Ohio | Department of Commerce

Division of Securities

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The Ohio Investment Adviser and Investment Adviser Representative Handbook 4.0

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Ohio Department of Commerce, Division of Securities

Licensing Section

Handbook 4.0 replaces Handbook 3.0 dated March 2020

For the most recent version, visit https://com.ohio.gov/wps/portal/gov/com/divisions-and-programs/securities

Revised Handbook January 2022

The securities industry is a moving and changing industry. To keep up with new investor protection challenges, it is imperative that the Division of Securities make amendments and changes to policy and laws as it pertains to investment advisers. Therefore, as part of the Division's continuing outreach and education efforts, the Division is revising the 2020 Handbook. Please refer to Appendix L for specific topics that have changed and a page locator for those changes. And as always, please feel free to contact our office with any questions.

The Ohio Department of Commerce

The mission of the Ohio Department of Commerce is to safeguard Ohio's citizens and visitors and their property and resources, while ensuring reliable marketplaces conducive to business growth and prosperity.

The Ohio Division of Securities

The Division of Securities, within the Ohio Department of Commerce, administers and enforces the Ohio Securities Act. The Division licenses broker-dealers, securities salespersons, investment advisers, and investment adviser representatives. The Division also registers securities offered for sale to Ohioans. When Ohio Securities law is violated, the Division can pursue administrative actions, civil injunctive actions, and criminal referrals.

Mission: Promoting capital formation while protecting Ohio investors from fraudulent securities and investment schemes through the sale of properly registered securities by licensed professionals.

Disclaimer: This compilation of material and information was prepared by the Ohio Division of Securities to provide general information and assistance regarding the Division's oversight of investment advisers and investment adviser representatives in Ohio. This information is not legal advice and is not a substitute for a thorough review of the relevant statutory provisions set out in Chapter 1707 of the Ohio Revised Code and related administrative rules set out in Chapter 1301:6-3 of the Ohio Administrative Code.

Part 1 Table of Contents

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Part 2 Introduction

The Ohio Securities Act (the "Act"), set forth in Chapter 1707 of the Ohio Revised Code (the "ORC"), provides for oversight of investment advisers ("IAs") and investment adviser representatives operating in Ohio. This oversight is administered and enforced by the Division of Securities (the "Division") pursuant to the Act and the associated rules set forth in Chapter 1301:6-3 of the Ohio Administrative Code (the "OAC"). Subject to certain limited exceptions, all investment advisers operating in Ohio must be either licensed by the Division or in compliance with certain notice filing requirements. Further, subject to certain limited exceptions, all investment adviser representatives with a place of business in Ohio must be licensed by the Division. Filings and fees for investment adviser notice filings or licensure must be submitted electronically through the Investment Adviser Registration Depository ("IARD"), a nationwide database and filing system maintained by the Financial Industry Regulatory Authority ("FINRA") that is available at iard.com. Filings and fees for investment adviser representative licensure must be submitted electronically through the Central Registration Depository ("CRD"), the companion FINRA database to IARD.

Pursuant to the federal National Securities Markets Improvement Act of 1996, as amended, and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, only certain investment advisers are eligible to be registered with the federal Securities and Exchange Commission (the "SEC"). Generally, there are 11 categories of investment adviser that are permitted to register with the SEC. The most frequently relied upon category is for investment advisers with assets under management of $100 million or more. Subject to certain limited exceptions, investment advisers registered with the SEC that are operating in Ohio must comply with the Act's notice filing requirements.

Investment advisers operating in Ohio that are not registered with the SEC must be licensed by the Division, subject to four limited exceptions.

Similarly, all investment adviser representatives with a place of business in Ohio must be licensed by the Division, subject to five limited exceptions. The general rule requiring licensure for investment adviser representatives applies regardless of whether the investment adviser representative is affiliated with an SEC-registered investment adviser or a state-licensed investment adviser.

The starting points for consideration of Ohio investment adviser and investment adviser representative requirements are the definitional sections. "Investment adviser" is defined in ORC § 1707.01(X). "Investment adviser representative" is defined in ORC § 1707.01(CC). These definitions track the definitions of these terms contained in federal law.

If a person meets the definition of investment adviser or investment adviser representative under Ohio law, the person then must look to the Act's licensing and notice filing

requirements. ORC § 1707.141 and ORC § 1707.151 set out the licensing and notice filing requirements for investment advisers, while ORC § 1707.161 sets out the licensing requirements for investment adviser representatives.

Finally, investment advisers and investment adviser representatives are subject to certain anti-fraud and conduct standards. These standards are contained primarily in ORC § 1707.44(M) and OAC 1301:6-3-15.1 and 1301:6-3-44.

Violations of the Act can result in criminal penalties. ORC § 1707.99 provides that the penalties for certain violations range from fifth degree to first degree felonies. Violations can also lead to civil liability. Consequently, the Division urges investment advisers and investment adviser representatives to take their compliance responsibilities seriously.

To review the full text of references in this Handbook to the ORC or the OAC, please see the Ohio Revised Code online at codes.ohio.gov/orc, and the Ohio Administrative Code online at codes.ohio.gov/oac.

Part 3 Licensing – Applications, Renewals, Termination

I. Investment Adviser Licensing

a. Are You an Investment Adviser under Ohio Law?

1. "Investment Adviser" Definition

The Ohio definition of "investment adviser" is set forth in ORC § 1707.01(X) and parallels the federal definition (see § 202(a)(11) of the Investment Advisers Act of 1940).

In general, an investment adviser is a person who: (1) for compensation; (2) engages in the business of; (3) advising others as to the value of securities or the advisability of investing in securities.

The Investment Adviser Flowchart set forth in Appendix C and accompanying notes provides a step-by-step guide through the elements of, and exclusions from, the definition of "investment adviser" under Ohio law.

2. Three Elements

The three elements are broadly construed. The "**compensation**" element is satisfied by the receipt of any economic benefit by the person providing advice. The "**engaged in the business**" element is satisfied if any one of the following occurs: (1) the person holds himself or herself out as an investment adviser or as one who provides investment advice; (2) the person receives compensation that represents a clearly definable charge for providing advice about securities; or (3) the person, on anything other than rare, isolated

and non-periodic instances, provides specific investment advice. Finally, as to the third element, the advice must "**pertain to securities**." However, in order to satisfy the "pertain to securities" element, the advice need not be about specific securities, but rather only about securities generally as a possible avenue for investment.

Keep in mind that it is not necessary that a person's activities consist solely of investment advisory services to qualify as an investment adviser. Rather the test is whether any part of the person's activities meet the three elements of "for compensation," "engaged in the business," and "regarding securities." For example, a recommendation to sell securities holdings in order to purchase a particular insurance product may satisfy the definition of an investment adviser where the insurance sale results in a commission payment.

3. Exclusions From the Definition of "Investment Adviser"

Ohio Revised Code § 1707.01(X)(2) excludes several classes of persons from the Ohio definition of investment adviser. These exclusions track the exclusions from the federal definition of investment adviser. (See §§ 202(a)(11)(A)-(F) of the Investment Advisers Act of 1940). Whether an exclusion is available depends on all the relevant facts and circumstances.

b. How to Form an Investment Adviser Firm in Ohio

If you determine that you meet the definition of an Investment Adviser under Ohio law and that you are required to be licensed, you need to take steps to become licensed.

- Determine the legal status of your firm. The most common structures are Corporation, Sole Proprietorship (see the section of this Handbook titled "Establishing an Investment Adviser Firm as a Sole Proprietor"), Limited Partnerships, Partnership, and Limited Liability Company. To determine the best structure for your firm, you should consult with an attorney or accounting professional for guidance.

- Register your firm with the Ohio Secretary of State's office and obtain an Employer Identification Number (EIN) for your firm, if applicable. Helpful sites to visit are sos.state.oh.us and irs.gov.

- Establish that your firm has a representative that meets minimum competency requirements and determine if the representative is required to submit fingerprints. Investment Adviser Representative licensing requirements are discussed in more detail in the section of this Handbook titled "Investment Adviser Representative Licensing."

- Establish an IARD account, through FINRA's IARD at: iard.com/accessIARD.asp. This is where a firm applies for licensure and funds the

payments for licensing and future renewals. IARD Gateway Call center representatives can be reached at (240) 386-4848.

- Applications for licensure must be submitted electronically using the IARD system. Items to be filed on IARD include Form ADV Parts 1A and 1B, Parts 2A and 2B, and wrap fee brochure, if applicable. These documents make up your firm's application. Form ADV in its entirety as well as the Instructions and Glossary are available at: sec.gov/about/forms/formadv.pdf.

- Pay the applicable licensing fees for your firm and all IARs as prescribed in ORC § 1707.17(B).

- Create your firm's Compliance and Cybersecurity Manuals, policies and procedures, business continuity plan and investment advisory agreement. These requirements are discussed in more detail in the section of this Handbook titled "Compliance Manual."

- Install your initial recordkeeping procedures, including your accounting records that you will use for creating the required financial statements. These requirements are discussed in more detail in the section of this Handbook titled "Books and Records."

Once you have filed your initial application material on the IARD, the Division requires a Pre-Licensing Examination. The exam will require that certain documents be provided. See Appendix E.

c. Investment Adviser Branch Offices

If you operate a branch office(s) other than your primary office, you need to register the branch office with the Division. Each investment adviser must file a Form BR through IARD to report a "place of business" other than their principal place of business. "Place of business" is defined in OAC 1301:6-3-01(G) to include two categories of locations. First is an office at which an investment adviser or investment adviser representative regularly provides investment advisory services, solicits, meets with, or otherwise communicates with clients. Second is any other location that is held out to the general public as a location at which an investment adviser or investment adviser representative provides investment advisory services, solicits, meets with or otherwise communicates with clients. There is no filing fee for filing Form BR.

d. How to Form an Investment Adviser Firm as a Sole Proprietor

Ohio Revised Code § 1707.151(B) provides that each natural person applicant for an investment adviser license (i.e., as a sole proprietor) must demonstrate their competence

to engage in the advisory business. A sole proprietor investment adviser is a natural person who has not created a legal entity to engage in that business. Sole proprietor investment advisers should keep in mind that, as with firms, they are subject to anti-fraud and business conduct standards.

In addition, because sole proprietor investment advisers are distinguished from sole shareholders of corporate investment advisers, sole proprietor investment advisers need not file a Form U-4 with the Division and need not be licensed as an investment adviser representative (unless the person also acts as an investment adviser representative for another investment adviser). However, in addition to submitting Form ADV and a filing fee through the IARD system, a sole proprietor must also submit a standard impression sheet for fingerprints provided by the Division if one is not currently on file with the Division. See the section of this Handbook titled "Fingerprinting Requirement" for more information.

A sole proprietor investment adviser must also demonstrate "good business repute" (as discussed in this Handbook under "The Good Business Repute Standard for IAs") and minimum competency. Under OAC 1301:6-3-15.1(C), the minimum competency standard for sole proprietors may be satisfied by:

- Having been licensed as an investment adviser or investment adviser representative by the division within the two years immediately preceding the date of the application;

- Achieving a passing score on one of the following exams, or their successor exams, within two years of the date of filing the application:
    - The uniform investment adviser law exam (series 65); or
    - The securities industry essentials exam (SIE), the general securities representative exam (series 7), and the uniform state law exam (series 66);

- By earning and being in good standing with the organization that issued any of the following credentials:
    - Certified Financial Planner awarded by the Certified Financial Planner Board of Standards, Inc.;
    - Chartered Financial Analyst;
    - Chartered Financial Consultant;
    - Chartered Investment Counselor; or
    - Certified Public Accountant with a Personal Financial Specialist designation.

Important Note: An applicant under this rule will be considered to have met the examination requirement(s) of this rule if the applicant was licensed or registered as an

investment adviser representative in another United States jurisdiction within the two years immediately preceding the filing of an application with the division. Also, an applicant will be considered to have passed the securities industry essentials exam (SIE) if they currently maintain a non-expired "SIE Credit" issued by the financial industry regulatory authority. See OAC 1301:6-3-15.1(C)(4) and (5).

An applicant who is not affiliated with a FINRA-registered securities dealer may register for the Series 65 or Series 66 by submitting to FINRA a completed Form U-10, Uniform Examination Request for Non-FINRA Candidates. These examinations are administered by the North American Securities Administrators Association (NASAA). For information about registration, scheduling, and study guides, visit their website for more information: nasaa.org.

e. The "Good Business Repute" Standard for IAs

In addition to the application requirements described above, ORC § 1707.151(E) requires the Division to make an affirmative finding that an applicant is of "good business repute" before granting a license. To determine if you meet the "good business repute" standard, the Division considers the factors set forth in OAC 1301:6-3-19(D), which generally include whether the applicant has:

- Engaged in fraudulent conduct or been found liable for conduct constituting incompetence in financial activities;
- Been subject to administrative, civil or other disciplinary action by a regulatory agency, or failed to fully satisfy any judgment or award;
- Been found guilty of a felony, or of any misdemeanor involving theft, deception, or moral turpitude; or
- Engaged in any conduct that would reflect on the applicant's reputation for honesty, integrity, and competence in business and personal dealings.

f. Application Review Process – Approval or Denial

Failure to answer all questions on the appropriate forms, and failure to provide all required information will delay the Division's review of an application. By rule, the Division may terminate an application with unresolved deficiencies that remains pending for more than 180 days. See OAC 1301:6-3-15.1(L).

Pursuant to ORC § 1707.151(B), the Division may investigate any license applicant and may require any additional information as it deems necessary in consideration of the application.

If the Division determines that an applicant lacks good business repute, the Division will issue to the applicant a notice of intent to deny the application. The applicant must, within 30 days, either withdraw the application or, pursuant to ORC Chapter 119, request an administrative hearing. Failure to withdraw the application or request a hearing within 30 days will result in the issuance by the Division of a final order to deny the application.

II. Investment Adviser Representative Licensing

a. Are You an Investment Adviser Representative under Ohio law?

The Ohio definition of "investment adviser representative" is set forth in ORC § 1707.01(CC) and parallels the federal definition (See SEC Rule 203A-3(a)). The Investment Adviser Representative Flowchart set forth in Appendix D and accompanying notes provide a step-by-step guide through the elements of this definition.

In general, an investment adviser representative is an individual who gives advice on behalf of an investment adviser to a certain minimum number of natural person clients through regular meetings or communications.

- **Supervised Person:** Specifically, in order to be an investment adviser representative, the person **first must be a "supervised person"** as defined in ORC § 1707.01(DD) and generally means officers, directors and employees of an investment adviser as well as others who provide advice on behalf of the investment adviser firm.

- **More than five Clients:** The supervised person must have more than five clients who are natural persons other than "excepted persons," and more than 10% of the clients must be natural persons other than "excepted persons." "Excepted person" is defined in ORC § 1707.01(EE) and generally means certain wealthy and high net worth individuals.

- **Client meetings:** The supervised person must on a regular basis solicit, meet with, or otherwise communicate with clients of the investment adviser.

All three of these elements must be met for a person to qualify as an investment adviser representative. However, even if a person meets all three of these elements, ORC § 1707.01(CC)(1)(b) provides that the person is excluded from the definition of investment adviser representative if the natural person provides advisory services only by means of written materials or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts.

b. How do I Apply to be an IAR in Ohio?

Ohio Revised Code § 1707.161(D)(1) states that an application for an investment adviser representative license shall consist of the information, materials, and forms specified in rules adopted by the Division. OAC 1301:6-3-16.1(A) specifies that an application shall consist of:

- A completed Form U-4 for each individual for whom the applicant seeks to act as an investment adviser representative;
- The fingerprinting requirement; and
- The license fee prescribed in ORC § 1707.17(B).

Annual Cost table	Ohio Fee	IARD User Fee	Totals
Investment Adviser Firm	$100.00	$0.0	$100.00
Investment Adviser Representative	$35.00	$15.00	$50.00

c. Fingerprinting Requirement

(OAC 1301:6-3-16.1(A)(1)(c))

All investment adviser representatives are required to be fingerprinted when applying for a license. The Division will only waive this requirement if the applicant has a **current** approved status by a regulatory authority at the time application for licensure is made with the division and the applicant has submitted fingerprint impressions to FINRA or CRD in connection with the approved status.

For Ohio residents, the Division only accepts electronic fingerprints taken via WebCheck. Below is a website you can use to find a WebCheck location near you:

Ohio Attorney General WebCheck Community Listing

A WebCheck facility will request the "reason for printing." Please have the WebCheck personnel choose "other" and fill in "IAR Registration, pursuant to OAC 1301:6-3-16.1." The impressions will be forwarded directly to the Attorney Generals' Bureau of Criminal Investigation ("BCI") and then be sent to the Division. It may be necessary to notify the WebCheck personnel that the fingerprint results must be sent directly to the Division, not to the adviser/firm to then route them to the Division. The Division can only accept results if they come directly from BCI.

The Division cannot accept fingerprint results directly from the applicant or their employing firm. Please bring the Division's address to the facility for the results to be sent directly to the Division:

Ohio Department of Commerce
Division of Securities
77 South High Street, 22nd Floor
Columbus Ohio 43215

For non-Ohio residents needing fingerprints, please contact the Division at (614) 644-6292, and a Division-specific fingerprint impression card will be forwarded to you.

d. Minimum Competency – Series Examinations

(OAC 1301:6-3-16.1(B))

As a condition of licensing, every applicant for licensing as an investment adviser representative shall furnish evidence to the division that they have satisfied one of the criteria listed in paragraphs (B)(1) to (B)(3) of this rule:

(1) Been licensed as an investment adviser representative by the division within the two years immediately preceding the date of the application; or

(2) Achieved a passing score on the following exams, or their successor exams, within two years of the date of filing an application:

(a) The uniform investment adviser law exam (series 65); or

(b) The securities industry essentials exam (SIE), the general securities representative exam (series 7), and the uniform combined state law exam (series 66);

An applicant under this rule will be considered to have met the examination requirement above if the applicant was licensed or registered as an investment adviser representative in another United States jurisdiction within the two years immediately preceding the filing of an application with the Division. Further, an applicant will be considered to have passed the securities industry essentials exam (SIE) referenced in this rule if they currently maintain a non-expired "SIE Credit" issued by FINRA.

An applicant who is not affiliated with a FINRA-registered securities dealer may register for the Series 65 or Series 66 by submitting to FINRA a completed Form U-10, Uniform Examination Request for Non-FINRA Candidates. These examinations are administered by NASAA (North American Securities Administrators Association). For information about registration, scheduling, and study guides, visit their website for more information: nasaa.org.

e. Minimum Competency – Professional Designations

(OAC 1301:6-3-16.1(B)(3))

As an alternative to the Series Examinations, an applicant can qualify for licensure with the Division by providing verification that they are in good standing with the organization that issues credentials for one of the following designations:

- Certified Financial Planner;
- Chartered Financial Analyst;
- Chartered Investment Counselor;
- Chartered Financial Consultant; and
- Certified Public Accountant with a Personal Financial Specialist designation.

f. IAR Dual Registration

Ohio Revised Code § 1707.161(B)(1) permits an investment adviser representative to be licensed with up to two (2) investment adviser firms, regardless of whether the two firms are affiliated.

