950 CMR 12.200: REGISTRATION OF BROKER-DEALER, AGENTS, INVESTMENT ADVISER, INVESTMENT ADVISER REPRESENTATIVES AND NOTICE FILING PROCEDURES FOR FEDERAL COVERED ADVISERS

Section

12.201: Broker-dealer/Agent Registration Requirements

(1) Registration Expiration Date. Every registration of a broker-dealer, agent, investment adviser, investment adviser representative, or issuer-agent expires on the last day of the calendar year, unless renewed or terminated at an earlier date.

(2) Prohibition Against Dual Registration. No person may be registered concurrently as an agent of more than one broker-dealer or issuer. The Director may waive this requirement if he or she determines that it would not interfere with effective supervision of the agent by the broker-dealer or issuer and it is in the public interest.

(3) Boston Stock Exchange. (Reserved)

(4) Automatic Registration as Agent for Executive Officers, Directors or Partners. Each executive officer, director, partner, or a person occupying a similar status performing similar functions is presumed to be acting as an agent and thus registered automatically, pursuant to M.G.L. c. 110A, § 202(a), when the broker-dealer is registered. If any such person does not desire automatic registration because he or she does not meet the definition of an agent, he or she must file with the Division an affidavit stating that he performs no activity for the broker-dealer that would require him or her to register as an agent.

(5) Scope of Activity Permitted by Registration. A broker-dealer's registration permits only such activity in types of business indicated on the Form BD, unless such activity constitutes 1% or less of the broker-dealer's revenue from its securities business. An agent's registration permits only activity that is conducted within the scope of the agency relationship, and activity for which the appropriate examination has been passed. Any activity that occurs outside of that permitted by the registration, shall be considered in violation of M.G.L. c. 110A, § 201(a), unless the person is separately registered or appropriately exempt to conduct such activity.

12.202: Broker-dealer/Agent Registration Procedures

(1) Initial Broker-dealer Registration.

(a) An application for registration as a broker-dealer in the Commonwealth shall be made by submitting the following items to the Central Registration Depository (CRD):

1. If the applicant is an existing member of FINRA, or has previously filed items with the CRD seeking registration in another state or membership in FINRA:
   a. Page 1 of Form BD marked "Amendment."
   b. Page 2 of Form BD with "MA" checked in Item 2.
   c. Page 1 of Form U-4 for each executive officer, director, partner or person occupying a similar status performing similar functions who will be automatically registered with "MA" checked. Any such person who does not seek automatic registration shall submit a duly executed affidavit in a form approved by the Division.
   d. A check or money order in the amount of the filing fees for the above ($450 for the broker-dealer and $75 for each agent).
2. If the applicant is not yet a FINRA member, has not filed an application for FINRA membership, but is seeking membership in FINRA, it should comply with FINRA's application instructions, and:

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a. It must check "MA" on page two of Form BD.

b. It must submit a complete U-4 for each executive officer, director, partner or person occupying a similar status performing similar functions who will be automatically registered with "MA" checked. Any such person who does not seek automatic registration shall submit a duly executed affidavit in a form approved by the Division

c. It must submit funds sufficient to cover the filing fees of FINRA and all jurisdictions to which it is applying for registration, including Massachusetts' fees ($450 for the broker-dealer and $75 for each agent).

(b) Registration as a broker-dealer becomes effective on the earliest of the following dates:

1. If no deferral or denial order is in effect and no proceeding is pending under M.G.L. c. 110A, § 204, registration becomes effective at noon of the 30th day after an application is filed. No application under 950 CMR 12.202(1)(a) will be deemed filed until and unless the applicant has been approved as a member of FINRA.

2. On the day the Division notifies the CRD that the registration is effective.

3. If a deferral order is in effect, the date specified in the order. A deferral order may be entered on the basis of an amendment to the broker-dealer application which is filed with the CRD. Amendments to the CRD records of persons listed on Schedules A, B, or C of the broker-dealer's Form BD will be considered amendments to the broker-dealer application for purposes of issuing deferral orders.

(c) If the applicant is not a member of FINRA and is not required by federal law to become a member, then it may apply by filing the following items with the Securities Division:

1. A copy of Form BD with original signatures.

2. Documentary evidence that the applicant is registered with the SEC.

3. A manually signed, complete Form U-4 for each person listed on Schedule A of Form BD.

4. Documentary evidence that each person who will be automatically registered as an agent has successfully passed either the Uniform State Law Exam (Series 63) or the Uniform Combined State Law Examination (Series 66).

5. A check for the filing fees, made payable to The Commonwealth of Massachusetts, in the amount of $450 for the broker-dealer and $75 for each agent.

(2) Initial Agent Registration.

(a) Non-FINRA Broker-dealers.

1. A non-FINRA broker-dealer may register agents, in addition to those automatically registered, after its registration has become effective by filing with the Division the following:

a. A manually signed, complete Form U-4 for each agent.

b. Documentary evidence of passage of either the Uniform State Law Exam (Series 63) or the Uniform Combined State Law Examination (Series 66).

c. A non-refundable filing fee of $75 for each agent, such fee made payable to "The Commonwealth of Massachusetts."

2. Registration of an agent becomes effective on the earliest of the following dates:

a. If the agent has indicated no affirmative response to Disclosure Questions in Section 14 of Form U-4, then the application for registration becomes effective upon filing with the Division.

b. If no deferral or denial order is in effect and no proceeding is pending under M.G.L. c. 110A, § 204, registration becomes effective at noon on the 30th day after the application for registration is filed.

c. On the date the Division notifies the applicant that the registration is effective.

d. If a deferral order is in effect, the date specified in the order.

(b) FINRA Broker-dealers.

1. After a FINRA broker-dealer's application for registration has become effective, it may apply to register agents in addition to those automatically registered, by filing with the CRD:

a. A manually signed, complete Form U-4 for each agent (if the agent has not previously filed a Form U-4 with this broker-dealer) with "MA" checked; or,

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b. Page one of Form U-4 for each agent with "MA" checked (if the agent has already filed a Form U-4 with the CRD through this broker-dealer); and,

c. A non-refundable registration fee in the amount of $75 for each agent.

2. Each agent must have successfully passed the Uniform State Law Examination (Series 63) or the Uniform Combined State Law Examination (Series 66); and, every examination required for such applicant under 950 CMR 12.204(3).

3. Registration of an agent becomes effective on the earliest of the following dates:

a. If the agent has met the following conditions, then the registration becomes effective when the Form U-4 or the amendment to Form U-4 indicating registration with Massachusetts is filed with the CRD and the agent is approved by FINRA:

i. The proper fee is paid.

ii. The agent has passed the required examinations.

iii. The agent is not seeking a dual registration.

iv. The agent has no affirmative answers to Disclosure Questions in Section 14 of Form U-4 or other disclosure reports on file with the CRD.

b. If no deferral or denial order is in effect and no proceeding is pending under M.G.L. c. 110A, § 204, then the registration becomes effective at noon on the 30th day after the application for registration is filed with the CRD.

c. On the date the Division notifies the CRD that the registration is effective.

d. If a deferral order is in effect, the date specified in the order. A deferral order may be entered on the basis of an amendment to the agent's application which is filed with the CRD.

(3) Initial Issuer-agent Registration.

(a) An issuer that seeks registration of an agent shall file with the Division the following:

1. A manually signed, complete Form U-4.

2. A registration fee in the amount of $75, made payable to "The Commonwealth of Massachusetts."

(b) Registration as an issuer-agent becomes effective on the earlier of the following dates:

1. If no deferral or denial order is in effect and no proceeding is pending under M.G.L. c. 110A, § 204, then the registration becomes effective at noon on the 30th day after the application is filed.

2. The date that the Division notifies the applicant that the registration is effective.

(4) Additional Information. Additional exhibits or information not specifically required by the forms or 950 CMR 12.200 but essential to a full presentation of all material facts relating to the qualifications of the applicant should be furnished and properly identified. The Division may make such examination of the applicant and request additional information it deems appropriate in the consideration of eligibility for registration. Additional information filed with the Division that is not part of the original application shall be filed by amendment.

(5) Renewal Broker-dealer, Agent and Issuer-agent Registration.