If the investment adviser representative is licensed with two (2) unaffiliated investment adviser firms, then they shall do so only after the occurrence of both of the following;

- Being properly licensed, or properly excepted from licensure, as an investment adviser representative for each of the two investment advisers; *and*

- Notifying both investment advisers of the dual affiliation via filing of Form U-4 on the IARD/CRD system and retaining evidence of that notification in his or her records.

g. The "Good Business Repute" Standard for IARs

In addition to the application and minimum competency requirements described above, ORC § 1707.161(E) requires the Division to make an affirmative finding that an applicant is of "good business repute" before granting a license.

Determining the existence of good business repute. The Division is guided by the factors set forth in OAC 1301:6-3-19(D), which generally include whether the applicant has:

- Engaged in fraudulent conduct or been found liable for conduct constituting incompetence in financial activities;
- Been subject to administrative, civil or other disciplinary action by a regulatory agency, or failed to fully satisfy any judgment or award;
- Been found guilty of a felony, or of any misdemeanor involving theft, deception or moral turpitude; or
- Engaged in any conduct that would reflect on the applicant's reputation for honesty, integrity and competence in business and personal dealings.

If the Division determines that an applicant lacks good business repute, the Division will issue to the applicant a **notice of intent to deny the application**. The applicant must, within 30 days, either withdraw the application or, pursuant to ORC Chapter 119, request an administrative hearing. Failure to withdraw or request a hearing within 30 days will result in the issuance by the Division of a final order to deny the application.

h. Application Review Process – Approval and Denial

Failure to answer all questions on the appropriate forms, and failure to provide all required information will delay the Division's review of an application. By rule, the Division may terminate an application with unresolved deficiencies that remains pending for more than 180 days. See OAC 1301:6-3-16.1(G).

Pursuant to ORC § 1707.161(D), the Division may investigate any applicant and may require any additional information as it deems necessary in consideration of the application.

If the Division determines that an applicant lacks good business repute, the Division will issue to the applicant a notice of intent to deny the application. The applicant must, within 30 days, either withdraw the application or, pursuant to ORC Chapter 119, request an administrative hearing. Failure to withdraw the application or request a hearing within 30 days will result in the issuance by the Division of a final order to deny the application.

III. Renewal and Expiration of a License

All investment adviser and investment adviser representative licenses expire on December 31st each year unless they are renewed through the Web IARD/CRD.

A Preliminary renewal statement is made available to each firm online in Web IARD/CRD in mid-November each year. The firm's renewal account must be funded for the entire preliminary renewal statement amount, regardless of whether there are additions or deletions in the number of investment adviser representatives, in order for the firm and their investment adviser representatives to be renewed. Failure to fund the renewal account with the entire amount of the preliminary renewal account statement will result in the firm and its investment adviser representatives being terminated. The renewal account must be funded prior to Web IARD/CRD shutdown in mid to late December. There are **no exceptions** in Ohio. You must renew through Web IARD/CRD. Ohio cannot accept payment directly to the Division.

All licenses not renewed by the deadline will terminate as a matter of law – there are no grace periods. Investment advisers and investment adviser representatives that "fail to renew" must re-apply with the Division.

a. How to Terminate a License – Discontinuing Business

(OAC 1301:6-3-15.1(J))

A notice of withdrawal from licensure shall be filed with the Division via the IARD on Form ADV-W in accordance with its instructions. The IA should include on Form ADV-W the address where the books and records will be maintained during such period. Investment adviser representatives licensed with the terminating firm should have a Form U5 filed on their behalf.

An investment adviser ceasing to conduct or discontinue business shall arrange for and be responsible for the preservation of the records in compliance with the OAC for a period of five years after the firm ceases doing business.

Part 4 Compliance Obligations

I. Books and Records

(OAC 1301:6-3-15.1(E))

The following books and records must be maintained in true and accurate form by investment advisers headquartered in Ohio and licensed with the Division.

a. Financial Records

(OAC 1301:6-3-15.1(E)(1)(a), (b), and (d)–(f))

- Cash receipts and disbursement journals and other records of original entry forming the basis for entries in any ledger,
- General and auxiliary ledgers reflecting assets, liabilities, reserves, capital, income and expense accounts,
- All bank statements and bank reconciliations of the adviser,
- All bills or statements (paid or unpaid) relating to the business of the investment adviser as such,
- All trial balances, quarterly financial statements (which includes balance sheets and income or profit and loss statements), and internal audit working papers relating to the investment adviser's business.

b. Trading Records

(OAC 1301:6-3-15.1(E)(1)(c) and (h), (E)(2)-(3))

- A memorandum for each order made for the purchase or sale of securities, including terms, conditions and instructions received from the client, and any modification or cancellation of the order. The memorandum must identify the affiliated person who recommended the transaction, the person who placed the order, the account involved, the date of entry, and the bank, broker or dealer that executed the order. Orders entered pursuant to discretionary power are to be so designated.
- A list or record of all accounts in which the adviser has discretionary power as to funds, securities or transactions.
- For advisers that have custody or possession of client funds or securities, records must include (a) a journal of purchases, sales, receipts and deliveries of securities, showing certificate numbers and all other debits and credits to the accounts; (b) a separate ledger account for each client showing purchases, sales, receipts and deliveries, showing the date and price for each transaction and all debits and credits; (c) copies of confirmations of all transactions effected by or for clients' accounts; (d) a record for each security in which any client has a position, showing the name of each client having an interest in the security, the amount or interest of each client, and the location of each such security; and (e) the required

accountant's certificate verifying client funds and securities in the adviser's possession.

- For advisers who render investment advisory or management services to clients, records with respect to the portfolio being supervised or managed (to the extent reasonably available or obtainable) must include accurate and current records showing separately for each client the securities purchased and sold; the date, amount, and price of each transaction; and for each security in which any client has a current position, information from which the adviser can promptly furnish the name of each client and its current amount or interest in the security. Client records may be maintained using a code instead of the client's name so long as when requested the name and other identifying information is promptly provided to the Division.

c. Correspondence

(OAC 1301:6-3-15.1(E)(1)(g))

Originals of all written communications received, and copies of all written communications sent by the investment adviser:

- relating to recommendations or advice given (or proposed to be given);
- relating to receipt, disbursement or delivery of funds or securities; or
- relating to the placing or execution of any order to purchase or sell securities.

Written communications shall include all writings in any form, including but not limited to, text messages, direct messaging, emails, and email attachments.

The adviser does not need to keep the names and addresses of persons to whom a publication was sent when it was distributed to more than two persons but must keep with the copy of the publication a memorandum describing any list to whom the publication was sent and the source of the list. The adviser does not need to keep unsolicited market letters or similar communications of general public distribution not prepared by or for the adviser.

d. Advertising Records

(OAC 1301:6-3-15.1(E)(1)(k) and (p))

- A copy of any notice, circular, advertisement (as defined in OAC 1301:6-3-44(A)(2)), newspaper article, investment letter, bulletin or other communication, including but not limited to, electronic, digital, and internet communications or postings to internet sites, that the investment adviser circulates or distributes,

directly or indirectly, to two or more persons (other than people connected with the investment adviser). If the communication recommends the purchase or sale of a specific security without giving the reasons for the recommendation, the adviser must keep a memorandum indicating the reasons, and

- All accounts, books, internal working papers, and other records or documents that support the performance or rate of return calculations for managed accounts or securities recommendations that are advertised or circulated to ten or more persons (other than persons connected with the investment adviser). With respect to performance of managed accounts, it is sufficient to retain the account statements and related worksheets.

e. Client Records

(OAC 1301:6-3-15.1(E)(1)(h)-(j), (q)-(r), and (t))

- A list or other records 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;
- Originals or copies of all powers of attorney or similar documents from clients granting the adviser discretionary authority;
- Originals or copies of all written agreements with clients or agreements otherwise relating to the adviser's business;
- All current and former client lists, including all contact information in the adviser's possession for purposes of communicating with the client, including address, telephone number, and email address, if applicable;
- All advisory contracts entered into by the adviser or its investment adviser representatives;
- Originals or copies of all written agreements with clients or agreements otherwise relating to the adviser's business; and
- Written information about each investment advisory client and each security that forms the basis for making any recommendation or providing investment advice to such client.

As a fiduciary, an adviser must make a reasonable inquiry into the investment objectives, risk tolerance, liquidity needs, time horizon, and other relevant information necessary to make recommendations that are in the client's best interest. All investment advisers must review their recommendations no less than every three years. This review shall be

conducted more frequently if the client's circumstances are expected to change or otherwise indicate a need for more frequent reassessment.

f. Suitability/Know Your Client Records

(OAC 1301:6-3-15.1(E)(1)(t))

The adviser is required to retain written information about each investment advisory client and each security that forms the basis for making any recommendation or providing any investment advice to such client. This information should include all details obtained to determine a client's investment objectives, financial needs and any other relevant information. The information obtained should at the least include income, net worth, investment objectives, investment experience, the time horizon, liquidity needs and risk tolerance for each client. This information should be dated and maintained in a manner for easy access if requested.

In addition, it is recommended that this information be updated at least every three years. Advisers should review and assess suitability information when there are major changes in the client's life (e.g., retirement, job changes, divorce, etc.). The updated information should be dated and maintained in a manner that is easily accessible and able to be provided in an orderly manner to examiners or other regulatory agents if requested.

Investment Advisers should also maintain all records documenting the research they conduct to assess whether a recommended or selected security is suitable for their clients (also known as, due diligence). This can be written, or maintained in electronic format, but must comply with all aspects of the record retention rules.

These specific requirements, including how often these records will be updated, should be made part of the adviser's compliance manual.

This information is not only required by Ohio's rules but is deemed a part of the adviser's fiduciary duty.

g. Fiduciary Duty Records

(OAC 1301:6-3-44(E)(1)(f))

Advisers have a fiduciary duty to act in the best interests of clients and to disclose actual or potential conflicts of interest. Some specific obligations resulting from this fiduciary duty are:

- A duty to employ reasonable care to avoid misleading clients;
- A duty to have a reasonable independent basis for investment advice;
- A duty to ensure that investment advice is suitable;

- A duty to obtain best execution of client transactions; and
- Borrowing money or securities from a client.

h. Trusted Contact

The Division strongly encourages that advisers obtain clients' Trusted Contact Authorizations as a best practice. This should be separate (although may be similar) to any Trusted Contact Authorizations executed between the client and third parties (e.g., your custodian). A client's Trusted Contact Authorization may be used if the adviser has questions or concerns about the client's health (capacity and well-being) or welfare (financial exploitation), or if the adviser is unable to contact the client. The adviser would then be legally permitted to speak with the person(s) listed about the client. The Trusted Contact Authorization should be signed by the client and updated as needed. While there is no prescribed format for a Trusted Contact Authorization, advisers may wish to refer to FINRA's template while customizing their own. See Appendix G for a sample Trusted Contact Template.

i. Disclosure Records

(OAC 1301:6-3-15.1(E)(1)(n))

- A copy of the written disclosure statement, Form ADV Part 2A, 2B, Appendix 1, (and each amendment or revision) made available and a record of the dates that they were given or offered to each client or prospective client who subsequently became a client, and
- All written disclosure documents delivered to clients by third-party solicitors and all written acknowledgments of receipt of such documents received back from clients.

j. Privacy Policy

(OAC 1301:6-3-15.1(H))

The investment adviser must deliver upon the investment adviser's engagement by a client, and on an annual basis thereafter, a privacy policy to each client that is reasonably designed to aid in the client's understanding of how the investment adviser collects and shares, to the extent permitted by state and federal law, non-public personal information. The investment adviser must promptly update and deliver to each client an amended privacy policy if any of the information in the policy becomes inaccurate.

k. Compliance Policies and Procedures

(OAC 1301:6-3-15.1(E)(1)(w) - (x); and 1301:6-3-44(H))

Advisers are required to maintain compliance policies and procedures, and records of their annual review of those compliance policies and procedures. Please note that advisers should maintain copies of the various "versions" of their manual for five years from the end of the fiscal year that the version was used.

It is advisable to set up routine compliance procedures, including the update of your compliance manual to stay on top of your requirements. The Division will advise you of important requirements, including rule/requirement changes, when they occur.

l. Miscellaneous Records

(OAC 1301:6-3-15.1(E)(1)(l), (s), and (u)-(v))

- A record of every securities transaction (other than in US government securities) over which the adviser or any of its advisory representative has, influence or control and in which the adviser or advisory representative has, or by reason of the transaction acquires, any direct or indirect beneficial ownership. The record must state the title and amount of securities involved, the date and nature of the transaction, the price, and the name of the broker, dealer or bank through whom the transaction was effected.

- A file containing a copy of all written communications received or sent regarding any complaint, arbitration, civil litigation, unsatisfied judgment, or lien involving the investment adviser or any investment adviser representative that alleges a violation of state or federal law, or the rules or codes of ethics of any association of investment advisers, investment adviser representatives, securities salespersons or dealers, any professional association granted disciplinary authority or regulatory authority by any state or federal law, or by a recognized securities exchange.

- Written physical security and cybersecurity policies and procedures reasonably designed to ensure the confidentiality, integrity, and availability of physical and electronic records and information. The policies and procedures must be tailored to the investment adviser's business model, considering the size of the firm, the type(s) of services provided, and the number of locations of the investment adviser.

- Every investment adviser shall establish, implement, and maintain written procedures relating to a business continuity and succession plan. The plan shall be based upon the investment adviser's business model, including the

size of the firm, type(s) of services provided, and the number of locations of the investment adviser.

m. Retention Period of Books and Records

(OAC 1301:6-3-15.1(E)(5))

All books and records required to be made 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 the record. The first two years must be maintained in an appropriate office of the investment adviser.

n. Electronic Storage

(OAC 1301:6-3-15.1(E)(7))

The records required to be maintained and preserved may be maintained and preserved electronically, however the investment adviser must arrange and index the records in a way that permits easy location, access and retrieval of the record and must be able to promptly provide legible true and complete copies when requested by the Division. The Division permits advisers to maintain records exclusively with third parties (e.g., cloud storage); however, it is the ultimate responsibility of the investment adviser to comply with all aspects of the record retention rules.

o. Books and Records Should be Current

Each Investment Adviser licensed with the Division shall make and keep, true, accurate and ***current*** books and records relating to its advisory business. Records must be created at the time of or in proximity to the entry, action, or occurrence.

As part of the requirement to keep books and records current, all changes to the ADV must be made promptly. As a reminder:

- Solicitors should always be provided with the most updated version of an adviser's Form ADV.
- All referenced links to Form ADV (i.e., on a website or within a publication) should be to the most updated version.

All links and information provided on an adviser's website and other social media must be kept current and all links must be tested for accuracy.

II. Financial Records Required to be Kept Quarterly

(OAC 1301:6-3-15.1(E)(1))

Investment advisers are required to make and keep accurate and current financial records. All financial records must be prepared on a **quarterly basis**. Please refer to the section of this Handbook titled "Books and Records" for the specific types of records. **If an IA is a sole proprietor, it is recommended that financial records for the investment adviser be kept separate from the sole proprietor's personal records. It is also recommended that financial software be used or that the investment adviser employ an accountant.**

III. The Brochure Rule – Form ADV (Parts 1 and 2)

(OAC 1301:6-3-15.1(G))

a. Form ADV Part 1

Part 1 of Form ADV is required to be reviewed and updated within 90 days AFTER the end of your fiscal year. In addition to your *annual updating amendment*, you must amend your Form ADV Part 1, including corresponding sections of Schedules A, B, C, and D, by filing additional amendments promptly (within 30 calendar days of learning of the circumstances giving rise to the amendment or update) if:

- Information you provided in response to Items 1, 3, 9 (except 9.A.(2), 9.B.(2), 9.E., and 9.F.), or 11 of Part 1A or Items 1, 2.A. through 2.F., or 2.I. of Part 1B becomes inaccurate in any way; or
- Information you provided in response to Items 4, 8, or 10 of Part 1A or Item 2.G. of Part 1B becomes materially inaccurate.
- Form ADV Part 1, Item 5(D) and 5(K) were amended in October 2017, and require additional information to be disclosed.

b. Regulatory Assets Under Management (RAUM)

Understanding and accurately calculating your firm's regulatory assets under management (RAUM) is crucial to making accurate and complete disclosure. As explained by the instructions to Form ADV Part 1A, Item 5, RAUM includes only the "securities portfolios" for which you provide "continuous and regular supervisory or management services" as of the date of Form ADV.

An account is deemed a "securities portfolio" if at least 50% of the total value of the account is attributable to securities, cash, or cash equivalents (e.g., bank deposits,

certificates of deposit, bankers' acceptances, and similar bank instruments). Assets such as real estate, fixed indexed annuities, or operating businesses do not meet the definition of "securities portfolios." In Re New Line Capital, SEC Proceeding File No. 3-16371 (2015).

You provide "continuous and regular" supervisory or management services to a portfolio if either (i) you have discretionary authority over and provide ongoing services with respect to the account, or (ii) you do not have discretionary authority, but you have ongoing responsibility to make recommendations based on the needs of the client and, if the client accepts such recommendations, you are responsible for effecting the purchase or sale. A common example of this scenario is when an adviser reviews a participant's 401(k) allocations. Only that portion of a securities portfolio that is regularly and continuously managed should be included. For example, where securities assets are allocated at the opening of an account, receive only once-quarterly rebalancing, such assets should not be included among RAUM. In re Retirehub, Inc., SEC Admin Proc, 3-14666 (2011).

RAUM should be disclosed based on the current market value of the assets determined within 90 days of filing Form ADV.

Other factors may affect whether your clients' accounts should be included in your firm's RAUM, such as the form of your compensation and the terms of your advisory contract. You are strongly encouraged to review the entire instructions to Form ADV Part 1A, Item 5, regarding calculating and proper reporting of RAUM.

See Appendix F for an RAUM calculation decision tree.

c. Assets Under Advisement

Assets under Advisement (AUA) is a non-regulatory term that refers to assets on which your firm provides advice or consultation but which your firm either does not have discretionary authority or does not arrange or effectuate the transaction. AUA is distinct from RAUM and should neither be disclosed as part of RAUM nor used as the basis to charge an Assets Under Management fee. AUA are permitted to be disclosed, however, on Form ADV Part 2A as a separate asset figure. If you disclose AUA, then you may be asked to provide a basis for computing the AUA and a description of the assets comprising it. Some advisers opt to include AUA to provide prospective clients a more complete picture of the firm's responsibilities.

d. Third Party Relationships

The Division is aware that securities professionals refer clients to other firms for asset management services. These relationships are sometimes described as solicitor relationships, subadvisor relationships, third-party money manager relationships, or co-

adviser relationships. Because most of these terms are not defined in the Ohio Securities Act, we will provide general explanations below. Keep in mind, however, that the terms "solicitor" and "investment adviser" are defined in the Ohio Securities Act, so regardless of the terminology used, the Division will look to the licensing and compliance obligations of your role, as described in your contracts and your regulatory disclosures, to determine the legal nature of the role.

A solicitor (as defined in by the Act) relationship exists when one refers clients to another and no longer has any authority in managing or making ongoing decisions on the client assets, while a referral fee is paid. **A co-advisor** is generally one who has the authority and responsibilities to the client, which could mean filling out paperwork, determining suitability, choosing a model, changing a model, or asset allocation. Co-advisers might or might not have discretion over the accounts.

e. Form ADV Parts 2A and 2B

(a/k/a "brochure" or "disclosure document" and "brochure supplement")

Every investment adviser is required to deliver to each client and prospective client a written disclosure document, describing the investment adviser's business practices, education, and business background.

Unless otherwise provided in the OAC, an investment adviser shall follow all current Instructions to Form ADV issued by the SEC regarding the completion, filing, delivery, and updating of Form ADV Part 2A (Brochure statement) and Form ADV Part 2B (Brochure Supplement). A general summary is as follows:

- **Provide your Brochure:** You must provide a Brochure to each client before or at the time you enter into an advisory agreement. Evidence of providing the Brochure is required. This evidence can be in the form of a signed receipt, or language can be made as part of the client contract.

- **Update your Brochure** each year you should review your entire brochure and make necessary changes. The date of the brochure, and the amount of client assets under management should be updated at this time. In addition, Item 2, Material Changes, should also be updated by clearly indicating that you are including only material changes since the last annual update of your brochure. You must then provide the date of the last annual update of your brochure. If there are no material changes since your last update, you should state that there are no material changes. Please note that you must maintain each update in your files.

- **File your Brochure**, once it is updated, through the IARD annually within 90 days of the end of your fiscal year. However, if information in your brochure

becomes materially inaccurate, you must update it promptly. According to OAC 1301:6-3-01, the word "promptly" requires licensees to amend or update any filings within 30 calendar days of learning of facts or circumstances giving rise to an amendment or update.

- **Annual Delivery:** Each year you must either deliver within 120 days of your fiscal year-end your Brochure to each client, that either includes or is accompanied by a summary of material changes (Item 2), OR you must provide a summary of material changes and offer your clients the Brochure if they are interested. **If you do not have any material changes:** You do not have to deliver or offer the Brochure to your clients annually.

- **Interim Delivery:** If any information in response to Item 9 of Part 2A (disciplinary information) changes, you are required to deliver an interim amended Brochure Statement to clients. An interim amendment can be in the form of a document describing the material facts relating to the amended disciplinary event.

f. Material Changes

Depending on the facts and circumstances, examples of material changes may include, but are not limited to:

- Change of address/location or contact information (e.g., phone number or email address),
- New Owners of Investment Adviser entity,
- Significant change in services offered,
- New potential conflict of interest,
- A new fee schedule,
- Changes in disciplinary history,
- Changes in the custodian or broker used, and/or
- Changes in licensing status with the SEC or state(s).

g. Wrap Fee Program Disclosures

For advisers offering a wrap fee program, they shall follow all current instructions to Form ADV issued by the SEC with regards to the completion, filing, delivery, and updating of Form ADV Part 2A, Appendix 1.

- **Preparing a Wrap Fee Program Brochure:** If you sponsor a wrap fee program, you must prepare a Wrap Fee Program Brochure. If you sponsor more than one wrap fee program, you may prepare a single Wrap Fee Program Brochure describing all the programs or you may prepare separate brochures for each program. If you provide advisory services outside of a wrap fee program, you must prepare a separate brochure for those advisory services. If a wrap fee program that you sponsor has multiple sponsors, and another sponsor creates and delivers to your wrap fee program clients a brochure that includes all the required information, you do not have to create or deliver a separate Wrap Fee Program Brochure.

- **Provide your Wrap Fee Program Brochure:** You must provide a Wrap Fee Program Brochure to each client of the wrap fee program before or at the time the client enters into a wrap fee program contract. Evidence of providing such is required. This evidence can be in the form of a signed receipt, or language can be made as part of the client contract.

- **Update your Wrap Fee Program Brochure** each year at the time you file your annual updating amendment on the IARD system and otherwise promptly whenever any information in the Wrap Fee Program Brochure becomes materially inaccurate.

- **File your Wrap Fee Program Brochure** through the IARD annually within 90 days of the end of your fiscal year. However, if information in your Wrap Fee Program Brochure becomes materially inaccurate, you must update it promptly. According to OAC 1301:6-3-01, the word “promptly” requires licensees to amend or update any filings within 30 calendar days of learning of facts or circumstances giving rise to an amendment or update.

- **Annual Delivery:** Each year you must either deliver within 120 days of your fiscal year-end your wrap-fee program brochure to each client, that either includes or is accompanied by a summary of material changes (Item 2), OR you must provide a summary of material changes and offer your Wrap Fee Program Brochure.

- **Interim Delivery:** If any information in response to Item 9 of Part 2A (disciplinary information) changes, you are required to provide an interim update of your Wrap Fee Program Brochure to your wrap fee clients. *NOTE: Technically, an IA with both Wrap Fee and non-Wrap Fee clients will have to deliver updated Brochures to each type of client.

IV. Advertising

(OAC 1301:6-3-44(A))

Investment advisers and their investment adviser representatives are prohibited from using any advertisement that contains any untrue statement of a material fact or that is otherwise misleading. The rule broadly defines "advertisement" to include any notice, circular, letter or other written communication addressed to more than one person, or any notice, circular, letter or other written communication or any communication by electronic means including but not limited to email, the Internet, any social media sites, or other digital media, which are disseminated to more than one person, or any notice or other announcement in any publication or by radio or television.

In addition, an advertisement may not:

- Use or refer to testimonials (which include any statement of a client's experience or endorsement),
- Refer to past, specific recommendations made by the adviser that were profitable, unless the advertisement sets out a list of all recommendations made by the adviser within the preceding period of not less than one year, and complies with other, specified conditions,
- Represent that any graph, chart, formula, or other device can, in and of itself, be used to determine which securities to buy or sell, or when to buy or sell such securities, or can assist persons in making those decisions, unless the advertisement prominently discloses the limitations thereof and the difficulties regarding its use, or
- Represent that any report, analysis, or other service will be provided without charge unless the report, analysis or other service will be provided without any obligation whatsoever.

V. Performance Advertising

(OAC 1301:6-3-44(A)(1)(b))

Consistent with the position taken by the SEC, the Division takes the position that an adviser may advertise its past performance (both actual performance and hypothetical or model results), only if the advertisement meets certain conditions and restrictions. An advertisement using performance data must disclose all material facts necessary to avoid any unwarranted inference.

Among other things, an adviser may not advertise its performance data if the adviser:

- Fails to disclose the effect of material market or economic conditions on the results portrayed (e.g., an advertisement stating that the accounts of the adviser's clients appreciated in value 25% without disclosing that the market generally appreciated 40% during the same period).

- Includes model or actual results that do not reflect the deduction of advisory fees, brokerage or other commissions, and any other expenses that a client paid or would have paid.

- Fails to disclose whether and to what extent the results portrayed reflect the reinvestment of dividends and other earnings.

- Suggests or makes claims about the potential for profit without also disclosing the possibility of loss.

- Compares model or actual results to an index without disclosing all material facts relevant to the comparison (e.g., an advertisement that compares model results to an index without disclosing that the volatility of the index is materially different from that of the model portfolio).

- Fails to disclose any material conditions, objectives, or investment strategies used to obtain the results portrayed (e.g., the model portfolio contains equity stocks that are managed with a view towards capital appreciation).

- Fails to prominently disclose the limitations inherent in model results, particularly the fact that such results do not represent actual trading and that they may not reflect the impact that material economic and market factors might have had on the adviser's decision-making if the adviser was in fact managing clients' money.

- Fails to disclose, if applicable, that the conditions, objectives, or investment strategies of the model portfolio changed materially during the period of time portrayed in the advertisement and, if so, the effect of any such change on the results portrayed.

- Fails to disclose, if applicable, that any of the securities contained in, or the investment strategies followed with respect to, the model portfolio do not relate, or only partially relate, to the type of advisory services currently offered by the adviser (e.g., the model includes some types of securities that the adviser no longer recommends for its clients).

- Fails to disclose, if applicable, that the adviser's clients had investment results materially different from the results portrayed in the model.

- Fails to prominently disclose, if applicable, that the results portrayed relate only to a select group of the adviser's clients, the basis on which the selection was made, and the effect of this practice on the results portrayed, if material.

An adviser must create and retain all documents necessary to substantiate any performance information contained in advertisements or communications.

VI. Investment Advisory Contracts and Compensation

(OAC 1301:6-3-15.1(I))

- All advisory contracts shall be in writing and signed and dated by the client and the adviser.

- The contract should clearly state that the contract may not be assigned without the client's consent. OAC 1301:6-3-15.1(A)(2) defines "assignment" generally to include any direct or indirect transfer of an investment advisory contract by the investment adviser to another adviser, entity, or firm. A transaction that does not result in a change of actual control or management of the investment adviser (e.g., a reorganization for purposes of changing an adviser's state of incorporation), would not be deemed to be an assignment for these purposes.

- OAC 1301:6-3-15.1(I)(1)(c) provides that if an investment adviser is organized as a partnership, the advisory contract must provide that the adviser will notify the client of a change in its partnership makeup.

- OAC 1301:6-3-15.1(I)(1)(d) prohibits the use of mandatory arbitration of disputes. For advisory contracts that had a mandatory arbitration clause and were entered into before the rule became effective (prior to September 30, 2021), the adviser must create a new agreement without the arbitration clause. The new agreement must be signed by the adviser and client. Alternatively, the adviser can amend the original agreement voiding the mandatory arbitration clause. The amendment must also be signed by the adviser and client.

Advisory contracts should describe the specific services that the adviser is to provide to the client. Descriptions such as "investment advisory services" do not provide adequate detail.

If client fees are pre-paid, the contract should contain a provision for the pro rata refund of fees if the contract is terminated.

If the adviser has trading authority but does not have discretionary authority, it is recommended that the adviser contract include language that the adviser cannot trade without prior approval of the customer.

Ohio Administrative Code 1301:6-3-44(E)(1)(e) makes it unlawful for any investment adviser to use any condition, stipulation, or provision binding upon any person to waive compliance within any provision of Chapter 1707 of the ORC or any rule promulgated thereunder. This includes the use of hedge clauses, or disclaimers absolving the IA from responsibility or accuracy of the information obtained, which would lead a client to believe that any rights have been waived.

VII. Supervision and Compliance Manual

(OAC 1301:6-3-15.1 (D))

Every investment adviser licensed by the Division shall reasonably supervise its investment adviser representatives and other persons employed or associated with the investment adviser.

Part of the supervision obligation requires the investment adviser to adopt and implement written policies and procedures reasonably designed to prevent violations by the adviser and its supervised person of the Ohio Securities Act and the administrative rules promulgated by the Division. These written policies and procedures are often referred to as the adviser's "compliance manual."

Compliance considerations must be relevant to the operations of the adviser, and not simply an "off the shelf" version adopted without modifications tailored to the activities of the adviser.

In connection with adopting and implementing the written compliance program, an adviser must designate a person, who is a supervised person, as the "Chief Compliance Officer" ("CCO") responsible for administering the program.

The CCO should establish procedures for those they supervise to:

- prevent violations from occurring;
- detect violations that have occurred; and
- promptly correct any violations that have occurred.

VIII. Compliance Manual

The IA is required to review, no less frequently than **annually**, the adequacy of the policies and procedures and their effectiveness. In addition, you are required to document, in writing, evidence of the annual review, sign and confirm receipt of the policy by employees.

Advisers licensed with the Division have an obligation to establish, maintain, and enforce written policies and procedures reasonably designed to prevent and detect any violation by its investment adviser representatives or other persons, employed by or associated with, the investment adviser. The Division cannot provide a standard template for a compliance manual. The following is a sample list of the most common fiduciary and regulatory obligations of an adviser that should be addressed in the firm's written compliance program, where applicable:

- Correspondence/Communications
    - Establish policies regarding if/when internal approvals will be required prior to use of any client correspondence or communications
    - Document how client correspondence and communications will be retained
    - Correspondence/communications includes all written and recordable formats (letters, emails, text messages, video messages, etc.)
- Conflicts of interest
- Identify potential risks and make all reasonably practical efforts to avoid or eliminate conflicts of interest that can be reasonably avoided
    - Establish policies addressing how the adviser will disclose and mitigate conflicts of interest
- Registration and Licensing
    - Keep Form ADV Current – should be reviewed and updated no less than annually
    - IARD Entitlement and personnel responsible for all IARD duties
    - IA Licensing – Maintain compliance with licensing requirements in Ohio and other states, when necessary
    - IAR Licensing – Who is required to be licensed as an Investment Adviser Representative
- Books and Records
    - What are the firm's required records?
    - Who maintains the records, how, and where (including off-site storage)?
    - How are records secured from unauthorized alteration or use?

  - What is the schedule for retention and destruction of records?
  - How does the firm maintain and preserving electronic records and safeguarding them from loss

- Disclosure
  - Brochure Rule, Form ADV – how it's offered originally and annually
  - Form U4 Disclosures
  - Client Referral Arrangements
  - The accuracy of disclosures made to investors, clients, and regulators, including account statements and advertisements

- Trading Practices
  - Best Execution
  - Policies on when the adviser can trade in stocks recommended to clients
  - Guidelines on whether IARs need to trade with a certain broker-dealer
  - Soft Dollar Arrangements
  - Batch Trading (Aggregation of Orders)
  - Proprietary trading of the adviser and personal trading activities of supervised persons
  - Trade Errors

- Privacy Policy
  - The sharing of client information with others
  - Office personnel having access to files/computer
  - Establish safeguards for confidential personal information
  - Delivery of the adviser's privacy policy to each client upon engagement, and on an annual basis thereafter, with records evidencing such delivery

- Portfolio management processes
  - The allocation of investment opportunities among clients

- The consistency of portfolios with clients' investment objectives
- Disclosures by the adviser, and applicable regulatory restrictions

- **Mandatory Reporting requirements – Senior Exploitation Legislation**
  - ORC § 5101.63, the Adult Protection Services law was amended to better protect seniors by requiring all investment advisers, financial planners, dealers, salespersons, and investment adviser representatives licensed under Chapter 1707 of the ORC who have "reasonable cause to believe" that an adult is being abused, neglected, or exploited to immediately report the suspicion to their county office of job and family services (See educational booklet for more information at odjfs.state.oh.us/forms/num/JFS08095/pdf).
  - Policies and Procedures of your firm shall incorporate this requirement and must include a detailed process for how your firm will document compliance.

- Marketing/Advertising
  - Required internal approval prior to use
  - Use of social media, website, blogs, posts (etc.)
  - The use of solicitors
  - Record retention

- Fees
  - Processes to value client holdings
  - Disclosure
  - Refunds

- Business Continuity and Disaster Recovery Plans
  - Recovery of Books and Records
  - Alternate means of communications with customers, employees, service providers (including third-party custodians), and regulators
  - Office relocation due to unavailability of office
  - Death or incapacity of principal(s)

- Custody
    - Prior authorization before deducting fees
    - Safekeeping requirements
    - Account statements to clients
    - Audit requirement
    - Standing Letters of Authorization
- Proxy voting policy
- Complaints
    - How are they handled (procedures for reporting and addressing)?
    - How are related records maintained?
- Computer and Cybersecurity
    - Anti-virus – installation, updates
    - Preservation of the records from loss, alteration, destruction (use of back-ups)
    - Encryption
    - Secure Emails
    - Dissemination of client information
    - Inventory of hardware
    - Passwords
    - Procedures for lost or stolen data/information
    - Customer Access via web portals
- Cybersecurity and best practices
    - Ohio Data Protection Act, encouraging businesses to voluntarily adopt cybersecurity practices to protect consumer data; see codes.ohio.gov/orc/1354

- Cybersecurity Checklist and Confidential Data Inventory Checklist for IAs (See Appendix J and Appendix K)

- Insider Trading
  - Prevention of the misuse of material, nonpublic information

IX. Custody

Unless an investment adviser licensed or required to be licensed by the Division, and its investment adviser representatives, follow the Division's rule regarding custody of client funds and securities, such custody will be deemed a fraudulent, deceptive, or manipulative practice in violation of the statutory anti-fraud provision.

An adviser has custody if it holds client funds or securities directly or indirectly or has authority to obtain possession of such assets. See OAC 1301:6-3-44(B).

For example, an adviser has custody any time it physically holds client stock certificates, bonds or cash – even if temporarily. It should be noted that inadvertent receipt will not result in custody provided the check or securities are returned to the client within three business days. In addition, checks written to third parties and forwarded on to that third party will not result in custody.

A second example of custody is when an adviser is authorized to sign checks on a client's behalf to withdraw funds or securities from a client's account or to dispose of client funds or securities for any purpose other than authorized trading, such as a standing letter of authority (SLOA). Please see Appendix H for SLOA-related guidance. To illustrate this more clearly, custody occurs where advisers are authorized to deduct advisory fees or other expenses directly from a client's account, or, where the adviser has a general power of attorney.

Custody is triggered any time an adviser acts in a capacity that gives the adviser legal ownership of, or access to, client funds or securities. Illustrations of this include a general partner of a limited partnership; a managing member of a limited liability company; a comparable position for another type of pooled investment vehicle; or, a trustee of a trust.

The custody rule requires that all advisers maintain client funds and securities with only four types of qualified custodians, including:

- United States banks
- broker-dealers registered with, and regulated by the SEC
- futures commission merchants registered under the Commodity Exchange Act

- foreign financial institutions that customarily hold financial assets for their customers provide they hold them in segregated accounts

The client's funds and securities must be either placed in a separate account for each client under the client's name or placed in an account that contains only the adviser's clients' funds and securities under the adviser's name as agent or trustee for the clients.

An adviser that opens an account with a qualified custodian on the client's behalf, whether in the name of the client or in the name of the adviser, as agent, must notify the client in writing and provide the name and address of the qualified custodian; the manner in which the client funds or securities are being held; and **must promptly notify** the client upon the change of this information.