(a) An issuer or a non-FINRA broker-dealer may renew its registration or that of its agent by filing a Form RF and the appropriate registration fee ($450 for broker-dealer, $75 for agents and issuer-agents) no earlier than November 1st, nor later than December 1st, for renewal to be effective for next calendar year. The Director will provide Form RF on or about November 1st of each year. All renewal applications filed under 950 CMR 12.202(5) received other than in the above manner will be treated as initial registrations, except that, applicants initially registered after December 1st, may immediately apply for renewal by filing Form RF with the Division no later than the last business day of the calendar year.

(b) A FINRA broker-dealer shall renew its registration and that of its agents through the CRD. It shall comply with applicable FINRA rules regarding dates and payments. Such renewal registration applications shall be deemed filed with the Division on the day on which notice of intention to renew is received by the Division from FINRA. The effective date of renewal registrations filed through the CRD system shall be January 1st unless otherwise ordered by the Director.

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(6) Agent and Issuer-agent Transfers.

(a) A non-FINRA broker-dealer agent or issuer-agent shall transfer his affiliation from one broker-dealer or issuer to another by filing a Form U-4, with the Division, together with a non-refundable transfer fee of $75. Such a filing will be considered a new application under M.G.L. c. 110A, § 202, and 950 CMR 12.202(2).

(b) Agents of FINRA broker-dealers shall transfer to another FINRA broker-dealer by filing with the CRD a Form U-4 with "MA" checked, and paying the non-refundable transfer fee of $75. Such a filing will be considered a new application under M.G.L.c. 110A, § 202 and 950 CMR 12.202(2).

(c) No agent or issuer-agent shall conduct the business of an agent after transfer until its transferred registration becomes effective under 950 CMR 12.200.

(7) Abandoned Applications. The Director may order an application for registration as a broker-dealer, agent, investment adviser, investment adviser representative, or issuer-agent deemed abandoned when an applicant fails to adequately respond to any request for additional information required under M.G.L. c. 110A or 950 CMR 10.00 through 14.413. The Director shall provide written notice of warning 30 calendar days before such order is entered. The applicant may, with the consent of the Director, withdraw the application.

(8) Successor Broker-dealer Registration.

(a) A registered broker-dealer that seeks to register a successor pursuant to M.G.L. c. 110A, § 202 shall file with the Division the following:

1. A copy of Form BD.
2. Form U-2.
3. A list of registered agents associated or to be associated with the successor and a transfer registration fee of $75 per agent.

(b) If the successor is a FINRA broker-dealer, the transfer of agents shall be accomplished through the CRD system.

(c) In the event that a broker-dealer succeeds to and continues the business of another registered broker-dealer, the registration of the predecessor shall remain effective as the registration of the successor for 60 days after such succession or until the last day of the calendar year, whichever is sooner, provided the Form BD is filed by such successor within 30 days after such succession or before the last day of the calendar year, whichever is sooner.

(d) A Form BD, filed by a broker-dealer partnership which is not registered when such form is filed and that succeeds to and continues the business of a predecessor partnership registered as a broker-dealer, shall be treated as an application for registration, even though designated as an amendment, if it is filed to reflect the changes in the partnership and to furnish required information concerning any new partners.

(e) There shall be no fee for filing Form BD pursuant to 950 CMR 12.202(8).

(9) Mass Transfers. A FINRA broker-dealer seeking to mass transfer its agents to another FINRA broker-dealer shall file with the Division a roster of all agents intending to transfer. Such roster shall include the name and CRD number of each agent as well as an indication as to whether the agent has any currently disclosable items under Disclosure Questions in Section 14 of Form U-4. A transfer fee of $75 for each agent shall accompany the roster. Filings pursuant to 950 CMR 12.202(9) shall be made at least 30 days prior to the effective date of transfer, or such shorter period as the Director may permit. The provisions set forth in 950 CMR 12.202(9) supplement and do not supersede any FINRA rules and policies concerning mass transfers of agents.

12.203: Post-registration Requirements

(1) Minimum Capital Requirements.

(a) broker-dealer shall comply with the net capital requirements for brokers and dealers set forth in SEC Rule 15c3-1 (17 CFR 240.15c3-1), and the customer protection-reserves and custody of securities requirements set forth in SEC Rule 15c3-3 (17 CFR 240.15c3-3).

(b) A broker-dealer shall comply with SEC Rule 17a-11 (17 CFR 240.17a-11), as amended by FOCUS Report. The Director may by order restrict or condition the broker-dealer's right to transact business in the Commonwealth as he finds appropriate for the protection of investors.

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(2) Record Keeping Requirements. Each broker-dealer shall maintain the following records:
(a) Copies of confirmations of transactions required by SEC Rule 10b-10 (17 CFR 240.10b-10).
(b) All records required to be maintained by SEC Rules l7a-3 and 4 (17 CFR 240.17a-3 and 17 CFR 240.17a-4).
(c) All records required to be maintained by any SRO or national exchange of which the broker-dealer is a member.

(3) Supervision.
(a) Each broker-dealer must comply with the supervision requirements set forth in the FINRA member conduct rules.
(b) Each broker-dealer must designate at least one employee to be responsible for supervision of its business in the Commonwealth. Such person must be the broker-dealer himself or herself (if a sole proprietorship), an officer or partner registered in the Commonwealth, or a registered agent. If the broker-dealer is a FINRA firm, the person so designated shall have passed the principal's or supervisor's examination that is required by FINRA for the type of business that is conducted by the broker dealer.
(c) Every complaint submitted to a broker-dealer by a customer must be investigated by an employee of the broker-dealer specifically designated for this function. The broker-dealer must respond to all complaints in a timely manner.

(4) Financial Reporting and Notification Requirements.
(a) A broker-dealer shall comply with FOCUS Report Part II (Reports to be made by certain brokers and dealers).
(b) A broker-dealer shall notify the Director of any proposed transfer of control of such broker-dealer within 30 days prior to the date on which such transfer of control is to take place or such shorter period as the Director may permit, and shall furnish the Director such additional information relating to the transfer as the Director may require. A transfer of control is considered a material amendment of the application for registration for purposes of M.G.L. c. 110A, § 203(c).

(5) Duty to Amend Information Previously Filed.
(a) If the information contained in any application or amended application for registration as a broker-dealer, agent, or issuer-agent changes in a material way, or is or becomes inaccurate or incomplete in any material respect, an amendment shall be filed at the time of knowledge of such change. Such amendments shall be filed with the CRD or directly with the Division. Events considered material include, but are not necessarily limited to, the following:
1. Change in firm name, ownership, management, or control of a broker-dealer.
2. Change in any of a broker-dealer's partners, directors, officers, or persons occupying a similar status performing similar functions.
3. Change in the business address or creation or termination of a branch office.
4. Change in the supervisory personnel of a branch office.
5. Change in type of business engaged in by a broker-dealer.
6. Insolvency, dissolution, liquidation or a material adverse change or improvement of working capital.
7. Noncompliance with the minimum net capital requirements set forth in 950 CMR 12.203(1).
8. Termination of business or discontinuance of activities as a broker-dealer or agent.
9. Filing of a criminal charge or civil action against a person or entity, including a partner or officer, registered with the Division, in which an alleged violation of a securities law is involved.
10. Commencement of or notice of intent to commence any action by an administrative agency, regulatory agency, self-regulatory organization or court to consider whether to deny, suspend or revoke a registration, to impose a fine, injunction, cease and desist or other penalty upon the registrant, and the results of such action, including subsequent measures taken by any agency, organization or court.
11. Filing of a civil action against any person or entity registered with the Division alleging a cause of action other than a securities violation which, if proven, would materially affect the ability of the registrant to do business, including any acting materially affecting the financial condition of the registrant.

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12. Any affirmative answers to Disclosure Questions in Section 14 of Form U-4.
13. Any restriction or condition placed on the activities of the broker-dealer or agent by any regulatory or self-regulatory agency.

(b) The registrant will have complied with the requirement of prompt notification pursuant to 950 CMR 12.203(5)(a) if notification has been filed with the Division in writing as soon as possible, but in no event more than 30 days after the registrant has knowledge of the circumstance requiring such notification.