Clients must also receive quarterly account statements directly from the qualified custodian that identify the amount of funds and each security held in the adviser's custody at the end of the period and all transactions that took place in the account occurring during the period. The adviser must have a reasonable basis for believing that the qualified custodian is delivering proper quarterly account statements to its clients. To form this reasonable basis for believing, the adviser is required to receive duplicate copies of the account statements from the qualified custodian of what was delivered to the adviser's clients. The adviser cannot receive the quarterly account statements and then forward copies on to its clients. **Failure to comply with these quarterly account statement delivery requirements will result in the adviser being required to have annual surprise audits conducted by an independent public accountant, at the adviser's cost.**

Limited partnerships, limited liability companies, other pooled investment vehicles, and trusts must have clients' funds and securities maintained with a qualified custodian. The qualified custodian must deliver quarterly account statements regarding transactions and holdings in the limited partnerships, limited liability companies, other pooled investment vehicles, and trusts, not just transactions or holdings relating to the individual investors/limited partners.

The qualified custodian must deliver the quarterly account statements directly to the limited partners, members, or beneficial owners. Account statement delivery is not required if the limited partnership, limited liability company, or pooled investment vehicle is audited annually by an independent public accountant; the audited financials are prepared in accordance with GAAP accounting; and the audited financials are distributed to each limited partner or pooled investment vehicle member within 120 days of the limited partnership's or pooled investment vehicle's fiscal year end.

X. Fees

The Division takes the position that investment advisers and investment adviser representatives must disclose to clients all material information regarding compensation. This includes accurate fee schedules, when fees will be charged, and whether fees will be automatically deducted from clients' accounts or paid directly.

- Unreasonable or Unearned Fees

Ohio Administrative Code 1301:6-3-44(E)(1)(f)(vi) prohibits advisers from charging a client an unreasonable advisory fee. The Division may consider whether advisory fees are unreasonable in relation to: (1) the complexity and nature of the services provided; (2) the fees charged by other investment advisers or investment adviser representatives for similar services in the geographic area; and (3) the likelihood that the services provided by the investment adviser or investment adviser representative will result in returns in excess of the fees charged.

- Excessive Fees

The SEC and the Division have determined that an AUM fee **greater than 2%** will be considered excessive.[1] If the adviser is permitted to charge the excessive fee, the adviser must disclose to clients all material information regarding compensation. Specifically, the adviser must disclose to clients and prospective clients whenever:

- Such fees are higher than the industry standard;
- The same or similar services may be (or are) available from a different adviser at a lower cost; and
- If applicable, clients could obtain the same or similar services directly without the adviser's assistance and cost.

If you have a question on whether your excessive fee will be deemed appropriate, you may contact the division's Licensing Section. Alternatively, detailed information will be obtained during the examination of your firm and determined whether fees are considered excessive. If they are, refunds could be required.

[1] The SEC staff has indicated that it will consider an advisory fee greater than 2% of the total assets under management as excessive and would violate section 206 unless the disclosure is made that the fee is higher than that normally charged in the industry. *See Equitable Communications Co.*, SEC Staff No-Action Letter (Feb. 26, 1975); *Consultant Publications, Inc.*, SEC Staff No-Action Letter (Jan. 29, 1975); *Financial Counseling Corporation*, SEC Staff No-Action Letter (Dec. 7, 1974); *John G. Kinnard & Co., Inc.*, SEC Staff No-Action Letter (Nov. 30, 1973).

- Minimum Fees

If minimum fees are charged, the adviser has a fiduciary obligation to ensure that fees for small accounts are not abusive. Fixing a minimum fee for a small account may be unreasonable.

- Refunding Fees for Terminated Accounts

If fees are paid in advance the investment adviser should also disclose its refund policy. A non-refundable feature goes against an investment adviser's fiduciary responsibility. Any advisory contract which does not provide in substance for a *pro rata* refund of a prepaid advisory fee would violate the antifraud provisions of § 206 of the Advisory Act.

- Performance Fees

  (OAC 1301:6-3-15.1(I))

Investment advisers licensed or required to be licensed under the Act, are prohibited from receiving any type of advisory fee calculated as a percentage of capital gains or appreciation in the client's account. This prohibition extends to contingent fee arrangements, including contracts that provide for the fee to be waived or reduced if certain performance levels are not met. However, this prohibition does not apply to contracts with clients who have at least $1.1 million under the management of the adviser, or if the client has a net worth of more than $2.2 million. Either of these tests must be met at the time of entering into the advisory contract. Please note, the SEC indexes the values for being considered a qualified client every five year with the last update becoming effective in August 2021.

XI. Wrap Fee Program

Definition

In a wrap fee program, a client pays a single fee (usually measured as a percentage of assets under management) for a group of services that are bundled, or "wrapped" together. Typically, the services include investment advice, brokerage, custody and other administrative functions. Ohio law defines a wrap fee program as an arrangement in which a client is charged a specified fee or fees, not based directly on transactions in the client's account, for investment advisory services and execution of transactions.

Sponsor

A wrap fee program is offered by a program "sponsor," which may be broker-dealer, an investment adviser, bank, or other financial institution. A wrap fee sponsor typically is subject to regulation as an investment adviser. Normally a client enters into a contract directly with the sponsor, and a sponsor has specific disclosure obligations.

Portfolio Manager

After contracting with the sponsor, the typical wrap fee program permits the client to choose a portfolio manager from a list provided by the sponsor. This permits a client with a smaller account that might not warrant separate management by an investment adviser to obtain individualized treatment. Typically, the portfolio manager will have investment discretion in accordance with pre-determined investment objectives. As a result, clients with the same investment objectives receive the same investment advice and may hold the same, or substantially the same, securities in their accounts. In light of this similarity of management, a wrap fee program can effectively function like a mutual fund.

An investment adviser, which is licensed or required to be licensed by the Division, and which 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, must furnish each client and prospective client of the wrap fee program with a written disclosure statement ADV Part 2A, Appendix 1.

Wrap Fee Statement

An investment adviser that is required to furnish a wrap fee statement must furnish the wrap fee statement to each client at the time they enter into the agreement with the investment adviser. An investment adviser's fiduciary duty extends to wrap fee program recommendations. In particular, an investment adviser sponsor of a wrap fee program should consider at least the following issues:

- Whether the portfolio manager is suitable for the client
- Whether the program is suitable for the client
- Whether the chosen strategy is suitable for the client

XII. Fiduciary Standard

(OAC 1301:6-3-44(E)(1)(f))

Investment advisers and IARs stand in a fiduciary relationship with their clients. This duty is a long-standing doctrine of both federal and state common law, and is reiterated in the OAC. As fiduciaries, advisers have "an affirmative duty of utmost good faith and full and fair disclosure of all material facts." (See *Transamerica Mortg. Adv. Inc. v. Lewis*, 444 U.S. 11, 17 (1979)). In addition, an adviser is prohibited from engaging, or attempting to engage, in any act or practice constituting a breach of fiduciary duty, including but not limited to:

- Recommending the purchase, sale, or exchange of any security without a reasonable basis to believe that the recommendation is suitable for and in the best interest of the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known, or in the exercise of reasonable diligence should be known, by the investment adviser or investment adviser representative;

- Engaging in any advisory activity without making all reasonably practicable efforts to avoid or eliminate conflicts of interest that can be reasonably avoided;

- Engaging in any advisory activity involving conflicts that cannot reasonably be avoided or eliminated without first:

  (a) Mitigating the conflict by neutralizing any potential or actual harm or adverse impact of the conflict to the client; and

  (b) Disclosing to the client in writing, prominently and in plain language, a description of the nature and extent of the conflict of interest, the potential impact on and risk that the conflict of interest may pose to the client, and how the conflict of interest has been mitigated;

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

- Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser;

- Charging a client an unreasonable advisory fee;

- Accessing a client's account by using the client's own unique identifying information, such as username and password, or

- Any other act or practice declared to be a breach of fiduciary duty in courts of law or equity, or by any administrative tribunal, state or federal, on or after July 22, 1929 or declared a breach of fiduciary duty by rules or regulations adopted, and as amended, by any state agency, or by the United States securities and exchange commission, the financial industry regulatory Authority, or any predecessor or successor agencies.

A conflict of interest that can reasonably be avoided includes, but is not limited to:

- Compensation arrangements connected with advisory services to clients that are in addition to compensation from such clients for such services;
- Charging a client an advisory fee for rendering advice when compensation for effecting securities transactions or other investment products pursuant to such advice will also be received by the investment adviser, investment adviser representative, federal covered investment adviser, or employees or affiliated persons thereof; and
- Serving as an officer, director, or similar capacity of any outside company or other entity.

Regarding suitability in particular, the Adviser is required to document how the investment advice is suitable for the client, taking into consideration the client's financial situation, investment experience, and investment objectives.

XIII. Mandatory Reporting of Senior Financial Exploitation with Transaction Holds

A new law went into effect September 30, 2021, impacting Ohio licensees. The "Reporting Elder Financial Exploitation" law, ORC § 1707.49, mandates reporting to the Ohio Division of Securities and the appropriate county office of the Ohio Department of Job and Family Services (ODJFS) by dealers, investment advisers, and their agents who have reasonable cause to believe that an eligible adult may be subject to past, current, or attempted financial exploitation **in connection with any transaction hold**. The law contains the following key definitions:

- "Eligible adult" is defined as: (a) a person sixty years of age or older; or (b) a person eligible to receive protective services pursuant to ORC §§ 5101.60—5101.71
- "Financial exploitation" is defined as:

  (a) the wrongful or unauthorized taking, withholding, directing, appropriation, or use of money, assets, or property of an eligible adult; or

  (b) Any act or omission by a person, including through use of a power of attorney or guardianship of an eligible adult, to do either of the following:

    (i) Obtain control, through deception, intimidation, or undue influence, money, assets, or property of an eligible adult and thereby deprive the

eligible adult of the ownership, use, benefit, or possession of the money, assets, or property;

(ii) Convert money, assets, or property of an eligible adult and thereby deprive the eligible adult of the ownership, use, benefit, or possession of the money, assets, or property.

If an employee of a dealer or investment adviser has reasonable cause to believe that an eligible adult who is an account holder may be subject to financial exploitation, then:

- The employee shall follow the firm's internal policies and procedures for reporting;
- The dealer or adviser may then place a hold on any transaction impacted by the past, current, or attempted financial exploitation for a period of time not to exceed fifteen business days; and
- Firms placing such transaction holds must file reports with the Ohio Division of Securities and the county ODJFS in writing immediately in connection with the hold.

The law allows for a possible extension of the transaction hold for another 15 days under certain circumstances. Any person involved in making a report or placing a transaction hold pursuant to this law is immune from any civil or administrative liability so long as they are acting in good faith.

Reports made to a state agency under this law are confidential investigative records of the Division and must be retained by the reporting firm for five (5) years.

The Division developed an online reporting tool for intake of reports under this law. Firms may either file directly online or download the reporting form and send it to the Division via a dedicated confidential email address. For Information, see https://com.ohio.gov/wps/portal/gov/com/divisions-and-programs/securities/industry-professionals/guides-and-resources/reporting-elder-financial-exploitation.

The Ohio Department of Job and Family Services online reporting tool is available at: aps.jfs.ohio.gov/

Licensed firms are advised to incorporate these new reporting requirements into their policy and procedure manuals, including a detailed process for how the firm will document compliance.

Finally, keep in mind that the "Reporting Elder Financial Exploitation" law is complimentary to, not a replacement of the mandatory reporting obligations for all

licensees under the Ohio Adult Protective Services statute (ORC § 5101.63), requiring mandated reporters to notify ODJFS of any suspected abuse, neglect, or exploitation of vulnerable adults (effective March 20, 2019).

XIV. Solicitors and Referral Fees

(OAC 1301:6-3-44(C))

A solicitor is any person who, directly or indirectly, solicits any client for, or refers any client to, an investment adviser or investment adviser representative. Solicitors are not required to be licensed by the Division; and there is no "solicitor's license". Rather, solicitors need to be licensed by the Division **only** if their activities meet the definition of investment adviser or investment adviser representative. (See Appendix C and Appendix D).

The OAC establishes a "safe harbor" for solicitors, provided that a person who acts solely as a solicitor and complies with the rule regarding cash payments for client solicitations is not deemed to be an investment adviser.

Ohio law generally prohibits investment advisers and their investment adviser representatives from paying a cash fee to a solicitor unless all three of the following exist:

- There is a written agreement between the investment adviser or investment adviser representative and the solicitor (a copy of which the investment adviser must retain), detailing the referral arrangement.

- At the time of any solicitation activities, the solicitor provides the prospective client with a copy of the investment adviser's brochure, Form ADV Part 2. The prospective client must also receive a separate, written disclosure document that discloses, among other things, that the solicitor is being compensated for referring or recommending the investment adviser or investment adviser representative, and the terms of the compensation (including any additional amounts the client will be charged by the adviser under the referral arrangement).

- The investment adviser or investment adviser representative receives from the client, prior to or at the time of entering into any written or oral investment advisory agreement with the client, a signed and dated acknowledgment that the client received the investment adviser's brochure and the solicitor's written disclosure document.

Certain persons are **prohibited** from serving as a solicitor under the Ohio Securities Act. Specifically, prior to engaging a solicitor, an investment adviser is required to verify that the individual does not have a history of any securities or commodities violations and has not committed various other kinds of illegal conduct. The specific types of past

administrative, civil, and criminal findings that disqualify a person from serving as a solicitor are listed in OAC 1301:6-3-44(C)(1)(c).

XV. Best Execution and Soft Dollars

As a fiduciary, an adviser has an obligation to obtain "best execution" of clients' transactions. In meeting this obligation, an adviser must execute securities transactions for clients in such a manner that the client's total cost or proceeds in each transaction are the most favorable under the circumstances.

In assessing whether this standard is met, an adviser should consider the full range and quality of a broker's services when placing brokerage orders, including, among other things, execution capability, commission rate, financial responsibility, responsiveness to the adviser, and the value of any research services provided. An investment adviser must keep in mind the fiduciary obligation of best price and best execution when considering these factors.

When an investment adviser causes an account to pay more than the lowest available commission to a broker-dealer in return for research products and services, these payments are commonly referred to as "soft dollars." Federal law contains a safe harbor for certain soft dollar payments in § 28(e) of the Securities Exchange Act of 1934 and is available for all investment advisers operating in Ohio. This safe harbor protects an adviser from claims for breach of fiduciary duty based solely on the fact that the adviser paid more than the lowest available commission rate if the adviser, in good faith, determined that the higher commission was reasonable in relation to the value of the brokerage and research services provided. Section 28(e)(3) provides that brokerage and research services within the safe harbor include:

- Furnishing advice, either directly or through publications or writings, as to the value of the securities, the advisability of investing in, purchasing, or selling securities and the availability of securities or purchasers or sellers of securities;

- Furnishing analyses and reports concerning issuers, industries, securities, economic factors and trends, portfolio strategy, and the performance of accounts; or

- Effecting securities transactions and performing functions incidental thereto (such as clearance, settlement, and custody) or required in connection therewith by rules of the SEC or a self-regulatory organization of which such person is a member or person associated with a member or in which such person is a participant.

The SEC has issued extensive guidance under § 28(e). See Securities Exchange Act Release No. 34-23170 (April 23, 1986). The Division takes the position that this guidance,

along with § 28(e), sets out the appropriate standards to follow regarding soft dollar arrangements for all investment advisers operating in Ohio.

XVI. Aggregation of Client Orders (Batch Orders)

In directing orders for the purchase or sale of securities to a broker-dealer for execution, an adviser may aggregate or "bunch" those orders into a single batch of orders, on behalf of two or more of its accounts, so long as the bunching is done for purposes of achieving best execution, and no client is systematically advantaged or disadvantaged by the bunching. An investment adviser may include accounts in which it or its officers or employees have an interest in a bunched order. Investment advisers must have procedures in place that are designed to ensure that the trades are allocated in such a manner that all clients are treated fairly and equitably.

XVII. Principal Transactions; Agency Cross Transactions; Cross Trades

(ORC § 1707.44(M)(1)(c) and OAC 1301:6-3-44(G))

Ohio law prohibits an investment adviser or an investment adviser representative, acting as principal for their own account, from knowingly selling any security to or purchasing any security from a client (a "principal transaction"), without notifying the client in writing, and obtaining the client's consent before the completion of the transaction. The Division shares the view of the SEC that a transaction is "completed" upon its settlement. Thus, consent must be obtained prior to execution or prior to settlement.

Notification and consent for principal transactions must be obtained separately for each transaction. However, this requirement does not apply to any investment adviser registered with the SEC, or to any transaction with a customer of a licensed dealer or salesperson who is not acting as an investment adviser or investment adviser representative in relation to the transaction.

For investment advisers licensed or required to be licensed by the Division and their investment adviser representatives, OAC 1301:6-3-44(G) permits an adviser to act as broker for both its advisory client and the party on the other side of the brokerage transaction (an "agency cross transaction"), without obtaining the client's prior consent to each transaction, provided that the adviser obtains a prior consent for these types of transactions from the client, and complies with other, enumerated conditions.

The rule does not relieve advisers of their duties to obtain best execution and best price for any transaction. A principal or agency cross transaction executed by an affiliate of an adviser is deemed to have been executed by the adviser for purposes of ORC § 1707.44(M)(1) and OAC 1301:6-3-44(G).

While an agency cross transaction involves an advisory client and a non-advisory client, a "cross trade" describes the circumstance where an adviser executes a transaction between advisory clients. The Division shares the view of the SEC that, in executing a cross trade, if an adviser receives no compensation (other than its advisory fee), directly or indirectly, for effecting a particular cross trade between advisory clients, the adviser will not be "acting as a salesperson" within the meaning of ORC § 1707.44(M)(1)(c). However, full disclosure of such cross trade is required, and the adviser must ensure that the cross trade achieves best execution and does not disfavor any client.

XVIII. Other Disclosure Requirements

(OAC 1301:6-3-44(D))

Ohio law requires investment advisers and investment adviser representatives that: (1) have custody or discretionary authority over client funds or securities; or (2) require prepayment six months or more in advance of more than $500 of advisory fees, to disclose promptly to clients any financial condition of the investment adviser or investment adviser representative(s) that is reasonably likely to impair the ability of the investment adviser and investment adviser representative to meet contractual commitments to clients. This disclosure requirement can be satisfied by giving disclosure at the time of entering into a contract with a prospective client, if the contract permits the client to terminate the contract without penalty within five business days after entering into it.

All investment advisers and investment adviser representatives are required to disclose promptly to clients legal or disciplinary events that are material to an evaluation of the adviser's integrity or ability to meet their commitments to clients. The rule lists numerous legal and disciplinary events for which there is a rebuttable presumption of materiality for these purposes. Keep in mind that although an event may not be on the list in the rule, it may still be material, particularly in light of an adviser's fiduciary duty to its clients.

XIX. Overview of the Anti-Fraud and Conduct Standards

Investment advisers and investment adviser representatives are fiduciaries who have an affirmative obligation of utmost good faith and full and fair disclosure, and who owe their clients undivided loyalty. Further, advisers have a duty to avoid misleading their clients, and may not engage in activity that may conflict with a client's interest without the client's consent.