(c) Any agent who, prior to January 1, 1977, filed an "Application for Registration as a Salesman," shall file a complete Form U-4 within ten business days after the information contained in the such application is or becomes inaccurate, incomplete or materially changed. Events requiring such a filing shall include, but are not limited to, those set forth in 950 CMR 12.203(5)(a).

(d) The Division regards the filing of amendments to update the records of agents within the supervisory responsibilities of the broker-dealer. A broker-dealer must have established procedures to ensure compliance with 950 CMR 12.203(5).

(6) An issuer-agent (other than one employed by or associated with an issuer registered under the Investment Company Act of 1940) shall make, maintain and preserve for a period of not less than three years books and records contain the following information:

(a) Copies of all writings confirming the sale or purchase of securities.

(b) The date and amount of each cash receipt or disbursement associated with such sale or purchase of securities.

(c) The number of shares involved, the certificate numbers, and the date each was delivered to or received from the investor.

(7) An issuer-agent (other than one employed by or associated with an issuer registered under the Investment Company Act of 1940) shall notify a customer in writing at or before the completion of each purchase or sale of a security, and a debit or credit for securities, cash, and other items for account of others of the following:

(a) The identity and price of the security.
(b) The account for which entered.
(c) The date of execution.
(d) The name of the person handling the transaction.
(e) The fact that the transaction was unsolicited, if so.

(8) An issuer-agent shall maintain a copy of the notice to the customer required by 950 CMR 12.203(7) at its office for a period of three years.

(9) All issuer-agents employed by or associated with an issuer registered under the Investment Company Act of 1940 shall maintain all records required to be maintained by SEC Rule 31a-1(17 CFR 270.31a-1), SEC Rule 31a-2 (17 CFR 270.31a-2) and SEC Rule 31a-3 (17 CFR 31a-3). The issuer-agent will be deemed to have complied with 950 CMR 12.203(9) if the issuer maintains such records.

(10) A broker-dealer shall immediately notify in writing the Director of the theft or unexplained disappearance of any securities or funds from any of its offices, setting forth all material facts known to it concerning the theft or disappearance.

12.204: Denial, Revocation, Suspension, Cancellation and Withdrawal of Registration

(1) Dishonest and Unethical Practices in the Securities Business.

(a) Broker-dealers. Each broker-dealer shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business. Acts and practices, including, but not limited to the following, are considered contrary to such standards and constitute dishonest or unethical practices which are grounds for imposition of an administrative fine, censure, denial, suspension or revocation of a registration, or such other appropriate action:

1. Being found by a court of competent jurisdiction to have violated M.G.L. c. 93A in connection with the sale of securities.

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2. Engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers and/or in the payment upon request of free credit balances reflecting complete transactions of any of its customers.

3. Inducing trading in a customer's account which is excessive in size and frequency in view of the financial resources and character of the account.

4. Except as provided in 950 CMR 12.207, recommending to a customer an investment strategy, the opening of or transferring of assets to any type of account, or the purchase, sale or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer.

5. Executing a transaction on behalf of a customer without authorization to do so.

6. Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of the order.

7. Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account.

8. Failing to segregate customer's free securities or securities held in safekeeping.

9. Hypothecating a customer's securities without having a lien thereon, unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by the rules of the SEC.

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

11. Failing to furnish to a customer purchasing securities in a registered offering, no later than the date of confirmation of the transaction, a final or preliminary prospectus, and, if the latter, failing to furnish a final prospectus within a reasonable period after the effective date of the offering.

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

13. Offering to buy or sell to any person any security at a stated price, unless such broker-dealer is prepared to purchase or sell at such price and under such conditions as are stated at the time of such offer to buy or sell.

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

15. Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include, but is not necessarily limited to, the following:

a. Effecting any transaction in a security which involves no change in the beneficial ownership.

b. Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for purpose of creating a false or misleading appearance of active trading in the security or false or misleading appearance with respect to the market for the security, provided, however, nothing in 950 CMR 12.204(1)(a)15. shall prohibit a broker-dealer from entering *bona fide* agency cross transactions for its customers so long as the cross transaction is noted on the confirmation and monthly account statements.

c. Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others.

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16. Guaranteeing a customer against loss in any securities account of such customer carried by the broker-dealer of in any securities transaction effected by the broker-dealer with or for such customer.

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

18. Making any advertising or sales presentation, either in written or oral form, in such a fashion as to be deceptive or misleading including, but not limited to, the following:

a. Distributing any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure.

b. Using supplementary materials in connection with the offer of a particular security where the information in such materials is not consistent with, or adequately supported by, the prospectus or is not filed as part of the registration statement.

c. Using supplementary material not authorized by the issuer in connection with the offer of a particular security when any prospectus or other offering document required to be delivered in connection with such offer specifically states that no such material is authorized.

19. Failing to disclose that the broker-dealer is affiliated with the issuer of a security before entering into a contract with or for a customer for the purchase or sale of such security. If such disclosure is made orally, written disclosure must be given before the completion of the transaction.

20. Failing to make a *bona fide* offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member.

21. Failing or refusing to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written request or complaint.

22. Being found by a court or administrative tribunal of competent jurisdiction to have violated the anti-fraud and/or registration provisions of state or federal securities laws.

23. Marking any order ticket or confirmation as unsolicited when in fact the transaction was solicited.

24. In connection with the solicitation of a sale or purchase of an over-the-counter non-NASDAQ security, failing to provide promptly the most current prospectus or the most recently filed periodic report filed under the Securities Exchange Act § 13, when requested to do so by the customer.

25. For any month in which activity has occurred in a customer's account, but in no event less than every three months, failing to provide the customer with a statement of account with respect to all over-the-counter non-NASDAQ equity securities in the account, containing a value for each such security based on the closing market bid on a date certain. 950 CMR 12.204(5)(a)25. shall apply only if the firm has been a market maker in such security at any time during the month in which the monthly or quarterly statement is issued.

26. Failing to refrain from soliciting prospective customers who have informed the broker-dealer that such person does not want to be solicited, and conducting business by telephone at unreasonable times.

27. Failing to disclose to a person purchasing shares of an investment company on the premises of an insured depository institution that such investment is not covered by the Federal Deposit Insurance Corporation, or failing to cause a written statement to be presented to, and signed by such person, acknowledging that he has received such information.

28. Failing to comply with any applicable provision of FINRA member conduct rules or any applicable fair practice or ethical standard promulgated by the SEC or by a self-regulatory organization approved by the SEC.

29. Failing to act in accordance with the duties and standards described in 950 CMR 12.207.

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(b) Agents. Each agent shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of his or her business. Acts and practices including, but not limited to, the following, are considered contrary to such standards and constitute dishonest or unethical practices in the securities industry and are thereby grounds for imposition of an administrative fine, censure, denial, suspension or revocation of a registration or such other action as is appropriate:

1. Engaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer.
2. Effecting securities transactions not recorded on the regular books and records of the broker-dealer that the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transactions.
3. Establishing or maintaining an account containing fictitious information in order to execute transactions that would otherwise be prohibited.
4. Sharing directly or indirectly in profits and losses in the account of any customer without the written authorization of the customer and the broker-dealer that the agent represents.
5. Dividing or otherwise splitting the agent's commissions, profits or other compensation from the purchase and sale of securities with any person not also registered as an agent for the same broker-dealer, or a broker-dealer under direct or indirect common control.
6. Failing to disclose the name of the principal if different from name that the agent is doing business under, to the customer at the time of the first contact with the customer.
7. Contacting any customer who has requested to be placed on a list of persons who do not want to be contacted by the broker-dealer, and conducting business by telephone at unreasonable times.
8. Engaging in conduct specified in 950 CMR 12.204(1)(a)1., 2., 3., 4., 5., 6., 10., 11., 12., 13., 18., 19., 22., 23., 27., 28., or 29.

(2) Fraudulent Practices of Broker-dealer and Agents. 950 CMR 12.204(2) identifies practices in the securities business that are associated with schemes to deceive or manipulate. A broker-dealer or agent who engages in one or more of the following practices shall have engaged in an "act, practice or course of business which operates or would operate as a fraud or deceit" as used in M.G.L. c. 110A, § 101. 950 CMR 12.204(2) is not inclusive, and thus, acts or practices not enumerated may also be found fraudulent.

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

(b) Contradicting or negating the importance of any information contained in a prospectus or other offering materials with the intent to deceive or mislead, or using any advertising or sales presentation in a deceptive or misleading manner including, but not limited to, using supplementary materials that do not consistently reflect or are not supported by information presented in any prospectus or offering materials required or permitted by 950 CMR 12.200 and the regulations of the SEC to be delivered in connection with the offer.

(c) In connection with the offer, sale or purchase of a security, falsely misleading a customer to believe that the broker-dealer or agent is in possession of material, non-public information which would impact on the value of the security.

(d) In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors with similar investment objectives for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstances of each investor.

(e) Failing to make a *bona fide* public offering of all the securities allotted to a broker-dealer for distribution by, among other things:

1. Transferring securities to a customer, another broker-dealer or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominee.
2. Parking or withholding securities.

(f) The following subsections specifically apply to transactions in securities sold in the over-the-counter market other than those in securities listed in the NASDAQ Global Market.

12.204: continued

1. Failing to comply with SEC Rules 15g-1 through 15g-9 (17 CFR 240.15g-1-9, and SEC Rule 15g-100 (17 CFR 240.15g-100).

2. Conducting sales contests in a particular security.

3. After a solicited purchase by a customer, failing or refusing, in connection with a principal transaction, to promptly execute sell orders.

4. Soliciting a secondary market transaction when there has not been a *bona fide* distribution in the primary (issuer) market.

5. Engaging in a pattern of co mpensating an agent in different amounts for effecting sales and purchases in the same security.

(g) Effecting any transaction in, or inducing the purchase or sale of any security by means of any manipulative, deceptive or other fraudulent device or contrivance, including, but not limited to, the use of "boiler room" tactics, use of fictitious or nominee accounts, or any practice listed in 950 CMR 12.204(1)(a)15. "Boiler room" tactics include any high-pressure sales tactics that have the effect of creating an artificially short period in which to make a decision or are designed to overcome a customer's reluctance to make an investment. Such tactics include the use of scripts designed to meet the customer's objections, repeated phone calls, phone calls designed to "set up" the customer, threatening tones on the telephone, informing the customer that he or she has little time to make a decision, and other such similar techniques.

(h) Failing to comply with any prospectus delivery requirement promulgated under federal law.

(i) 1. Using a purported credential or professional designation that indicates or implies that a broker-dealer agent has special certification or training in advising or servicing senior investors, unless such credential or professional designation has been accredited by an accreditation organization recognized by the Secretary by rule or order. For the purposes of 950 CMR 12.204(2)(i), the term "senior investor" shall include a person 65 years of age or older.

2. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a purported credential or professional designation indicating or implying that a broker-dealer agent has special certification or training in advising or servicing senior investors, factors to be considered shall include:

a. use of one or more words such as "senior", "retirement", "elder", or like words combined with one or more words such as "certified", "chartered", "adviser", "specialist", or like words in the name of the credential or professional designation;

b. how those words are combined; and

c. whether they are capitalized.

950 CMR 12.204(2)(i) is not intended to apply to job titles provided by a broker-dealer specifying one's area of specialization within an organization unless the facts and circumstances associated with the provision or use of a job title indicate that it improperly suggests or implies certification or training beyond that which the titleholder possesses or that it otherwise misleads investors. It is also not intended to apply to job titles provided by a broker-dealer indicating seniority within an organization.

3. There shall be a grace period commencing June 1, 2007 and running until two months after the date that at least one accreditation organization is recognized by the Secretary pursuant to 950 CMR 12.204(2)(i)5. In addition, there shall be a six month grace period with respect to any credential or professional designation that has been submitted to an accreditation organization described in 950 CMR 12.204(2)(i)1. for accreditation, running from the date of such submission; provided, that the Secretary may, at his discretion (consistent with the public interest and protection of investors), increase such grace period by an additional period of up to 12 months upon a showing of substantial progress in the accreditation process and a showing that such additional time is needed to complete the accreditation process; however, if accreditation of such credential has been denied in a final decision of such accreditation organization, any grace period provided for in 950 CMR 12.204(2)(i)3. shall terminate on the date of such denial.

12.204: continued

4. 950 CMR 12.204(2)(i) shall not apply to a degree or certificate evidencing completion of an academic program at an accredited institution of higher education unless the facts and circumstances associated with the provision or use of such degree or certificate indicate that it improperly suggests or implies certification or training beyond that which the degree holder or certificate holder possesses or that it otherwise misleads investors.

5. The Secretary may recognize any accreditation organization by rule or order. The Secretary shall consider any request for recognition by an accreditation organization. In determining whether to recognize an accreditation organization, the Secretary shall consider, among other factors that the Secretary deems appropriate in his or her discretion, whether or the extent to which the accreditation organization is nationally recognized and independent, whether it is for-profit or nonprofit, whether the primary purpose of the organization is to develop standards and implement methods for assuring competency and whether the organization has standards to address the status of designees who obtained the credential or designation prior to accreditation. The Secretary shall maintain a readily-accessible list, with contact information, of all accreditation organizations he recognizes.

(3) Examination Requirements.

(a) Every applicant for registration as an agent must pass either the Uniform State Law Exam (Series 63) or the Uniform Combined State Law Examination (Series 66) unless such requirement is waived by the Director. An applicant who has not been registered with FINRA or another self-regulatory organization during the two years prior to the filing of his application shall not be considered to have satisfied the examination requirements of 950 CMR 12.204(3). Waivers will be granted in the discretion of the Director on a showing of substantial experience in the industry or such other grounds suggesting awareness of the issues covered by the examinations.

(b) Every principal and supervisor who oversees the activities of agents operating in the Commonwealth must pass the examination required of such person by any self-regulatory organization of which such person's broker-dealer is a member.

(c) Every agent registered in the Commonwealth must pass any examination required by any self-regulatory organization of which such agent's broker-dealer is a member. The agent's activity is restricted to solely that activity for which he or she is permitted under the rules of the self-regulatory organization. Any activity outside that permitted constitutes unregistered activity and is in violation of M.G.L. c. 110A, § 201(a) unless the person is registered in another capacity or is appropriately exempt.

(4) Broker-dealer Withdrawal and Agent and Issuer-agent Transfer. A broker-dealer that seeks to withdraw or fails to renew its registration shall file Form BDW with the CRD or the Division. A broker-dealer or an issuer that seeks to terminate or fails to renew the registration of an agent or issuer-agent associated with it shall file a Form U-5 for such agent or issuer-agent with the CRD or the Division.

12.205: Investment Advisers and Federal Covered Advisers

(1) Definition of Investment Adviser.

(a) 950 CMR 12.205(1) shall cover the exclusions from the definition of investment adviser, as set forth in M.G.L. c. 110A, § 401(m) (**Note:** These definitions cover only the exclusions from the definition of investment adviser and do not pertain to other parts of the regulations):

1. Incidental shall mean occurring as a fortuitous or minor concomitant.

2. An investment adviser exercises investment discretion with respect to an account if, directly or indirectly, the investment adviser:

a. Is authorized to determine what securities or other property shall be purchased or sold by or for the account; or

b. Makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person (including the client) may have responsibility for those investment decisions.

12.205: continued

3. The Registered Broker-dealer Agent exclusion from the definition of "investment adviser" shall apply only to activities performed within the scope of the agency relationship, *i.e.*, to activities of the agent performed under the control and supervision of the broker-dealer. **Note**: If an agent conducts an investment advisory business outside the control and supervision of the registered broker-dealer, that agent cannot claim the exclusion from the definition of investment adviser by virtue of being a registered agent of such broker-dealer.

4. Qualified Institutional Buyer shall be defined as set forth in 17 CFR 230.144A(a)(1).

5. Affiliate of a qualified institutional buyer (QIB) means a person that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the QIB.