Consequently, advisers are subject to a set of conduct and anti-fraud standards. The conduct standards include a series of business responsibilities, set out in OAC 1301:6-3-15.1, that are based on analogous federal responsibilities. Statutory anti-fraud standards are set out in ORC § 1707.44(M) and generally prohibit misstatements or misleading omissions of material facts and other fraudulent acts and practices in connection with the

conduct of an advisory business. ORC § 1707.44(M) applies to all investment advisers and investment adviser representatives operating in Ohio.

The statutory anti-fraud standards are amplified by a series of administrative rules set out in OAC 1301:6-3-44 and based on analogous federal regulations. The administrative rules are prophylactic in nature and are generally aimed at prohibiting activities that are fraudulent, deceptive, or manipulative.

The following are some examples of conduct that may be deemed dishonest or unethical practices or are otherwise contrary to an adviser's fiduciary duty:

- Failing to disclose to their client in writing that a material conflict of interest exists
- Misrepresenting the qualifications of the adviser or IAR
- Borrowing or lending money or securities from or to a client
- Making guarantees
- Placing an order without authority to do so
- Making a recommendation without reasonable grounds to believe the recommendation is suitable
- Providing a report or recommendation to a client prepared by someone else without disclosing that fact
- Charging an excessive fee
- Failing to disclose a legal or disciplinary event that is material
- Disclosing the identity, affairs, or investments of any client to a third party unless required by law or consented to by the client

Part 5 The Division's Onsite Examination Program

I. Onsite Exams Generally

ORC § 1707.23(B)

The Division may conduct periodic, special, or for-cause examinations of any investment adviser or investment adviser representative, and their books, records, documents, accounts, and work papers as it deems material or relevant to the protection of investors or in the public interest. While most examinations are scheduled in advance, the Division

has authority to conduct unannounced for-cause examinations of its licensees at any time it is necessary for the protection of investors or in the public interest.

Before the Exam

As an investment adviser licensed in Ohio, you can expect an examination of your firm's books and records routinely once you are licensed. Generally, prior to the examination date you will receive a call from the office notifying you that an examination is to be scheduled. That conversation will be followed with a letter confirming the date and time and providing you with a list of your records that should be readily available. Additional records may be requested by the examiner during or after the exam. It is important that you promptly notify the Division if the address is incorrect or if you cannot adhere to the scheduled date.

The Exam

During the examination, the examiner will spend time interviewing key personnel. The examiner will then review all or some of the documents and information you were asked to make available. Copies of some documents may be requested by the examiner in order for further reading or review. If records are maintained in electronic form, electronic copies may be provided to the examiner in lieu of hard copies. However, it may be necessary and will be requested for you to print or provide access for the examiner to view such records. The examiner will also be available to answer questions but cannot provide legal advice. The length of the examination varies depending on the focus of the examiner. **Key personnel must be available for the duration of the examination.**

After the Exam

Once the examination is complete, the examiner may explain what you can expect, including a deficiency letter if certain deficiencies were noted. A deficiency letter may be sent from the Division requiring you to correct deficiencies and otherwise may make recommendations that the Division believes are good business practices. You will receive adequate time to reply and submit corrected documents if required. Once you have addressed all items in the deficiency letter, you will then receive a closing letter.

Non-compliance

Failure to be prepared for or co-operate with the Division's on-site examination program, as well as a failure to timely and satisfactorily respond to the Division deficiency (see common deficiencies below) may result in administrative action against the investment adviser and investment adviser representative's licenses, including license suspension or revocation.

II. Common Deficiencies

The Division suggests getting ahead of some of the most common deficiencies found during examinations:

a. ADV Consistency. The description of your advisory business and services in Part 1 should match the description of your advisory business and services in Part 2.

b. Annual ADV Part 2 "Brochure" Updates. The annual updating of the adviser's Form ADV is required within 90 days of the firm's fiscal year end. You are required to make this annual filing on the IARD system. Remember, the ADV should reflect you actual, not anticipated, business.

c. Ensure IARD changes are **Submitted**. Many advisers make amendments to their ADV on the IARD system, save the changes, but then fail to SUBMIT the filing changes. Be sure to select the SUBMIT button once you have completed making all amendments – or the changes will never post to the Division or the investing public.

d. Form ADV, Part I, Item 9F. This item is commonly answered incorrectly or is misunderstood. It is important that IA's understand that if fees are directly deducted from client accounts, for the purposes of this question, they are considered to have custody limited to the direct deduction of fees from client accounts. Please refer to the ADV Instructions found at: sec.gov/about/forms/formadv.pdf.

e. Quarterly Financial Statements. A Balance Sheet and Income Statement – prepared quarterly - are required. The Balance Sheet is a statement showing the assets, liabilities, and equity of the firm (Assets = Liabilities + Equity). The Income Statement is a statement showing the revenues, expenses, and net income of the firm.

f. Bank Reconciliation. This is a reconciliation between the cash balance shown on the Balance Sheet with the balance shown on the bank statement. The reconciliation will account for outstanding checks, deposits in transit, and other items that cause the bank balance to differ from the amounts shown on your records.

g. Compliance Manual. The Division has no template for a compliance manual but does expect the compliance manual to reflect all the policies and procedures that apply to your firm's business. The purchase of "off the shelf" compliance manuals is acceptable so long as the manual is reviewed and amended to reflect only the items that apply to your firm.

h. Cybersecurity. The Division expects compliance manuals to address your firm's policy with respect to cybersecurity. How is client information safeguarded? How do you keep your systems secure? How is the identity of your clients verified? How are records retained and then destroyed after the retention period?

i. Suitability. Often this information is not gathered because the IAR claims to personally know their clients. Records, whether that be questionnaires, part of a software program, or notes must be maintained. On occasion this information is claimed to have been obtained and recorded "somewhere" in the IAR's notes. These records should be formalized, dated, maintained and easily accessible. Adequate records must contain specific areas that are pertinent to adequately "know their client" (see details in the books and records section of this manual). In addition, this information for the client often changes (e.g., income, net worth, time horizon, etc.). The division recommends that this information be updated at least every three years and dated.

j. Refunds. IA's may not retain unearned fees. Any fees paid in advance must be refunded. If you collect fees in advance, your contract must contain a provision to refund unearned fees if the client terminates.

k. Discretion. If your firm is not granted discretion in the written contract, you are required to obtain client approval for all trades prior to the trade being made. Your firm must establish a means of documenting this client contact and approval of securities actions.

l. Brochure Rule. Form ADV Part 2 requires that the IA provide a Brochure Statement to each client or potential client before or at the time they enter into an advisory agreement. Evidence of providing such is required and may be accomplished by including this obligation in the advisory contract.

m. Deficiency letters. The importance of responding to Division communications cannot be over-stressed. The Division is very receptive to reasonable requests for extensions of time to respond. We will work with you. Failure to respond to our requests serves only to require additional follow-up on our part and additional effort on your part to comply. Non-compliance will lead to a Notice of Intent to suspend or revoke of your license.

Part 6 Appendices

I. Appendix A: Frequently Asked Questions

Q: Does the state of Ohio regulate investment clubs?

A: Since each investment club is unique, each club will need to decide if it has any registration requirements. If the investment club is a corporation or LLC, the club may issue shares or membership interests, up to 10 Ohio investors in a 12-month period without having to register the securities being offered. There can be no general solicitation or advertising, and each investor (in the investment club) must be purchasing for investment. (See ORC § 1707.03(O)). If the investment club's manager were to receive compensation for their investment advice from the other members of the group, then they may be considered an Investment Adviser and licensure may be required. Investment Club members are encouraged to speak with an attorney about any registration or licensing requirements. See the Investment Adviser Flowchart in Appendix C.

Q: What do I need to do to sell variable annuity products in Ohio?

A: To sell variable annuity products in Ohio, agents must be Ohio licensed insurance agents with a variable products qualification. Ohio's agent licensing laws do not make a distinction between group and individual variable products. Any applicant applying through the Ohio Department of Insurance for variable life/variable annuity line of authority must be registered with FINRA as a registered representative after having passed at the one of the following examinations: Series 6, 7, 63 or 66. Individuals who sell variable products may need to be dually licensed to sell securities products and licensed to sell insurance products. Individuals should contact the appropriate regulator to inquire about these requirements.

Q: Does Ohio have an Exempt Reporting Advisers (ERA) licensure or notice filing?

A: No, Ohio does not. This is an SEC licensing requirement for firms that advise solely to private funds, and Ohio does not have an equivalent licensing requirement. If a firm files to be registered as an ERA firm with SEC, then no filing is required in Ohio.

Q: Do I register as an investment adviser with the SEC or with the state of Ohio?

A: Investment advisers that have Regulatory Assets Under Management of less than $100 million register with the state, unless the adviser is required to be registered in 15 or more states (then it registers with the SEC). Investment advisers that have Regulatory Assets Under Management of more than $110 million are required to register with the SEC.

Q: How long does it take to get approved as an investment adviser in Ohio?

A. The Division reviews all applications and pre-licensing examination materials as quickly as possible. Given that the process is back-and-forth between the applicant and the Division, the amount of time an application remains pending largely depends on how quickly the applicant can submit the required documents to the Division and otherwise meet all licensing requirements. Applicants who are timely and diligent in providing the required information to the Division, and are not subject to a denial action, will find that their application may be approved a just a few weeks.

Q: How long is an investment adviser or investment adviser representative license valid?

A: The licenses of investment advisers and investment adviser representatives expire on December 31 each year unless the renewal fees for the next calendar year have been paid in advance. If the renewal fees are not paid in time and the licenses lapse, there is no grace period and no method for reinstating the licenses. Firms and individuals must re-apply. Further, if the investment adviser firm fails to renew its license, all licenses of affiliated investment adviser representatives are automatically terminated.

Q: How do I renew my investment adviser and investment adviser representative licenses?

A: Renewal fees are paid through the IARD system and must be paid in accordance with the IARD system deadlines. The Division undertakes many steps to remind advisers of their renewal filing obligations. There are no renewal documents required to be filed with the Division.

Q: How do I update information concerning the investment adviser?

A: The best way to keep the Division informed of any changes to the investment adviser (e.g., phone number, mailing address, e-mail address) is to amend the firm's Form ADV through the IARD system. It is the first place the Division will look for the most current information.

Q: My firm has started obtaining potential clients outside of Ohio. When do I need to become licensed with other state(s)?

A: Each state has different rules regarding timing of the licensing requirement. Some states have a "*de minimus*" rule which allows you to have up to five clients in their state and not become licensed, provided you do not maintain a place of business there. However, this is not the case in all states. You must contact the appropriate

state securities regulator to verify their state's licensing requirements before working with out-of-state clients.

Q: Is there a net capital requirement for investment advisers in Ohio?

A: There are no net capital or surety bond requirements for investment advisers in Ohio.

Q: Are investment adviser representatives required to file fingerprints with the Division?

A: Yes, please see the IAR Fingerprinting section of this Handbook.

Q: Is there a *de minimus* exclusion from registering as an investment adviser in Ohio?

A: Yes, the investment adviser must in the preceding twelve months, have had no place of business in Ohio and had five or fewer clients.

Q: Does the Division allow advisers to send documents to their clients electronically?

A: Yes, so long as the adviser has previously obtained consent from the client to send documents to them electronically, the adviser takes reasonable steps to ensure the e-mail address on file for the client is still valid, and the adviser takes precautions to protect the transmission of any confidential personal information contained in the documents.

Q: How do I withdraw my license as an investment adviser or investment adviser representative?

A: The investment adviser is required to file a Form ADV-W through the IARD system; the investment adviser representative is required to file a Form U5 with the CRD system.

II. Appendix B: Common Definitions

All definitions in the Ohio Securities Act can be found in either the ORC (available at codes.ohio.gov/orc) or the OAC (available at codes.ohio.gov/oac). The following are definitions that relate to commonly asked questions:

"Clients" – OAC 1301:6-3-01(H) and (I);

For purposes of determining the number of clients for meeting the *de minimus* exception from licensing as an investment adviser, the following are deemed a "single client":

- A natural person, and
- Any minor child of the natural persons;
- Any relative, spouse, or relative of the spouse of the natural person who has the same principal residence; and
- All accounts and trusts, the only primary beneficiaries of which are the natural person and/or the children, spouses and relatives described above.
- Legal organizations, including
- A corporation, general partnership, limited partnership, limited liability company, trust (other than a family trust described above), or other legal organization that receives investment advice based on its investment objectives rather than the individual investment objectives of its owners; and
- Two or more legal organizations described above that have identical owners.

"Held Out to the Public" - SEC Release IA-1633m [1997 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 85,940 (May 15, 1997)

A location is considered "held out" to the public by, for example, publishing information in a professional directory or a telephone listing, or distributing advertisements, business cards, stationery, or similar communications that identify the location as one at which the investment adviser or investment adviser representative is or will be able to meet or communicate with clients. However, an investment adviser representative who sends a letter to certain existing clients indicating, for example, that he or she will be in their area and available for a meeting would not have held out the location of the proposed meeting to the general public for purposes of the definition. Similarly, an investment adviser representative that communicates to a defined group under the terms of an advisory contract the location at which he or she will be available would not be holding himself or herself out to the general public. Further, in the case of a national organization that engages an adviser to provide advisory services to its members, an adviser

representative who communicates its availability at a certain location to the members (even though those individuals may not be clients) would not be holding himself or herself out to the general public. The definition encompasses permanent and temporary offices as well as other locations at which advisory services are provided, such as a hotel or auditorium. Whether an investment adviser representative will be subject to the qualification requirements of a state in which the hotel or auditorium is located will turn on whether, for example, an investment adviser representative conducts advisory business there.

"Place of Business" – OAC 1301:6-3-01(G)

Ohio law defines "place of business" to include two categories of locations. First is an office at which an investment adviser or investment adviser representative regularly provides investment advisory services, solicits, meets with, or otherwise communicates with clients. Second is any other location that is held out to the general public as a location at which an investment adviser or investment adviser representative provides investment advisory services, solicits, meets with, or otherwise communicates with clients.

"Promptly" – OAC 1301:6-3-01(N)

Promptly is defined to mean not later than 30 calendar days after learning of the facts or circumstances giving rise to the amendment or update.

"Regulatory Assets Under Management" – Form ADV, Part 1A, Instruction 5.b

For purposes of completing Form ADV, the amount of your firm's Regulatory Assets Under Management ("RAUM") is determined by including the securities portfolios for which you provide **continuous and regular supervisory or management services** as of the date you are filing or amending your Form ADV. As to the types of securities portfolios you must include in your calculation, in addition to traditional advisory accounts, you must include family or proprietary accounts, pro bono accounts, accounts of non-U.S. persons, and assets of a private fund. For additional explanation on how to calculate your Regulatory Assets Under Management, see Form ADV, Part 1A, Instruction 5.b, and Appendix F to this Handbook.

"Solicitor" – OAC 1301:6-3-44(C)

A solicitor is any person who, directly or indirectly, solicits any client for, or refers any client to, an investment adviser or investment adviser representative. Solicitors *per se* are not required to be licensed by the Division—there is no "solicitor's license." Rather, solicitors need to be licensed by the Division only if their activities meet the definition of investment adviser or investment adviser representative. As under federal law, Ohio law requires a solicitor who receives cash payments to provide a written solicitation disclosure document to clients. A true solicitor does not give investment advice.

Ohio Administrative Code 1301:6-3-01(K)(2) establishes a "safe harbor" for solicitors, providing that a person who acts solely as a solicitor and complies with the rule regarding cash payments for client solicitations is not deemed to be an investment adviser. However, certain persons are legally prohibited from acting as solicitors, namely those who have been the subject of certain federal and state securities actions.

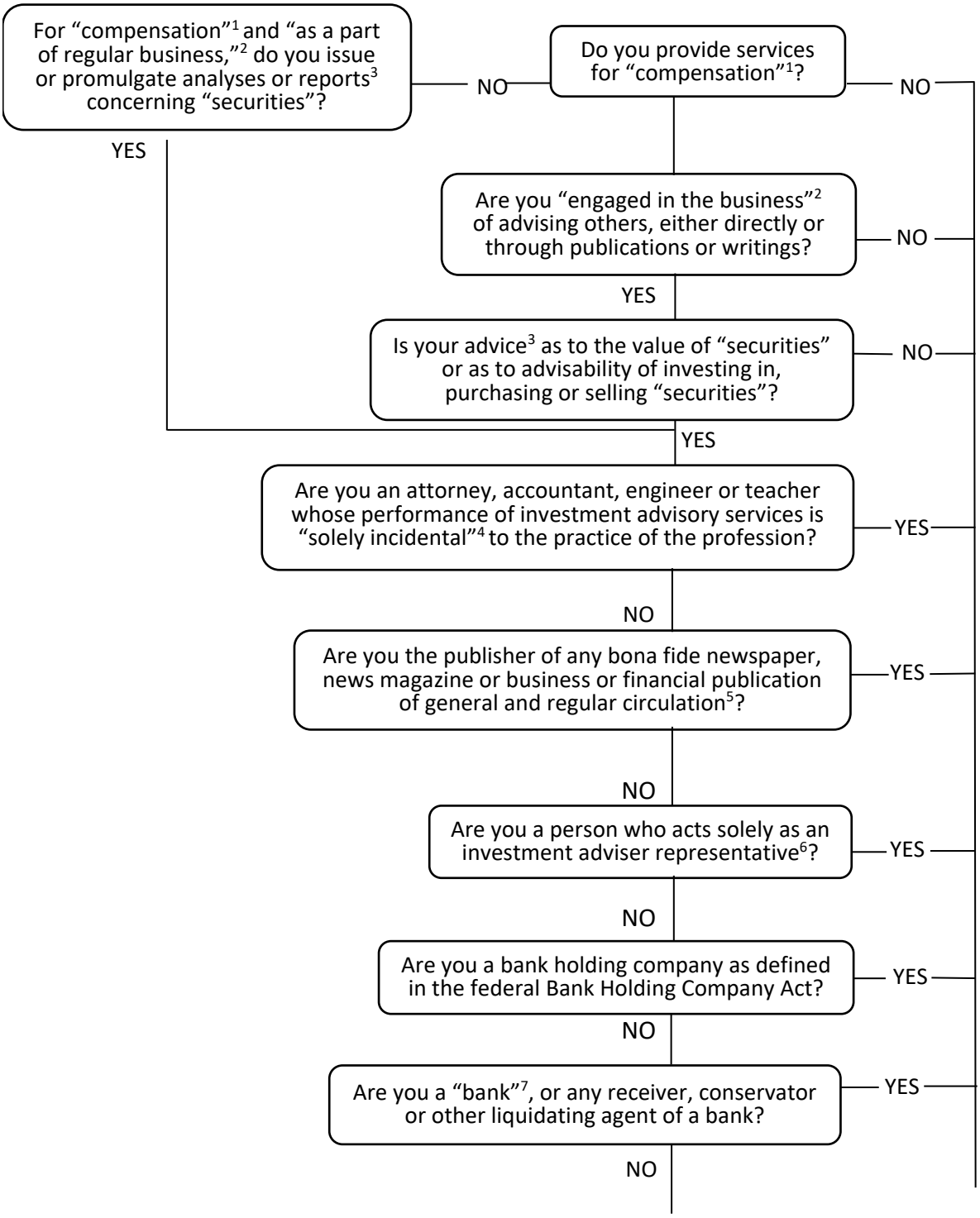
"Supervised Person" – ORC § 1707.01(DD)

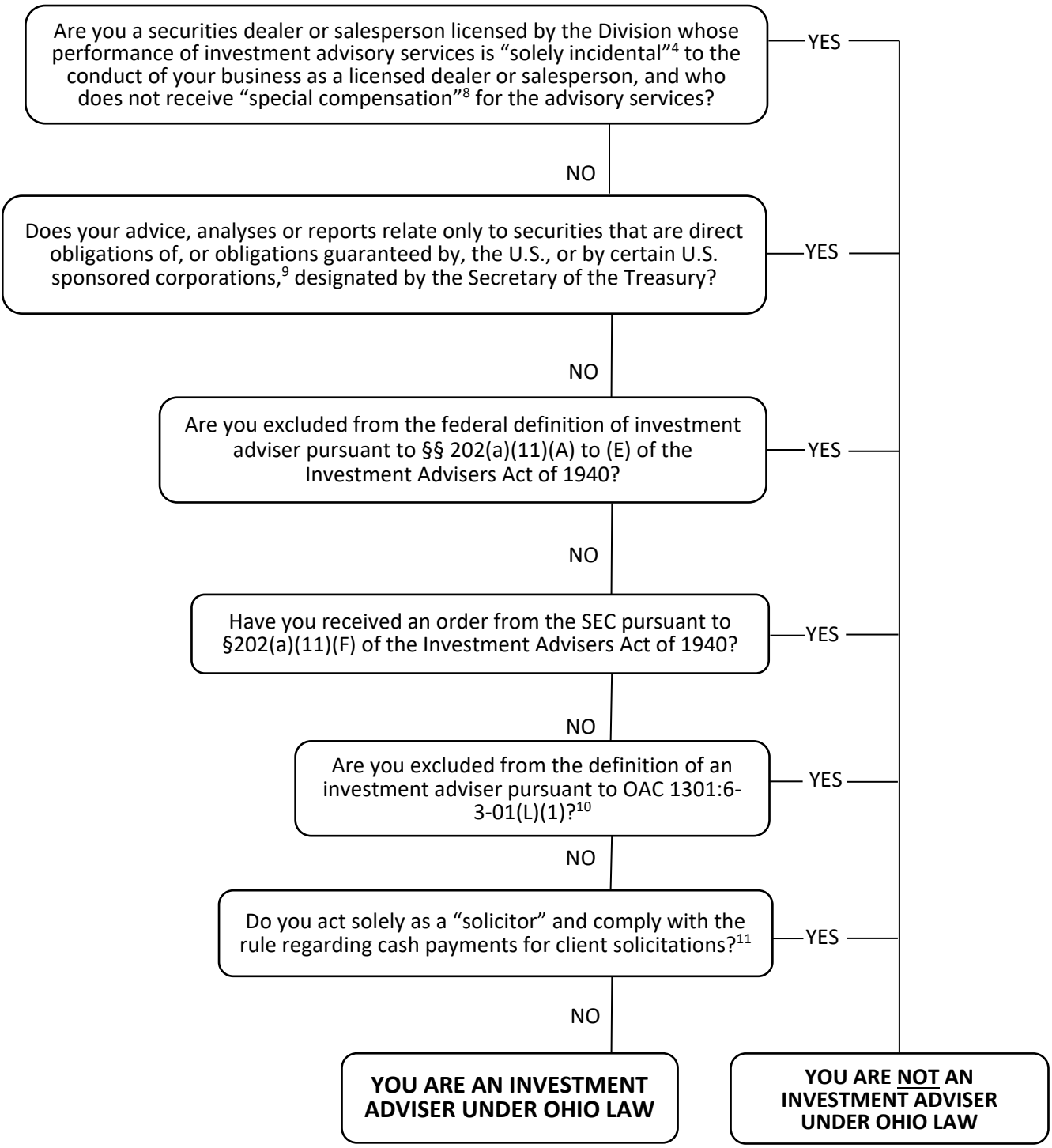
In order to be an investment adviser representative, a natural person first must be a "supervised person." A supervised person is a natural person who is any of the following:

- A partner, officer, or director of an investment adviser, or other person occupying a similar status or performing similar functions with respect to an investment adviser;
- An employee of an investment adviser; or
- A person who provides investment advisory services on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.

III. Appendix C: Investment Adviser Flowchart

(The accompanying notes are an integral part of this flowchart.)




Are you a securities dealer or salesperson licensed by the Division whose performance of investment advisory services is "solely incidental"[4] to the conduct of your business as a licensed dealer or salesperson, and who does not receive "special compensation"[8] for the advisory services?
YES
NO
Does your advice, analyses or reports relate only to securities that are direct obligations of, or obligations guaranteed by, the U.S., or by certain U.S. sponsored corporations,[9] designated by the Secretary of the Treasury?
YES
NO
Are you excluded from the federal definition of investment adviser pursuant to §§ 202(a)(11)(A) to (E) of the Investment Advisers Act of 1940?
YES
NO
Have you received an order from the SEC pursuant to §202(a)(11)(F) of the Investment Advisers Act of 1940?
YES
NO
Are you excluded from the definition of an investment adviser pursuant to OAC 1301:6-3-01(L)(1)?[10]
YES
NO
Do you act solely as a "solicitor" and comply with the rule regarding cash payments for client solicitations?[11]
YES
NO
YOU ARE AN INVESTMENT ADVISER UNDER OHIO LAW
YOU ARE NOT AN INVESTMENT ADVISER UNDER OHIO LAW

NOTES TO "ARE YOU AN INVESTMENT ADVISER UNDER OHIO LAW?"

1. "Compensation" is construed broadly and means the receipt of any economic benefit, whether in the form of an advisory fee or some other fee, relating to the total services rendered, commissions, or some combination of the foregoing. It is not necessary that an adviser's compensation be paid directly by the person receiving investment advisory services, but only that the investment adviser receive compensation from some source for the services. See SEC Release No. IA-1092, § II.A.3. (October 8, 1987).

2. "As a part of regular business" and "engages in the business" both require a "business" element and are to be construed in the same manner. The determination to be made is whether the degree of the person's advisory activities constitutes being "in the business." Whether a person giving advice about securities for compensation would be "in the business" depends upon all relevant facts and circumstances. In general, a person is deemed "in the business" if the person (i) holds himself or herself out as an investment adviser or as one who provided investment advice; or (ii) receives any separate or additional compensation that represents a clearly definable charge for providing advice about securities; or (iii) on anything other than rare, isolated and non-periodic instances, provides specific investment advice. See SEC Release No. IA-1092, § II.A.2. (October 8, 1987).

3. The advice, report or analyses need not be with respect to particular securities. Rather, for example, advice concerning the relative advantages and disadvantages of investing in securities in general as compared to other investments would be "advice" for purposes of this prong of the definition. See SEC Release No. 1A-1092, § II.A.1. (October 8, 1987)

4. Whether an exclusion from the definition of investment adviser is applicable depends on the relevant facts and circumstances. For example, an attorney or accountant who holds himself or herself out to the public as providing financial planning or advisory services would not appear to fall within this "solely incidental" exclusion. See SEC Release No. IA-1092, § II.B. (October 8, 1987). In general, three factors are relevant to the determination of whether the "solely incidental" exclusion is available: (i) whether the person holds himself or herself out to the public as an investment adviser, financial planner or other provider of advisory services; (ii) whether the advisory services are rendered in connection with and reasonably related to the professional services; (iii) whether the fee charged for advisory services is based on the same factors as those used to determine the fee for the professional services. See, e.g., *Hauk, Soule & Fasani, P.C., SEC No-Action Letter* (April 2, 1986); *Milton O. Brown, P.C., SEC No-Action Letter* (August 28, 1983).

5. This exclusion does not include bulletins that are issued from time to time in response to episodic market activity, advertisements that "tout" particular issues, advertised lists of stocks "that are sure to go up" that are sold to individual purchasers or publications distributed as an incident to personalized investment services. Lowe v. SEC, 472 U.S. 181 (1985). The Lowe court did hold that this exclusion was applicable to a newsletter that was "completely disinterested" and "offered to the general public on a regular schedule." Id. at 206. The definition of "investment adviser" encompasses publishers as well as authors. See SEC Release No. IA-563 (January 10, 1997). This exclusion, if it is available, would extend to authors.

6. A person may act as both an investment adviser and an investment adviser representative. See ORC § 1707.161(B)(2). However, a person who acts solely as an investment adviser representative is excluded from the definition of investment adviser. "Investment adviser representative" is defined in ORC § 1707.01(CC).

7. "Bank" is defined in ORC § 1707.01(O). This exclusion extends to an employee of a bank to the extent that the employee is acting in his or her capacity as an employee. See, e.g., Harbor Springs State Bank, SEC No-Action Letter (March 3, 1986). This exclusion does not extend to a bank employee acting in his or her individual capacity. Id.

8. "Special compensation" for investment advice is compensation to the dealer or salesperson in excess of that which he or she would be paid for providing a brokerage or dealer service alone. Consequently, "special compensation" exists where there is a clearly definable charge for investment advice. See SEC Release No. IA-626, § V. (April 27, 1978).

9. For example, the Government National Mortgage Association ("GNMA").

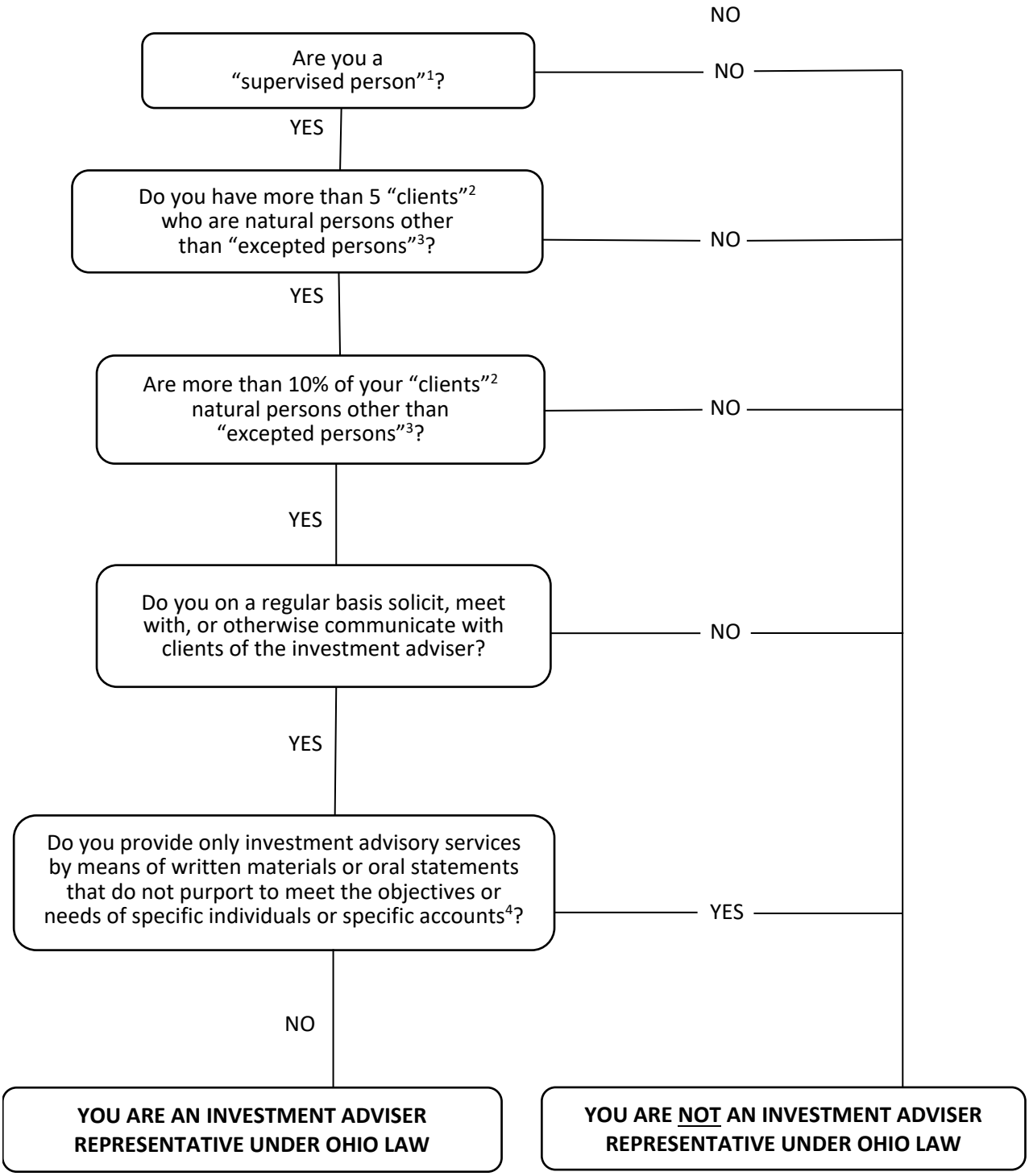
10. See OAC 1301:6-3-01(L)(1). To qualify for this limited exclusion to Investment Adviser licensure, the Division suggests a complete review of this rule in its entirety. *See* codes.ohio.gov/oac/1301:6-3-01.

11. See OAC 1301:6-3-01(L)(2). A solicitor is any person who, directly or indirectly, solicits any client for, or refers any client to, an investment adviser or investment adviser representative. The rule regarding cash payments for client solicitations is contained in OAC 1301:6-3-44(C)(1) and requires, among other things, a solicitor who received cash payments to provide a written solicitation disclosure document to clients.

IV. Appendix D: Investment Adviser Representative Flowchart

(R.C. 1707.01(CC))

(The accompanying notes are an integral part of this flowchart.)



NOTES TO "ARE YOU AN INVESTMENT ADVISER REPRESENTATIVE UNDER OHIO LAW"?

1. "Supervised person" is defined in ORC § 1707.01(DD) to mean a natural person who is any of the following:

   (1) a partner, officer, or director of an investment adviser, or other person occupying a similar status or performing similar functions with respect to an investment adviser; or

   (2) an employee of an investment adviser; or

   (3) a person who provides investment advisory services on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.

   This definition of "supervised person" matches the federal definition of "supervised person" contained in § 202(a)(25) of the Investment Adviser Act of 1940. The definition of "investment adviser representative" contained in ORC § 1707.01(CC) tracks the definition of that term set out in SEC Rule 203A-3(a) promulgated under the Investment Advisers Act of 1940.

2. Ohio Revised Code § 1707.01(CC)(2) lists certain persons who are deemed to be a single client for purposes of this definition. ORC § 1707.01(CC)(2) tracks SEC Rule 203(b)(3)-1 promulgated under the Investment Advisers Act of 1940.

3. "Excepted person" is defined in ORC § 1707.01(EE), and generally means a person who has: (i) at least $750,000 under the management of the adviser; or (ii) has a net worth (jointly with spouse) of more than $1,500,000; or (iii) is a "qualified purchaser" as defined in ORC § 1707.01(FF); or (iv) is an executive officer, director, trustee, general partner, or person serving in a similar capacity of the investment adviser; or (v) is a non-clerical employee of the investment adviser who participates in the investment activities of the adviser, and has so participated for at least 12 months. This definition of "excepted person" tracks the SEC's definition of "excepted person" contained in SEC Rule 203A-3(a)(3)(i) promulgated under the Investment Advisers Act of 1940, which in turn is based on SEC Rule 205-3(d)(1) promulgated under the Investment Advisers Act of 1940.

   "Qualified purchaser" is defined in ORC § 1707.01(FF), and generally means a natural person who owns not less than $5,000,000 in "investments" or who owns and invests on a discretionary basis not less than $25,000,000 in "investments." This definition of "qualified purchaser" is based on the SEC's definition of "qualified purchaser" set out in SEC Rule 205-3(d)(1)(ii)(B) promulgated under the Investment Advisers Act of 1940. For purposes of this definition of "qualified

purchaser," the Division defines "investments" to mean "investments" as defined in § 2(a)(51)(A) of the Investment Company Act of 1940.

4. This is defined as "impersonal investment advice" by the SEC. See SEC Rule 203A-3(a)(3)(ii) promulgated under the Investment Advisers Act of 1940.

V. Appendix E: Pre-Licensing Exam

APPLICATION FILED THROUGH THE IARD:

Once the Ohio Division of Securities receives your application for an Investment Adviser License in Ohio, by way of submitting Form ADV through the IARD system, applicants will receive notification of the Pre-Licensing Examination.

Please familiarize yourself with Ohio's investment adviser rules, found in OAC 1301:6-3-15.1, 1301:6-3-16.1, and 1301:6-3-44. The OAC can be accessed at: https://codes.ohio.gov/ohio-administrative-code/chapter-1301:6-3.

The Ohio Division of Securities requires all applicants to file ADV Part 2 electronically via IARD prior to being licensed.

COMPLETION OF THE LICENSING PROCESS:

Once we have reviewed your application through the IARD and determined it to be complete, the licensing process can be completed. The following tasks must be completed prior to approval.

In accordance with ORC § 1707.151(B)(1), all IA applicants are required to provide to the Division with the documents described below. Due to how your business is formed, some of the requested documents may not be applicable. If this occurs, the Division requires a written explanation.

These documents should be submitted to the Division electronically to the e-mail address provided upon application.

DOCUMENTS REQUIRED TO BE SUBMITTED BEFORE INVESTMENT ADVISER LICENSE CAN BE GRANTED

1. Copies of all investment advisory contracts your firm intends to use. All contracts must comply with the requirements of OAC 1301:6-3-15.1(I).

2. A list of all branch offices your firm intends to have upon starting business. The list should include the address, telephone number, the number of investment adviser representatives, and the name of the manager of the branch office.

3. A list of all employees and their duties.

4. A copy of your firm's compliance manual, including a business continuity plan, disaster recovery plan and the designation of a chief compliance officer. Please indicate how you intend to document the required annual review of your compliance manual.

5. Copies of business cards for each investment adviser representative of your firm.

6. Copies of any solicitor agreements.

7. A statement of how your firm will comply with the requirements to maintain financial records and produce financial statements. The financial statement requirements are found in OAC 1301:6-3-15.1(E)(1).