6. Institutional Buyer, for the purposes of M.G.L. c. 110A, § 401(m), shall include any of the following:

a. An organization described in Section 501(c)(3) of the Internal Revenue Code with a securities portfolio of more than $25 million.

b. An investing entity:

i. whose only investors are accredited investors as defined in Rule 501(a) under the Securities Act of 1933 (17 CFR 230.501(a)) each of whom has invested a minimum of $50,000; and

ii. the subject fund existed prior to February 3, 2012; and

iii. as of February 3, 2012, the subject fund ceased to accept new beneficial owners.

iv. 950 CMR 12.205(1)(a)6.b. shall be enforced as of August 3, 2012.

c. An investing entity whose only investors are financial institutions and institutional buyers as set forth in M.G.L. c. 110A, § 401(m) and 950 CMR 12.205(1)(a)6.a. or 950 CMR 12.205(1)(a)6.b.

7. Solicitation. A registered broker-dealer or agent shall not be deemed to be soliciting, offering or negotiating for the sale or selling investment advisory services if it refers its customers as part of a wrap-fee, asset allocation, market-timing program or otherwise to a registered investment adviser.

(b) The following entities are excluded by designation of the Secretary from the definition of investment adviser and federal covered adviser:

1. Any instrumentality created by the Commonwealth whose mission is to assist Massachusetts businesses in obtaining finance to start and expand. Such instrumentalities shall include the Massachusetts Technology Development Corporation, the Massachusetts Community Development Finance Corporation, the Massachusetts Industrial Services Program, the Massachusetts Industrial Finance Agency and the Massachusetts Government Land Bank.

2. Any entity having a place of business in the Commonwealth but having no clients located in the Commonwealth, so long as such entity is registered as an investment adviser in at least one jurisdiction where it does have clients or with the U.S. Securities and Exchange Commission (SEC).

3. A corporate general partner of a limited partnership if the limited partnership is registered as an investment adviser and any employee of the corporate general partner providing investment advice to or on behalf of the limited partnership is registered as an investment adviser representative of the limited partnership.

4. A person who has no office or other physical presence in the Commonwealth, and has had fewer than six clients in the Commonwealth during the preceding 12 months.

(2) Registration and Notice Filing Requirements and Private Fund Exemption.

(a) Registration of Investment Advisers.

1. Pursuant to M.G.L. c. 110A, § 202(a), the Secretary designates the web-based Investment Adviser Registration Depository (IARD) and the Central Registration Depository (CRD) both operated by FINRA to receive and store filings and collect related fees from investment advisers and investment adviser representatives on behalf of the Securities Division of the Office of the Secretary of the Commonwealth (Division). All applications for initial registration as an investment adviser shall be made via the IARD located at www.iard.com. (Any documents required to be filed with the Division that cannot be accepted by the IARD, including, but not limited to, the section 202(a) affidavit described in 950 CMR 12.205(2)(a)2. shall be filed directly with the Division.) Each application for registration as an investment adviser shall contain:

12.205: continued

a. The Form ADV, including all parts and schedules.

b. If required by 950 CMR 12.205(5)(a), a surety bond evidencing compliance with the minimum financial requirements set forth in 950 CMR 12.205(5).

c. A Form U-4 for each person listed on Schedule A or Schedule B of Form ADV as a sole proprietor, executive officer, director, partner or controlling member (or person occupying a similar status or performing similar functions).

d. A non-refundable registration fee of $300.

e. A non-refundable registration fee of $50 for each person listed on Schedule A or Schedule B of the Form ADV as a sole proprietor, executive officer, director, partner, controlling member (or person occupying a similar status or performing similar functions), unless such person, other than a sole proprietor, files an affidavit described in 950 CMR 12.205(2)(a)2. (*See* 950 CMR 12.205(2)(d) for investment adviser representative registration requirements.) **Note:** Each executive officer, director, partner, controlling member, (or person performing similar functions) listed on Schedule A or Schedule B of the Form ADV or sole proprietor who acts as an investment adviser representative is automatically registered as an investment adviser representative when the investment adviser's application is made effective.

2. Each executive officer, director, partner, controlling member or sole proprietor (or person occupying a similar status or performing similar functions) is presumed to be acting as an investment adviser representative and thus registered automatically unless such person, other than a sole proprietor, files with the Division an affidavit stating that he or she performs no activity for the investment adviser that would require him or her to register as an investment adviser representative. Such affidavit shall be in substantially the following form: "The undersigned hereby swears or affirms that as an [executive officer, director, partner, controlling member (or person occupying a similar status or performing similar functions)] of [name of investment adviser], I (a) make no recommendations nor otherwise render advice regarding securities; (b) do not manage accounts or portfolios for clients; (c) do not determine which recommendations or advice regarding securities should be given; (d) neither solicit, offer nor negotiate the sale of investment advisory services; and, (e) do not supervise any employee who performs any of the foregoing activities."

3. Every registration as an investment adviser shall expire on December 31st. An investment adviser registration shall be renewed annually via the IARD located at www.iard.com. The renewal application shall contain:

a. The information requested by the IARD.

b. The information requested by the CRD for each investment adviser representative whose registration is being renewed. (*See* 950 CMR 12.205(2)(c)2.)

c. A non-refundable registration fee of $300 for the investment adviser and non-refundable registration fees of $50 for each investment adviser representative.

(b) Notice Filing Procedures for Federal Covered Advisers.

1. Pursuant to M.G.L. c. 110A, § 202(a), the Secretary designates the web-based Investment Adviser Registration Depository (IARD) and the Central Registration Depository (CRD) both operated by FINRA to receive and store filings and collect related fees from Federal Covered Advisers and investment adviser representatives on behalf of the Securities Division of the Office of the Secretary of the Commonwealth (Division). Each Federal Covered Adviser required to provide notice shall file the following with the Division via the IARD located at www.iard.com.

a. A copy of its complete, most recent, Form ADV, including all parts and schedules, on file with the U.S. Securities and Exchange Commission.

b. A non-refundable notice-filing fee of $300.

c. A non-refundable registration fee of $50 for each investment adviser representative required to be registered in Massachusetts. (*See* 950 CMR 12.205(2)(d) for investment adviser representative registration requirements.)

2. Each Federal Covered Adviser's status as a notice filer shall expire on December 31st and must be renewed annually via the IARD located at www.iard.com. The renewal application shall contain:

12.205: continued

a. The information requested by the IARD.

b. The information requested by the CRD for each investment adviser representative whose registration is being renewed. (*See* 950 CMR 12.205(2)(d)2.)

c. A non-refundable notice-filing fee of $300 for the investment adviser and a non-refundable registration fee of $50 for each investment adviser representative.

(c) Registration Exemption for Certain Private Fund Advisers.

1. Definitions. For purposes of 950 CMR 12.205(2)(c), the following definitions shall apply:

a. Value of Primary Residence means the fair market value of a person's primary residence, less the amount of debt secured by the property up to its fair market value.

b. Private Fund Adviser means an investment adviser who provides advice solely to one or more private funds.

c. Private Fund means an issuer that qualifies for an exclusion from the definition of an investment company pursuant to section(s) 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940, 15 U.S.C. 80a.

d. 3(c)(1) Fund means a private fund that qualifies for an exclusion from the definition of an investment company pursuant to section 3(c)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a-3(c)(1).

e. 3(c)(7) Fund means a private fund that qualifies for an exclusion from the definition of an investment company pursuant to section 3(c)(7) of the Investment Company Act of 1940, 15 U.S.C. 80a-3(c)(7).

f. Venture Capital Fund means a private fund that meets the definition of a venture capital fund in SEC Rule 203(l)-1, 17 C.F.R. § 275.203(l)-1.

2. Exemption for Private Fund Advisers. Subject to the additional requirements of 950 CMR 12.205(2)(c)3., a private fund adviser shall be exempt from the registration requirements of M.G.L. c. 110A, § 201 if the private fund adviser satisfies all of the following conditions:

a. neither the private fund adviser nor any of its advisory affiliates are subject to a disqualification as described in Rule 262 of SEC Regulation A, 17 C.F.R. § 230.262;

b. the private fund adviser files with the state each report and amendment thereto that an exempt reporting adviser is required to file with the Securities and Exchange Commission pursuant to SEC Rule 204-4, 17 C.F.R. § 275.204-4; and

c. the private fund adviser pays a $300 reporting fee.