8. A statement of how your firm intends to comply with the five-year record retention requirements.

VI. Appendix F: Determining Regulatory Assets Under Management

HOW SHOULD YOU DETERMINE AND CALCULATE YOUR REGULATORY ASSETS UNDER MANAGEMENT

(Form ADV Instructions for Part 1A, Item 5.F)

Your Regulatory Assets Under Management should include, as of the date of filing, the entire value of all (1) securities portfolios (2) for which the IA provides continuous and regular supervisory or management services as of the date of filing Form ADV.

Section A Is the account a Securities Portfolio?

1 Does the value of the account consist of at least 50% securities[2], cash, and cash equivalents (e.g., bank deposits, certificates of deposit, and similar instruments)?

Yes—The account is a securities portfolio—to determine whether to include it in your RAUM,

Do the accounts consist of securities in an employer sponsored retirement plan or are the securities managed by a third party investment adviser?

Yes – Please see **Section D**

No. – Please see **Section B**

No—The account is not a securities portfolio—you should not include it in your RAUM.

NOTE: under the above rule, you must include securities portfolios that are family or proprietary accounts, accounts for which you receive no compensation for your services, and accounts of clients who are not United States persons.

2 Is the account part of a private fund?

Yes—The account is a securities portfolio regardless of the nature of the assets in the account, including any uncalled commitment by the client to acquire an interest in, or make a capital contribution to, the private fund—to determine whether to include it in your RAUM, please see **Section B** below

No—The account may be a securities portfolio—please see **Question 1**

[2] For a complete definition of a "security" under the Ohio Securities Act, see ORC § 1707.01(B).

Section B Do you provide Continuous and Regular supervisory or management services to the account?

3 Do you have discretionary authority over and provide ongoing supervisory or management services with respect to the account?

Yes—You should include the account in your RAUM—to determine the appropriate value to include, please see **Section C** below

No—please see **Question 4**

4 If you lack discretionary authority, do you nonetheless have responsibility to make recommendations, based on the needs of the client, as to specific securities or other investments the account may purchase and sell and, if such recommendations are accepted by the client, arrange for the purchase or sale?

Yes—You should include the account in your RAUM—to determine the appropriate value to include, please see **Section C** below

No—You should not include the account in your RAUM. For example, services that are not "regular and continuous" may include providing market timing recommendations, providing only impersonal investment advice (e.g., market newsletters), making an initial asset allocation without continuous and regular monitoring and reallocation, or provide advice on an intermittent basis

NOTE: the following factors are important in determining whether you provide continuous and regular supervisory management services to an account:

- Terms of the advisory contract—if you agree in an advisory contract to provide ongoing management services, this suggests that you provide these services; *however* other provisions in the contract may suggest otherwise.

- Form of compensation—if you are compensated based on the average value of the client's assets you manage over a specified period, that suggests you provide continuous and regular supervisory or management services for the account; *however*, it suggests you do not provide continuous and regular supervisory or management services if you:

    - Are compensated based upon the time spent with a client during client visits; or

    - Are paid a retainer based on a percentage of assets covered by a financial plan.

- Frequency of Services—if you actively manage assets or provide advice, it is more likely that you provide continuous and regular supervisory and management services. Conversely, if you manage assets only on an episodic or one-off basis, it is less likely that you provide continuous and regular supervisory and management services.

Section C How should you value the securities portfolios included in your RAUM?

5 Do you provide continuous and regular supervisory or management services to all the assets in the securities portfolio?

Yes—you should include the entire value of the securities portfolio based on the fair market value of the assets determined within 90 days of filing Form ADV, using the same valuation method used to report account values to clients or to calculate fees for investment advisory services

No—please see **Question 6**

6 Do you provide continuous and regular supervisory or management services to only a portion of a securities portfolio?

Yes—you should include in RAUM only that portion of the securities portfolio for which you provide such services (e.g., you should exclude the portion of the account managed by another person, or that consists of real estate or businesses whose operations you "manage" on behalf of a client but not as an investment)

No—you should not include the account in your RAUM.

NOTE: In the case of a private fund, determine the current market (or fair) value of the private fund's assets and the contractual amount of any uncalled commitment pursuant to which a person is obligated to acquire an interest in, or make a capital contribution to, the private fund

Section D Employer sponsored retirement plans and third-party managers.

Employer Sponsored Retirement Plans

7 Do you only provide services to the sponsor of an employer sponsored retirement plan? For example, recommending the securities to be offered to the participants, handle enrollment meetings, or do other 3(21) fiduciary activities?

Yes—you should not include those accounts in your RAUM

No—If you manage a pooled retirement account or provide investment advisory services to individual participants in 401K/403B or similar plans then see **Section B.**

Third Party Managers

8 Do you allocate assets among other managers (a “manager of managers”), and have discretionary authority to hire and fire managers and reallocate assets among them?

Yes—please see **Section B**.

No—then you would not be able to include the securities in your regulatory assets under management. Securities that are advised on under a solicitor or co-adviser relationship frequently would not be included in RAUM because of the lack of discretion, even if the adviser is doing all of the on boarding, ongoing client relations, and even determining if the portfolio is still suitable.

VII. Appendix G: Trusted Contact Template

I, _____, hereby give permission to my adviser to contact the below person(s) in the event that my adviser has concerns about my health (capacity and well-being), activity in my account (financial exploitation), or if my adviser is unable to contact me after numerous attempts. I also give my adviser the authority to discuss details about my account if necessary, however, by signing this the trusted contact(s) named:

- Cannot make trades in my account;
- Cannot make decisions about my account; and
- Does not have my power of attorney and does not become a legal guardian, trustee, or executor by virtue of being identified as my trusted contact.

_____ _____
First Name Last Name

_____
Street Address

_____ _____ _____
City State Zip Code

_____
Relationship

_____ _____
Mobile Phone Home Phone

_____
Email Address

_____ _____
Client Signature Date

_____ _____
First Name Last Name

_____
Street Address

_____ _____ _____
City State Zip Code

_____
Relationship

_____ _____
Mobile Phone Home Phone

_____
Email Address

_____ _____
Client Signature Date

VIII. Appendix H: Standing Letters of Authority (SLOAs)

The Division has received numerous inquiries regarding its position on Standing Letters of Authorization ("SLOA") arrangements established by a client with a qualified custodian. The Division follows the position adopted by the SEC in its February 21, 2017 No Action Letter to the Investment Adviser Association in that the Division will require state-licensed investment advisers to disclose custody, for purposes of Form ADV Part 1A, Item 9 and Part 2A, Item 15, if the adviser acts pursuant to a standing letter of instruction or other similar asset transfer authorization arrangement established with a client and a qualified custodian. Under the Act, custody is defined in OAC 1301:6-3-44(B)(3)(a). "Custody" means "holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them." Custody includes "any arrangement, including a general power of attorney, a standing letter of instruction, or other similar asset transfer authorization arrangement, under which the investment adviser or investment adviser representative are authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser's or investment adviser representative's instruction to the custodian." See OAC 1301:6-3-44(B)(3)(a)(ii). Consistent with the SEC's position stated in the February 21, 2017 No Action Letter at Footnote [1], the Division also takes the position that a SLOA arrangement where "the investment adviser does not have discretion as to the amount, payee, and timing of transfers under a SLOA would not implicate the custody rule."

All advisers with custody under Ohio law are required to meet the safeguarding requirements of the custody rule, set forth in OAC 1301:6-3-44(B)(1) and (2).

Ohio state-licensed investment advisers are encouraged to meet the seven SLOA conditions set forth in the February 21, 2017 No Action Letter, as the Division believes doing so is a best practice. The Division further acknowledges that some advisers may be required to follow these conditions as a requirement to do business with their custodian.

The seven SLOA conditions are as follows:

1. The client provides an instruction to the qualified custodian, in writing, that includes the client's signature, the third party's name, and either the third party's address or the third party's account number at a custodian to which the transfer should be directed.

2. The client authorizes the investment adviser, in writing, either on the qualified custodian's form or separately, to direct transfers to the third party either on a specified schedule or from time to time.

3. The client's qualified custodian performs appropriate verification of the instruction, such as a signature review or other method to verify the client's authorization and provides a transfer of funds notice to the client promptly after each transfer.

4. The client has the ability to terminate or change the instruction to the client's qualified custodian.

5. The investment adviser has no authority or ability to designate or change the identity of the third party, the address, or any other information about the third party contained in the client's instruction.

6. The investment adviser maintains records showing that the third party is not a related party of the investment adviser or located at the same address as the investment adviser.

7. The client's qualified custodian sends the client, in writing, an initial notice confirming the instruction and an annual notice reconfirming the instruction.

IX. Appendix I: Annual Compliance Checklist

*Disclaimer: This list is compiled as a summary of key compliance obligations occurring annually. This checklist does not replace a robust compliance program as required by the Ohio Securities Act.

- **Annual Obligation to FINRA CRD/IARD certification for system entitlement.**

  Firms are typically notified by email from mid-January to mid-February to confirm those who need access to the CRD system.

- **Annual License Renewal for firms and representatives.**

  Firms are alerted by email in November of each year that it is time to renew the licenses of both the firm and each rep. The required fees for the renewals should be in the firms account to prevent a license from being terminated.

- **Updates Due within 90 days after your fiscal year end.**

  Form ADV Part 1

  Must be reviewed and updated on the CRD system annually within 90 days of the firm's fiscal year end.

  BROCHURE: Form ADV Part 2

  Must be reviewed, updated, and filed on the IARD system annually within 90 days firm's fiscal year end.

  If there are material changes you must:

  (i) deliver, within 120 days of the end of your fiscal year, to each client a free updated brochure that either includes a summary of material changes or is accompanied by a summary of material changes, or

  (ii) deliver to each client a summary of material changes that includes an offer to provide a copy of the updated brochure and information on how a client may obtain the brochure.

  The delivery may be made electronically. If there are no material changes, you do not have to deliver a summary or the brochure. All annual amendment updates must be maintained.

  If you have a solicitor, the updated brochure should be provided for them since they are required to provide it to potential clients referred to you.

Wrap Fee Brochure (if applicable)

Must be reviewed, updated, and filed on the IARD system annually within 90 days firm's fiscal year end.

If there are material changes you must

(i) deliver, within 120 days of the end of your fiscal year, to each client a free updated brochure that either includes a summary of material changes or is accompanied by a summary of material changes, or

(ii) deliver to each client a summary of material changes that includes an offer to provide a copy of the updated brochure and information on how a client may obtain the brochure.

The delivery may be made electronically. If there are no material changes, you do not have to deliver a summary or the brochure. All annual amendment updates must be maintained.

If you have a solicitor, the updated brochure should be provided for them since they are required to provide it to potential clients referred to you.

- **Privacy Policy must be provided to all clients annually**.
- **The firm's Compliance Manual should be reviewed and updated**. Dates should be maintained evidencing this review and each IAR should receive a copy of the revised Compliance Manual.

X. Appendix J: NASAA's State IA Cybersecurity Checklist and Guidance

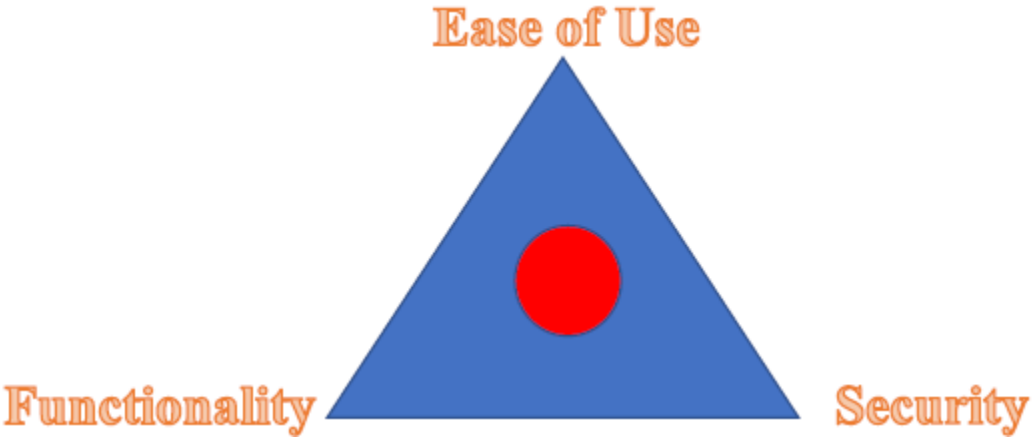
Disclaimer: the information provided in this Appendix is for your convenience only, is illustrative, and is not intended as legal advice. For the Cybersecurity Checklist template that corresponds to the guidance in this Appendix, please see http://www.nasaa.org/wp-content/uploads/2020/04/Cybersecurity-Checklist-Update-3-19-20.pdf.

Checklist Overview:

The NASAA Model Rule and corresponding Cybersecurity Checklist for Investment Advisers are designed to assist investment advisers in securing their systems and the non-public information of their clients. This guidance is designed to assist investment advisers in better understanding the meaning, intention, and connectivity of each of the sections of the NASAA Cybersecurity Checklist for Investment Advisers.

The importance of cybersecurity is consistently illustrated through the nearly daily occurrence of large-scale data breaches. As such, NASAA proactively created this guidance to assist investment advisers in addressing cybersecurity risks, securing their information technology infrastructure, identifying the occurrence of a risk event, confronting a cybersecurity incident, and then, quickly normalizing business operations.

To illustrate the importance of a balanced approach to cybersecurity, consider a common practice used by IT professionals known as the "Cybersecurity Triangle." As pictured below, the goal of any cybersecurity procedure is to appropriately balance confidentiality, integrity, and availability. For example, one would not want client PII so available for business use that it is no longer confidential, but one also would not want it so secure that it is more secure than the nuclear football. Thus, the "Cybersecurity triangle" assists in illustrating the balance required by information technology procedures.



To ensure a cybersecurity procedure appropriately balances this approach, one must ensure that it is in the center of this triangle (i.e., the red circle). Thus, after completing the NASAA Cybersecurity Checklist for Investment Advisers, the investment adviser

should use the "Cybersecurity Triangle" as guidance when addressing any identified deficiencies.

Identify – Risk Assessments & Management

1. Cybersecurity is included in the risk assessment.

    If the investment adviser does conduct an evaluation of its vulnerabilities, does the assessment include cybersecurity vulnerabilities that the investment adviser possess.

2. Risk assessments are conducted frequently (e.g., annually, quarterly, or more often).

    Does the investment adviser conduct a frequent evaluation of the threats to which it is vulnerable?

3. The risk assessment includes an examination of the data its business collects and creates, where it is stored, and whether it is encrypted.

    Is the investment adviser's evaluation of its vulnerabilities granular enough to address specific types of data and the level to which it is secured?

4. Internal "insider" risk (e.g., disgruntled employees) and external risks are included in the risk assessment.

    Does the investment adviser have policies and procedures to address malicious employees and data extrication? Does the investment adviser have policies and procedures to address the termination of employees and ensure their access to networks and data is restricted before or after their departure? Does the investment adviser explore external risks related to the acts of clients, visitors, or maintenance staff?

5. The risk assessment includes relationships with third parties.

    Does the investment adviser's evaluation of its vulnerabilities address any third parties with whom it has executed agreements? If so, what due diligence does the investment adviser conduct prior to executing such an agreement and continuously throughout the relationship?

6. Adequate policies and procedures demonstrate expectations of employees regarding cybersecurity practices (e.g., frequent password changes, locking of devices, reporting of lost or stolen devices, etc.)

    Does the investment adviser ensure that its employees are explicitly aware of their roles and responsibilities concerning cybersecurity? Are the investment adviser's employees aware of the consequences for violating investment adviser cybersecurity policies? Does the investment adviser document the on-going education of its employees and instances of employee violations?

7. Primary and secondary person(s) are assigned as the central point of contact in the event of a cybersecurity incident.

> Does the investment adviser have designated individual(s) to handle cybersecurity incidents that occur? The investment adviser should test its procedures as it develops to ensure that they are functioning prior to the actual occurrence of an incident.

8. Specific roles and responsibilities are tasked to the primary and secondary person(s) regarding a cybersecurity incident.

> Does the investment adviser have specific responsibilities assigned to specific employees to ensure incidents are handled effectively and efficiently? The investment adviser should ensure that the assigned roles and responsibilities have "back-ups" for the critical functions to ensure that, in the event a primary individual is unable to perform the assigned functions, the roles are still adequately performed.

9. The investment adviser has an inventory of all hardware and software.

> Is the investment adviser able to quickly and accurately locate and report all of its devices? Can the investment adviser account for all software authorized to run on its network? These are essential to ensure that the investment adviser can identify when unauthorized devices or programs access its digital assets.

Protect – Use of Electronic Mail

1. Identifiable information of a client is transmitted via email

> Does the investment adviser electronically communicate non-public information of clients? If so, what safeguards does the investment adviser have in place to protect this information?

2. Authentication practices for access to email on all devices (computer and mobile devices) is required.

> What procedures does the investment adviser have in place to ensure only authorized users are accessing the investment adviser's electronic assets? Does the investment adviser require encryption on all portable electronic devices? Does the investment adviser require a passcode on all investment adviser cell phones?

3. Passwords for access to email are changed frequently (e.g., monthly, quarterly).

> What is the investment adviser's password policy? Does the investment adviser require a certain length and complexity be maintained in user passwords? How often are users required to update their passwords?

4. Policies and procedures detail how to authenticate client instructions received via email.

> Does the investment adviser require that any client transactions initiated over email be verified with additional information? Does the investment adviser call its clients to verify their request when withdrawal instructions are received via email?

5. Email communications are secured. (If the response is no, proceed to the next question.)

> Does the investment adviser use a secure email service? Does the investment adviser store its electronic communications in a secure location (On-site server, cloud-service, etc.)?

6. Employees and clients are aware that email communication is not secured.

> If the investment adviser does not use a secure email service, and does not store its communication in a secure location, are clients and employees aware of that information so that they can adjust their business practices accordingly?

Protect – Devices

1. Device access (physical and digital) is permitted for authorized users, including personnel and clients.

> What procedures does the investment adviser have in place to ensure only authorized users are accessing the investment adviser's electronic assets? Does the investment adviser require encryption on all portable electronic devices? Does the investment adviser require a passcode on all investment adviser cell phones?

2. Device access is routinely audited and updated appropriately.

> How often does the investment adviser review its practices and procedures to ensure compliance and advancement?

3. Devices are routinely backed up and underlying data is stored in a separate location (i.e., on an external drive, in the cloud, etc.)

> If the investment adviser was unable to access the information locally stored on certain devices, would the investment adviser still be able to fulfill its business needs?

4. Backups are routinely tested.

> A backup of information is not useful if it does not work or contain the correct information.

5. The investment adviser has written policies and procedures regarding destruction of electronic data and physical documents.

How does investment adviser address the disposal of electronic records and devices? Does the investment adviser use the appropriate method to ensure the data is not recoverable? This prevents the investment adviser from unintended and unauthorized disclosure of confidential information.

6. Destruction of electronic data and physical documents are destroyed in accordance with written policies and procedures.

How often does the investment adviser audit its practices to ensure compliance with written procedures? What are the ramifications for a failure to comply with the written procedures? How is discipline handled in such instances?

Protect – Use of Cloud Services

1. Due diligence has been conducted on the cloud service provider prior to signing an agreement or contract.

Does the investment adviser check to ensure that the third parties it is entrusting its data to are secure? Is the investment adviser monitoring access to the information to ensure the third-party is executing the contract with the defined scope?

2. As part of the due diligence, the investment adviser has evaluated whether the cloud service provider has safeguards against breaches and a documented process in the event of breaches.

The investment adviser will want to verify that the third-party is equipped to handle any cybersecurity incidents that may occur during the course of business. Does the investment adviser ensure the third-party has a data breach response plan? Do they test the plan to address any issues it may have prior to a cybersecurity event occurring?

3. The investment adviser has a business relationship with the cloud service provider and has the contact information for that entity.

Does the investment adviser execute a specific contract with the third-party that outlines the scope of the relationship, the use and security of data, the length of the relationship, and the expectations of confidentiality?

4. The investment adviser is aware of the assignability terms of the contract.

The investment adviser understands what portions, if any, will be assigned to other parties. Assignability is similar to sub-contracting, and the investment adviser will want to be aware of what portions of the contract will be fulfilled by another party.

5. The investment adviser understands how the investment adviser's data is segregated from other entities' data within the cloud service.

Is the investment adviser's data intermingled with the data of other entities also using the same provider? Is the investment adviser's data stored independently of other entities?

6. The investment adviser is familiar with the restoration procedures in the event of a breach or loss of data stored through the cloud service.

Does the investment adviser understand what steps of the disaster recovery process it is responsible for? Has the investment adviser practiced these procedures to ensure they can be effectively and efficiently performed during a disaster situation?

7. The investment adviser has written policies and procedures in the event that the cloud service provider is purchased, closed, or otherwise unable to be accessed.

How will the investment adviser address any issues with the third-party it has contracted should its data be unavailable for business use?

8. The investment adviser solely relies on free cloud storage.

If the investment adviser does not have a third-party on contract and only uses free services, is the investment adviser aware of who owns the data that it stores with the free service?

9. The investment adviser has a back-up of all records off-site.

Is the investment adviser prepared to continue business functions in the event that all of its on-site data and devices are destroyed?

10. Data containing sensitive or personally identifiable information is stored through a cloud service.

If the investment adviser stores the non-public information of its clients in a cloud, what safeguards are in place to ensure that confidential information remains that way.

11. Data containing sensitive or personally identifiable information, which is stored through a cloud service, is encrypted.

By encrypting confidential information stored in the cloud, the investment adviser is adding an additional safeguard to protect the non-public information of its clients.

12. The investment adviser has written policies and procedures related to the use of mobile devices by staff who access data in the cloud.

How does the investment adviser address employees' access to non-public information while off-site? Are employees required to have security features enabled on those devices? How is that information checked?

13. The cloud service provider (or its staff) has unfettered access to the investment adviser's data stored in the cloud.

> As previously mentioned, is the investment adviser aware of the level of privacy they are obtaining with their third-party service provider?

14. The investment adviser allows remote access to its network (e.g., through use of VPN).

> As previously mentioned, are employees authorized to work off-site? If so, what precautions and features are required to increase the security of the investment adviser's information?

15. The VPN access of employees is monitored.

> Does the investment adviser ensure that, even though their traffic is encrypted, employees are using business resources for business purposes and not unnecessarily increasing the investment adviser's likelihood of a cybersecurity breach by visiting unauthorized sites?

16. The investment adviser has written policies and procedures related to the termination of VPN access when an employee resigns or is terminated.

> Is employee access "cut-off" prior to their formal termination? If not, how soon after official separation is employee access terminated?

Protect – Use of Investment adviser Websites

1. The investment adviser relies on a parent or affiliated company for the construction and maintenance of the website.

> Who is responsible for updating and managing the investment adviser's website? Is it an affiliate or parent company?

2. The investment adviser relies on internal personnel for the construction and maintenance of the website.

> Is there a specific person within the investment adviser that is designated as the investment adviser's webmaster? If so, what is the scope of their responsibility and liability?

3. The investment adviser relies on a third-party vendor for the construction and maintenance of the website.

> Who is responsible for updating and managing the investment adviser's website? Is it an external entity?

4. If the investment adviser relies on a third party for website maintenance, there is an agreement with the third party regarding the services and the confidentiality of information.

What due diligence did the investment adviser conduct prior to executing an agreement with them? Is the investment adviser aware of the scope of privacy granted by their agreement with the third-party? Who is responsible for website data breaches?

5. The investment adviser can directly make changes to the website.

If the investment adviser executed an agreement with a third-party for web services, did the investment adviser maintain control of day-to-day operations?

6. The investment adviser can directly access the domain renewal information and the security certificate information.

Is the investment adviser able to review logs associated with its webpage(s) to ensure the security and accuracy of its public-facing information?

7. The investment adviser's website is used to access client information.

If clients can remotely access their information, what additional steps and safeguards are in place to protect against unauthorized access and disclosure?

8. SSL or other encryption is used when accessing client information on the investment adviser's website.

Does the investment adviser use encrypted sites to add an additional level of security? Is the investment adviser's website accessed through HTTP or HTTPS?

9. The investment adviser's website includes a client portal.

Is there a portion of the investment adviser's website that houses non-public client information that clients must log-in to access?

10. SSL or other encryption is used when accessing a client portal.

As previously mentioned, is this portion of the website accessed through a more secure connection than the other public-facing portions of the website?

11. When accessing the client portal, user authentication credentials (i.e., username and password) are encrypted.

When a client enters their information, is that data encrypted while being transmitted to the investment adviser's webserver?

12. Additional authentication credentials (i.e., challenge questions, etc.) are required when accessing the client portal from an unfamiliar network or computer.

If the client remote access is an anomaly, what additional steps are required to authenticate the client's identity?

13. The investment adviser has written policies and procedures related to a distributed denial of service issue.

If the investment adviser's webpage is inaccessible for any reason—specifically, a DDoS attack—then how will the investment adviser handle the client impact?

Protect – Custodians & Other Third-Party Vendors

1. The investment adviser's due diligence on third parties includes cybersecurity as a component.

When executing agreements with external entities, the investment adviser verifies the reputation of the third-party and ensures safeguards are in place to protect any information the third-party will access or possess.

2. The investment adviser has requested vendors to complete a cybersecurity questionnaire, with a focus on issues of liability sharing and whether vendors have policies and procedures based on industry standards.

The investment adviser requires any third parties, with whom an agreement is, or to be, executed, to explain and justify their cybersecurity practices and reviews any written cybersecurity procedures.

3. The investment adviser understands that the vendor has IT staff or outsources some of its functions.

What are the third-parties cybersecurity capabilities? Is it well enough equipped to protect the investment adviser's information?

4. The investment adviser has obtained a written attestation from the vendor that it uses software to ensure customer data is protected.

Has the investment adviser obtained written notice that the third-party actively monitors its electronic assets to verify that unauthorized access or disclosure has not occurred?

5. The investment adviser has inquired whether a vendor performs a cybersecurity risk assessment or audit on a regular basis.

Does the third-party regularly review its cybersecurity practices, procedures, and vulnerabilities to ensure that its systems are secure and that it is protecting the information that it is entrusted with?

6. The cyber-security terms of the agreement with an outside vendor are not voided because of the actions of an employee of the investment adviser.

If the investment adviser has executed an agreement with a third-party, under what circumstances will the contract be terminated? If it is terminated because of the actions of the investment adviser, or one of its employees, what are the ramifications?

7. Confidentiality agreements are signed by the investment adviser and third-party vendors.

> Does the investment adviser execute agreements with the third-party that ensure its information, or any information related to a breach, will not be disclosed except as required by law?

8. The investment adviser has been provided enough information to assess the cybersecurity practices of any third-party vendors.

> Is the investment adviser aware of the cybersecurity practices of each of the third parties with which it has executed an agreement? Is the investment adviser comfortable with the practices of those third parties as they relate to the practices of the specific industry of the third-party?

9. [Relevant to custodians only] The investment adviser has discussed with the custodian matters regarding impersonation of clients and authentication of client orders.

> Does the investment adviser discuss with its clients why specific procedures are in place and provide the client with "best practices" to prevent unauthorized access, trades, and withdrawals in their accounts?

Protect – Encryption

1. The investment adviser routinely consults with an IT professional knowledgeable in cybersecurity.

> Is the investment adviser capable of effectively and efficiently securing its electronic resources without the help of a qualified professional? If not, does the investment adviser employ, or contract, a professional to assist with their cybersecurity efforts?

2. The investment adviser has written policies and procedures in place to categorize data as either confidential or non-confidential.

> How does the investment adviser classify data stored on its electronic assets? Can the investment adviser account for all confidential information stored within its infrastructure and verify that unauthorized access and disclosure has not occurred?

3. The investment adviser has written policies and procedures in place to address data security and/or encryption requirements.

> Within the investment adviser's compliance manual, does the investment adviser have a section addressing the security of its electronic assets and data?

4. The investment adviser has written policies and procedures in place to address the physical security of confidential data and systems containing confidential data (i.e., servers, laptops, tablets, removable media, etc.).

> Within the investment adviser's compliance manual, does the investment adviser have a section addressing physical access controls it will utilize to ensure the security of its electronic assets and data?

5. The investment adviser utilizes encryption on all data systems that contain (or access) confidential information.

> What safeguards does the investment adviser have in place to ensure that the non-public information it accesses, or stores, is protected from unauthorized disclosure?

6. The identities and credentials for authorized users are monitored.

> Does the investment adviser actively scan its electronic assets and infrastructure to ensure that unauthorized access is not occurring?

Detect – Anti-Virus Protection and Firewalls

1. The investment adviser regularly uses anti-virus software on all devices accessing the investment adviser's network, including mobile phones.

> Does the investment adviser require that an anti-virus program be running on all devices that it authorizes to access its network? If not, does the investment adviser have any requirements for devices that it authorizes to access its network?

2. The investment adviser understands how the anti-virus software deploys and how to handle alerts.

> Does the investment adviser have a basic understanding of the purposes and functions of anti-virus software? Arguably more importantly, does the investment adviser understand what anti-virus software does not do?

3. Anti-virus updates are run on a regular and continuous basis.

> Does the investment adviser ensure that the "library" of its anti-virus software is consistently and constantly updated? This will ensure that the anti-virus software is current and addresses recently identified virus heuristics.

4. All software is scheduled to update.

> Are software patches set to manually update or will the system update software automatically? Automatic updates remove the time-commitment of manually ensuring that software is updated as patches become available.

5. Employees are trained and educated on the basic function of anti-virus programs and how to report potential malicious events.

Are the investment adviser's employees aware of their roles and responsibilities when they suspect the investment adviser has suffered a cybersecurity event?

6. If the alerts are set up by an outside vendor, there is an ongoing relationship between the vendor and the investment adviser to ensure continuity and updates.

Is there an executed agreement between the investment adviser and any third-party services providers from which it is obtaining services?

7. A firewall is employed and configured to appropriate to the investment adviser's needs.

Does the investment adviser understand the basic functions and importance of utilizing a firewall? Does the investment adviser understand the functions and settings of its firewall and ensure that it is satisfying the investment adviser's needs?

8. The investment adviser has policies and procedures to address flagged network events.

Does the investment adviser have written policies and procedures outlining how it will mitigate the occurrence of a suspected cybersecurity event?

Respond – Responding to a Cyber Event

1. The investment adviser has a plan and procedure for immediately notifying authorities in the case of a disaster or security incident.

Does the investment adviser understand its legal obligations in the event of a cybersecurity event?

2. The plans and procedures identify which authorities should be contracted based on the type of incident and who should be responsible for initiating those contacts.

Do the investment adviser's written policies and procedures document the authoritative bodies to which it must report the occurrence of specific events?

3. The investment adviser has a communications plan, which identifies who will speak to the public/press in the case of an incident and how internal communications will be managed.

Do the investment adviser's written policies and procedures document the internal parties responsible for handling external communication? Do the policies and procedures outline the ramifications for unauthorized parties communicating the occurrence of a cybersecurity event to external parties?

4. The communications plan identifies the process for notifying clients.

> Do the investment adviser's written policies and procedures address the internal parties responsible for communicating a cybersecurity event to the investment adviser's clients? Do the policies and procedures document how promptly the event's occurrence will be communicated to clients?

Recover – Cyber-insurance

1. The investment adviser has considered whether cyber-insurance is necessary or appropriate.

> Is the investment adviser legally, or contractually, required to maintain cyber-insurance? If not, does the investment adviser feel that cyber-insurance is appropriate considering their business model and the associated risks?

2. The investment adviser has evaluated the coverage in a cybersecurity insurance policy to determine whether it covers breaches, including: breaches by foreign cyber intruders; insider breaches (e.g., legal expenses, notification expenses, third-party remediation expenses).

> Is the investment adviser aware of the limits of its coverage? Does the investment adviser understand specifically what events are, and are not, covered?

3. The cybersecurity insurance policy covers notification (clients and regulators) costs.

> Is the investment adviser aware of the extent of coverage and total expenses allotted to cover costs by the cyber-insurance it obtained?

4. The investment adviser has evaluated whether the policy includes first-party coverage (e.g., damages associated with theft, data loss, hacking and denial of service attacks) or third-party coverage (e.g., legal expenses, notification expenses, third-party remediation expenses).

> Does the investment adviser understand the specific events whose occurrence are not covered by its cyber-insurance? How does the investment adviser plan to mitigate those events?

5. The exclusions of the cybersecurity insurance policy are appropriate for the investment adviser's business model.

> Has the investment adviser evaluated its business practices/needs and determined the cybersecurity events excluded by its cyber-insurance policy are not events that it desires to be covered?

6. The investment adviser has put into place all safeguards necessary to ensure that the cybersecurity policy is not voided through the investment adviser's employee actions, such as negligent computer security where software patches and updates are not installed in a timely manner.

> Does the investment adviser understand the specific actions and steps it is required to take to ensure the cyber-insurance policy remains in effect? How does the investment adviser mitigate the occurrence of events that would void its policy?

Recover – Disaster Recovery

1. The investment adviser has a business continuity plan to implement in the event of a cybersecurity event.

> Does the investment adviser have a written plan addressing how it will respond to the occurrence of a cybersecurity incident? Has the investment adviser tested this plan to ensure that it properly works prior to the occurrence of a cybersecurity incident?

2. The investment adviser has a process for retrieving backed up data and archival copies of information.

> Does the investment adviser maintain data back-ups? Is the investment adviser aware if these back-ups are stored on-site or off-site? Has the investment adviser tested the back-ups to ensure they function and contain the intended information?

3. The investment adviser has written policies and procedures for employees regarding the storage and archival of information.

> Does the investment adviser document, in writing, the roles and responsibilities of its employees should the disaster recovery process be required? Is it stored in a location that employees are still able to access the information in the event of a cybersecurity incident?

4. The investment adviser provides training on the recovery process.

> Are employees trained on the written policies and procedures and their responsibilities during the recovery process? Is this training documented to ensure the investment adviser complies with its written policies and procedures? Are ramifications for non-compliance explicitly documented?

[* * * * *]

XI. Appendix K: NASAA's Confidential Data Inventory Checklist

Disclaimer: the information provided in this Appendix is for your convenience only, is illustrative, and is not intended as legal advice.

Confidential Data Inventory

Definitions:

"Personal Identifying Information," "PII," and/or "Firm Sensitive Information": PII is any data that connects or identifies a specific person or business, which includes name, social security number, date and place of birth, mother's maiden name, or financial records including customer accounts and holding information. Firm Sensitive Information can include data such as contact information, email addresses, physical addresses, marketing plans, employee information, financial records, tax filings, etc. Firms can list data at a group level such as customer account information, or at the granular level such as social security number, customer name, date of birth, etc. (Please note: Definitions may vary by State.)

***Consider the questions below to determine where this information may be located within your firm and to address how it can be protected. Log the information into the chart below and maintain the inventory through routine internal cybersecurity risk assessments.

How is it captured? – What forms require the information? Is it included in multiple places? (i.e., Investment contracts, tax filings, custodian account forms)

Where is it physically/digitally located? – Where is the data stored? (i.e., files in a filing room, saved in a folder on the network drive, stored in a local file)

Who has access? – Who can view the data? (i.e., does the firm use the principle of least privilege?)

How is the data protected? – What steps does the firm take to secure the stored data? (i.e., encryption, password protected)

Is the data backed up? – Does the firm copy the data to be used in case of a cybersecurity incident? Does the firm initiate backups daily, weekly, annually?

Where are the backups located? – Does the firm store the backups on-site, offsite, in the cloud?

What is the confidential data?	How is it captured?	Where is it located?	Who has access?	How is the data protected?	Is the data backed up? How often?	Where are the backups located?

XII. Appendix L: Summary of Handbook Changes Since 2020

Page 9 How to Form an Investment Adviser Firm as a Sole Proprietor → updated minimum competency standards

Page 13 Fingerprinting Requirement → updated fingerprinting guidance

Page 14 Minimum Competency – Series Examinations → updated rules regarding series exams required for licensure

Page 20 Client records → clarified recordkeeping requirements

Page 21 Suitability/Know your Client Records → included detailed guidance

Page 22 Trusted Contact → included trusted contact form

Page 22 Privacy Policy → added section on privacy policies

Page 23 Miscellaneous Records → included additional types of records to retain

Page 25 Regulatory Assets Under Management (RAUM) → added section on determining and calculating RAUM

Page 26 Assets Under Advisement → added section on defining assets under advisement

Page 26 Third Party Relationships → added section on defining third party relationships e.g., a solicitor relationship

Page 32 Investment Advisory Contracts and Compensation → added prohibition on mandatory arbitration clauses in customer contracts

Page 39 Fees → added section on defining and determination of unreasonable, unearned, and excessive fees

Page 42 Fiduciary Standard → added a list of the types of conduct that constitute a breach of an adviser's fiduciary duty, and suitability guidance

Page 45 Mandatory Reporting Senior Financial Exploitation with Transaction Holds → added section describing circumstances under which reporting of exploitation is appropriate

Page 52 Common Deficiencies → included additional guidance on suitability

Page 70 Appendix F – Determining Regulatory Assets Under Management → added RAUM "decision tree"

Page 74 Appendix G – Trusted Contact Template → updated trusted contact template

Page 77 Appendix I – Annual Compliance Checklist → revised to include 2020 updates by NASAA

Page 93 Appendix K – Confidential Data Inventory Checklist → added Appendix