3. Additional requirements for private fund advisers to certain 3(c)(1) funds. In order to qualify for the exemption described in 950 CMR 12.205(2)(c)2., a private fund adviser who advises at least one 3(c)(1) fund that is not a venture capital fund nor a 3(c)(7) fund shall, in addition to satisfying each of the conditions specified in 950 CMR 12.205(2)(a) through (c), comply with the following requirements:

a. The private fund adviser shall advise only those 3(c)(1) funds (other than venture capital funds or 3(c)(7) funds) whose outstanding securities (other than short-term paper) are beneficially owned solely by persons who, after deducting the value of the primary residence from the person's net worth, would each meet the definition of a qualified client in SEC Rule 205-3, 17 C.F.R. § 275.205-3, at the time the securities are purchased from the issuer;

b. At the time of purchase, the private fund adviser shall disclose the following in writing to each beneficial owner of a 3(c)(1) fund that is not a venture capital fund nor a 3(c)(7) fund:

i. all services, if any, to be provided to individual beneficial owners. If no services are to be provided to individual beneficial owners, that fact must be disclosed;

ii. all duties, if any, the investment adviser owes to the beneficial owners. If no duties are owed to individual beneficial owners, that fact must be disclosed; and

iii. any other material information affecting the rights or responsibilities of the beneficial owners.

c. The private fund adviser shall obtain on an annual basis audited financial statements of each 3(c)(1) fund that is not a venture capital fund nor a 3(c)(7) fund, and shall deliver a copy of such audited financial statements to each beneficial owner of the fund.

12.205: continued

4. Federal Covered Investment Advisers. If a private fund adviser is registered with the Securities and Exchange Commission, the adviser shall comply with the state notice filing requirements applicable to federal covered investment advisers in M.G.L. c. 110A, § 202(b).

5. Investment Adviser Representatives. A person acting as an investment adviser representative is exempt from the registration requirements of M.G.L. c. 110A, § 201 if he or she is employed by or associated with an investment adviser that is exempt from registration in the Commonwealth pursuant to 950 CMR 12.205(2) and does not otherwise act as an investment adviser representative.

6. Electronic Filing. The report filings described in 950 CMR 12.205(2)(b) shall be made electronically through the IARD. A report shall be deemed filed when the report and the fee are filed and accepted by the IARD on the behalf of the Securities Division.

7. Grandfathering for Private Fund Advisers with Non-qualified Clients. A private fund adviser to one or more 3(c)(1) funds that is not a venture capital fund nor a 3(c)(7) fund that is beneficially owned by persons who are not qualified clients as described in 950 CMR 12.205(2)(c)3.a. may nonetheless qualify for the exemption described in 950 CMR 12.205(2)(c) if:

a. the subject fund(s) existed prior to February 3, 2012; and

b. as of February 3, 2012, the fund(s) cease(s) to accept beneficial owners who are not qualified clients, as described in 950 CMR 12.205(2)(c)3.a.; and

c. the private fund adviser to the subject fund(s) was in compliance with the requirements of M.G.L. c. 110A § 201(c) as of February 3, 2012; and

d. the private fund adviser discloses in writing the information described in 950 CMR 12.205(2)(c)3.b. to all beneficial owners of the fund(s); and

e. the adviser delivers audited financial statements as required by 950 CMR 12.205(3)(c).

8. Enforcement. 950 CMR 12.205(2)(c) shall be enforced as of August 3, 2012.

(d) Registration of Investment Adviser Representatives.

1. Pursuant to M.G.L. c. 110A, § 202(a) the Secretary designates the web-based Central Registration Depository (CRD) operated by FINRA to receive and store filings and collect related fees from investment adviser representatives on behalf of the Securities Division of the Office of the Secretary of the Commonwealth (Division). All applications for initial registration as an investment adviser representative shall be made via the CRD, which may be located through www.iard.com (any documents required to be filed that cannot be accepted by the CRD, including, but not limited to, the Acknowledgement Form described in 950 CMR 12.205(2)(d)1.d. shall be filed directly with the Division). The application shall contain:

a. A complete, current Form U-4 indicating Massachusetts as a jurisdiction.

b. A non-refundable registration fee of $50.

c. Proof of meeting the examination or certification requirements of 950 CMR 12.205(4).

d. A Criminal Offender Record Information (CORI) Acknowledgement Form, or other similar form, necessary for the Division to obtain the applicant's Criminal Offender Record Information through the Massachusetts Department of Criminal Justice Information Services.

2. Every registration as an investment adviser representative shall expire on December 31st. An investment adviser representative registration shall be renewed annually via the CRD, which may be located through www.iard.com, and shall contain:

a. The information requested by the CRD.

b. A non-refundable registration fee of $50.

3. Renewal registration of an investment adviser representative shall be accomplished through the investment adviser or the Federal Covered Adviser.

(3) Withdrawals, Terminations and Transfers.

(a) An investment adviser which seeks to withdraw its registration pursuant to M.G.L. c. 110A, § 204(e), or a Federal Covered Adviser which seeks to terminate its notice filing status shall file with the Division, via the IARD located at www.iard.com, Form ADV-W in accordance with the instructions contained therein.

12.205: continued

(b) An investment adviser or a Federal Covered Adviser which seeks to terminate the registration of an investment adviser representative employed or associated with it, shall file with the Division, via the CRD which may be located through www.iard.com, a Form U-5 prepared in accordance with the instructions contained therein. The investment adviser or the Federal Covered Adviser shall send a copy of the Form U-5 to the terminated employee within five days after it is filed with the Division.

(c) An investment adviser or a Federal Covered Adviser shall notify the Division that it intends to employ or associate with an investment adviser representative currently registered in the Commonwealth by filing a Form U-4 with the Division, via the CRD which may be located through www.iard.com, for such representative. Such filing will be considered a new application under M.G.L. c. 110A, § 202. If the application discloses no affirmative responses to the disclosure item of Form U-4, the investment adviser or Federal Covered Adviser may request that the effective date of the registration be accelerated.

(4) Examination or Certification Requirement.

(a) Each individual submitting an initial application for registration as an investment adviser representative in the Commonwealth shall demonstrate compliance with either 950 CMR 12.205(4)(a)1. or 2.

1. Currently hold the professional designation of Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.; Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts; Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, PA; Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.; or Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants.

2. Have obtained a passing score on the examination(s) in one of the following: (1) The Uniform Investment Adviser Law Examination (the Series 65 examination); or (2) the Uniform Combined State Law Examination (the Series 66 examination) and the General Securities Representative Examination (the Series 7 examination of FINRA). **Note**: The Division will accept in place of the Series 7 examination (i) a passing score on the Series 2 examination formerly administered by FINRA, (ii) successful completion of an academic program at an accredited institution of higher education leading to a degree or certificate in financial planning (or its equivalent) or an academic program at an accredited institution of higher education leading to a degree in a subject involving significant financial and investment analysis, or (iii) successful completion of a nationally recognized examination or course of study specifically designed in part or whole for investment advisers or financial planners such as: any part of the CFA examination administered by the Institute of Chartered Financial Analyst (now known as AIMR); the examination for course HS328 of the Chartered Financial Consultant Examination administered by the American College of Bryn Mawr; the examination for the course currently known as CFPE 1102, Investment Planning, offered by the College for Financial Planning administered by the Certified Financial Planner Board of Standards, Inc.; the examination required for the admission to the Registry of Financial Planning Practitioners administered by the IAFP; the examination required for the designation Certified Investment Management Consultant administered by the Institute for Investment Management Consultants; the examinations required for the designation Certified Fund Specialist administered by The Institute of Certified Fund Specialists; the examination required for the designation Certified Investment Management Analyst administered by the Investment Management Consultants Association; and the examinations required for the designation Chartered Pension Professional administered by The Institute of Chartered Pension Professionals.

(b) Any individual who is registered as an investment adviser or investment adviser representative in any jurisdiction in the United States on December 9, 1999 shall not be required to satisfy the examination requirement for continued registration, unless notified otherwise by the Director, except that the Director may require additional examinations for any individual found to have violated any state or federal securities law. Notwithstanding 950 CMR 12.205(4)(b), any individual who has not been registered in any jurisdiction for a period of two years shall be required to comply with 950 CMR 12.205(4)(a) or (c).

(c) The Director may waive the examination or certification requirement if the applicant demonstrates, in writing, one of the following:

12.205: continued

1. The individual functions solely as a solicitor for new clients.
2. The individual's duties do not pertain directly or indirectly to clients located in the Commonwealth.
3. The individual renders investment advisory services solely by means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts or solely through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security.
4. Such other characteristics that would demonstrate that there is no need to meet the examination requirements, *e.g.* substantial experience in the securities or investment industry.

(5) Discretion and Custody Requirements.

(a) An investment adviser registered or required to be registered under M.G.L. c. 110A who has discretionary authority over client funds or securities shall be bonded in an amount of not less than $10,000.00 by a bonding company qualified to do business in the Commonwealth. This requirement shall be waived provided the following conditions are met:

1. the investment adviser is registered in the jurisdiction where its principal place of business is located; and
2. the investment adviser meets the minimum financial requirements of the jurisdiction where its principal place of business is located.

(b) An investment adviser registered or required to be registered under M.G.L. c. 110A who has custody of client funds or securities shall comply with the provisions of Rule 206(4)-2 under the Investment Advisers Act of 1940 (17 CFR 275.206(4)-2).

1. Custody shall have the meaning defined in Rule 206(4)-2(d)(2) under the Investment Advisers Act of 1940 (17 CFR 275.206(4)-(2)(d)(2)).
2. An adviser is not exempt from the independent verification requirement pursuant to Rule 206(4)-2(b)(3) under the Investment Advisers Act of 1940 unless the adviser meets the following additional requirements:
   a. The adviser has written authorization from the client to deduct advisory fees from the account held with the qualified custodian; and
   b. The adviser sends the qualified custodian and client an invoice or statement of the amount of the fee to be deducted from the client's account each time a fee is directly deducted.

(c) 950 CMR 12.205(5) shall be enforced as of August 3, 2012.

(6) Post-registration/Post-notice Filing Requirements.

(a) An investment adviser registered or required to be registered under M.G.L. c. 110A shall file the following information with the Division:

1. annual and other-than-annual amendments in compliance with the language, organizational format and the timing of filing requirements as specified in the Instructions to Form ADV, including the requirements for both annual and other-than-annual amendments; and
2. updates to Form U-4 or any representation or undertaking contained in any affidavit filed with the Division if such Form U-4 or any representation or undertaking changes in any respect.

(b) The registrant will have complied with the requirement of prompt notification if an amendment is filed with the Division as soon as possible, but in no event more than ten business days after the registrant has knowledge of the circumstances requiring such notification.

(c) Filing an amendment to the Form U-4 of an investment adviser representative is within the supervisory responsibilities of the investment adviser. Each investment adviser must establish written procedures to ensure compliance with this provision.

(d) Each investment adviser registered or required to be registered under M.G.L. c. 110A exercising discretionary investment authority or having custody of client funds shall file the following as evidence of compliance with 950 CMR 12.205(5):

1. An investment adviser exercising discretionary investment authority shall file evidence of a surety bond within 90 days from fiscal year-end.

12.205: continued

2. An investment adviser having custody of client funds as defined in 950 CMR 12.205(5)(b)1. shall file annually with the Division Form ADV-E in compliance with the requirements of Rule 206(4)-2 under the Investment Advisers Act of 1940.

(e) An investment adviser registered with the Division who subsequently becomes registered with the U.S. Securities and Exchange Commission shall promptly notify the Division of such registration by filing a copy of its SEC registration notice with the Division.

(f) Within ten business days of filing any amendment with the U.S. Securities and Exchange Commission, a federal covered adviser shall file a copy of such amendment with the Division.

(7) Record Keeping Requirements.

(a) Each investment adviser shall make and keep true, accurate and current the following accounts, correspondence, memoranda, papers, books, and other records relating to its investment advisory business:

1 All books and records required to be maintained by SEC Rule 204-2 (Books and Records to Be Maintained by Investment Advisers, 17 CFR 275.204-2).

2. A complaint file, containing all correspondence between the investment adviser and its clients pertaining to any complaint about services rendered. This file must be maintained in such a manner:

a. To identify all complaints made against a particular investment adviser representative employed or associated with the investment adviser.

b. To segregate any material within the file for which a claim of privilege is asserted, including the justification for such assertion.

c. To describe what action was taken by the investment adviser with respect to the complaint.

3. A litigation file documenting any criminal or civil action or administrative proceeding filed in any state or federal court or by any administrative agency against the investment adviser or any of its personnel with respect to a securities or an investment advisory transaction and the disposition of the action or proceeding.

4. A chronological correspondence file containing, or a chronological correspondence log identifying all correspondence disseminated to or received from clients or prospective clients in connection with the business of the investment adviser. If a file is maintained, it should include copies of all correspondence. If a log is maintained, it should list the date, the name of the sender or recipient, and a brief description of the subject matter of the correspondence. **Note:** The investment adviser may elect to meet this requirement by maintaining either a file or a log. It is not necessary that both be maintained.

5. The name and address of each investment advisory client.

6. Copies of the written disclosure delivered pursuant to 950 CMR 12.205(8)(e). If the disclosure obligation is met in whole or in part by the delivery of a prospectus, the investment adviser need only note such delivery and not retain a copy of the prospectus in each client's file.

(b) All items required by 950 CMR 12.200 must be maintained in a form permitting easy access for reasonable periodic, special, or other examinations by representatives of the Division. Inspection may be made either in person on the premises of the investment adviser or by written inquiry from the Division. If inspection is made by written inquiry, the investment adviser shall produce legible and reproducible copies of the requested records to the Division at the investment adviser's expense. Unless otherwise stated in the written inquiry, such copies shall be delivered to the Division within five business days after the request is received. Copies can be either reproductions of the original or print-outs if kept in electronic form.

(c) All items required by 950 CMR 12.200 shall be maintained and preserved for a period of not less than five years, the first two years in an appropriate office of the investment adviser. All items must be arranged or indexed to permit prompt retrieval of any particular record.

(d) All requirements of 950 CMR 12.205(7) shall be waived provided the following conditions are met:

1. The investment adviser is registered in the jurisdiction where it has its principal place of business located.

2. The investment adviser maintains its books and records in accordance with the applicable law of the jurisdiction where it has its principal place of business.

12.205: continued

(8) Disclosure Requirements.

(a) An investment adviser must provide each client or prospective client with the following disclosures at least 48 hours before entering into a contract, or if the investment adviser gives the disclosures to the client at the time of entering into the contract, the investment adviser must give the client the option to cancel the contract within five business days:

1. A disclosure statement, which may be a copy of Part 2 of Form ADV or another written document containing the equivalent information. If the document is not Part 2 of Form ADV, then it must be filed with the Division prior to its first use;

2. A stand-alone Table of Fees for Services in a form approved by the Division and prepared pursuant to the instructions thereto;

3. Any additional information required to be disclosed under the Investment Advisers Act of 1940; and

4. A notice that the disciplinary history of the investment adviser and its representatives can be obtained from the Division.

(b) An investment adviser annually shall, without charge, deliver or offer in writing to deliver upon written request to each of its advisory clients the disclosures required by 950 CMR 12.205(8)(a). Any disclosures requested in writing by an advisory client pursuant to an offer required hereby must be sent out within seven days of the receipt of the request.

(c) If an investment adviser renders substantially different types of investment advisory services to different advisory clients, any information required by Part 2 of Form ADV may be omitted from the statement furnished to an advisory client or prospective advisory client if such information is applicable only to a type of investment advisory service or fee which is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

(d) The disclosure obligations required by M.G.L. c. 110A, § 203A(a) will be met if the investment adviser complies with the requirements in 950 CMR 12.205(8)(a).

(e) Disclosure obligations under M.G.L. c. 110A, § 203A(b):

1. Before the purchase or sale of a security with respect to which investment advice has been rendered, the investment adviser or investment adviser representative shall disclose to each client in Massachusetts:

a. The total amount of sales commission or other fees, including mark-ups or mark-downs, that may reasonably be expected to be charged or deducted in connection with the purchase or sale.

b. That the investment adviser or investment adviser representative will receive such amount or a portion of such amount, or, in the case of a transaction to be effected through a broker-dealer that is a person affiliated or under common control with the investment adviser or investment adviser representative, that the broker-dealer is affiliated with the adviser and will receive such amount or portion of such amount. Note: Any person who regularly receives a transactions-based fee for effecting transactions in securities is presumed to be in the business and thus must register as a broker-dealer or an agent of a broker-dealer.

c. The existence of any compensation arrangement with an issuer of securities or other third parties, including sales incentives (*e.g.,* special bonuses, discounts, premiums or prizes) or arrangements which bestow soft-dollar or other such indirect benefits to the investment adviser or investment adviser representative.

2. The disclosure required hereunder shall be in writing if the investment advice was given in writing.

3. The disclosure required under M.G.L. c. 110A, § 203A(b) need not be given in any of the following circumstances:

a. The investment advice is rendered pursuant to a written agreement giving discretionary authority to the investment adviser or investment adviser representative.

b. The investment advice pertains to a security traded on a national exchange or through the NASDAQ Stock Market; the commission, mark-up or mark-down is permitted under the rules of FINRA; and, the broker-dealer effecting the transaction has no affiliation with the investment adviser or investment adviser representative.

12.205: continued

4. The client may waive, in writing, receipt of the disclosure required by 950 CMR 12.205(8)(e)1. under any of the following conditions:

a. The investment advice pertains to an investment company registered with the Division; and the client has previously received a prospectus for the investment company and a separate, clear written explanation of the information required to be disclosed in 950 CMR 12.205(8)(e)1.a. through c.

b. The investment advice pertains to a subsequent sale after the initial sale made pursuant to an agreement to invest a certain sum of money on a periodic basis.

(f) If an investment adviser maintains a website available to the public or to the investment adviser's clients, the Table of Fees for Services required by 950 CMR 12.205(8)(a)2. must be available and easily accessible on the website.

(g) The Table of Fees for Services required by 950 CMR 12.205(8)(a)2. must be updated on an annual basis as of the date on which the investment adviser is required to file any annual amendments to Form ADV.

(h) 950 CMR 12.205(8) shall be enforced as of January 1, 2020.

(9) Fraudulent Practices/Dishonest or Unethical Practices.

(a) As used in 950 CMR 12.205(9), "adviser" refers to any person, including persons registered or excluded from registration under M.G.L. c. 110A, who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase and sale, whether through the issuance of analyses or reports or otherwise. It is a rebuttable presumption that such term includes all investment advisers and investment adviser representatives, as well as other persons who charge fees based on assets under management or portfolio performance for rendering investment advice.

(b) The following practices by an adviser shall be deemed to operate as a fraud or deceit upon the other person under M.G.L. c. 110A, § 102(2):

1. Any practice proscribed under the SEC rules promulgated under the Investment Advisers Act of 1940, § 206(4) (17 CFR 275.206(4)-1 *et seq*.), unless such practice meets all conditions stated within those rules.

2. Use of a business name by an investment adviser so similar as to be likely to be mistaken for it, to any other firm, association or person already carrying on business in the Commonwealth, unless the business name is the same as the personal name of one of the principals.

(c) The following practices are a nonexclusive list of practices by an adviser which shall be deemed "dishonest or unethical conduct or practices in the securities business" for purposes of M.G.L. c. 110A, § 204(a)(2)(G):

1. Recommending to a client to whom investment supervisory, management or consulting services are provided, the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's overall portfolio, investment objectives, financial situation and needs, investment experience and any other information known or acquired by the adviser after reasonable examination of the client's records as may be provided to the adviser.

2. Placing an order to purchase or sell a security for the account of a client without authority to do so.

3. Placing an order to purchase or sell a security for the account of a client upon instruction of a third-party without first having obtained a written third-party trading authorization from the client.

4. Exercising any discretionary power in placing an order for the purchase or sale of securities without first obtaining written discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of specified securities shall be executed, or both.

5. Inducing trading in a client's account that is excessive in size and frequency in view of the financial resources, investment objectives and character of the account.

6. Borrowing money or securities from a client, unless the adviser is a broker-dealer or the client is a broker-dealer, an affiliate of the adviser, a family member or a financial institution engaged in the business of loaning funds or securities.

12.205: continued

7. Loaning money to a client, unless the adviser is a registered broker-dealer engaged in the management of margin accounts, or a financial institution engaged in the business of loaning funds, or the client is an affiliate of the adviser or a family member.

8. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the adviser, its representatives or any employees, or misrepresenting the nature of the advisory services being offered or fees to be charged for such services, or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

9. Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact. (950 CMR 12.205(9)(c)9. does not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing services.)

10. Charging a client an advisory fee that is unreasonable in light of the fees charged by other investment advisers providing essentially the same services.

11. Failing to disclose to a client in writing before rendering investment advice any material conflict of interest relating to the adviser, its representatives or any of its employees, which could reasonably be expected to influence or impair the rendering of unbiased and objective advice including:

a. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

b. Charging a client an advisory fee for rendering advice without disclosing that a commission or other remuneration for executing securities transactions pursuant to such advice will be received by the adviser, its representatives or its employees or that such advisory fee is being reduced by the amount of the commission or other remuneration earned by the adviser, its representatives or employees for the sale of securities to the client.

12. Guaranteeing a client that a specific result will be achieved (gain or loss) as a result of the advice which will be rendered.

13. Disclosing the identity, affairs, or investments of any client to any third-party, unless required by law to do so, or unless consented to by the client.

14. Entering into, extending or renewing any investment advisory contract, other than a contract for impersonal advisory services, unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee or the formula for computing the fee, the amount or the manner of calculation of the amount of the prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the adviser or its representatives and that no assignment of such contract shall be made by the adviser without the consent of the client.

15. a. Using a purported credential or professional designation that indicates or implies that an investment adviser representative has special certification or training in advising or servicing senior citizens, unless such credential or professional designation has been accredited by an accreditation organization recognized by the Secretary by rule or order. For the purposes of 950 CMR 12.205(9)(c)15., the term "senior citizen" shall include a person 65 years of age or older.

b. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a purported credential or professional designation indicating or implying that an investment adviser representative has special certification or training in advising or servicing senior citizens, factors to be considered shall include:

(i) use of one or more words such as "senior", "retirement", "elder", or like words combined with one or more words such as "certified", "chartered", "adviser", "specialist", or like words in the name of the credential or professional designation;

(ii) how those words are combined; and

(iii) whether they are capitalized.

12.205: continued

950 CMR 12.205(9)(c)15. is not intended to apply to job titles provided by an investment adviser specifying one's area of specialization within an organization, unless the facts and circumstances associated with the provision or use of a job title indicate that it improperly suggests or implies certification or training beyond that which the titleholder possesses or that it otherwise misleads investors. It is also not intended to apply to job titles provided by an investment adviser indicating seniority within an organization.

c. There shall be a grace period commencing June 1, 2007 and running until two months after the date that at least one accreditation organization is recognized by the Secretary pursuant to 950 CMR 12.205(9)(c)15.e. In addition, there shall be a six-month grace period with respect to any credential or professional designation that has been submitted to an accreditation organization described in 950 CMR 12.205(9)(c)15.a. for accreditation, running from the date of such submission; provided, that the Secretary may, at his discretion (consistent with the public interest and protection of investors), increase such grace period by an additional period of up to 12 months upon a showing of substantial progress in the accreditation process and a showing that such additional time is needed to complete the accreditation process; however, if accreditation of such credential has been denied in a final decision of such accreditation organization, any grace period provided for in 950 CMR 12.205(9)(c)15.c. shall terminate on the date of such denial.

d. 950 CMR 12.205(9)(c)15. shall not apply to a degree or certificate evidencing completion of an academic program at an accredited institution of higher education unless the facts and circumstances associated with the provision or use of such degree or certificate indicate that it improperly suggests or implies certification or training beyond that which the degree holder or certificate holder possesses or that it otherwise misleads investors.

e. The Secretary may recognize any accreditation organization by rule or order. The Secretary shall consider any request for recognition by an accreditation organization. In determining whether to recognize an accreditation organization, the Secretary shall consider, among other factors that the Secretary deems appropriate in his or her discretion, whether or the extent to which the accreditation organization is nationally recognized and independent, whether it is for-profit or nonprofit, whether the primary purpose of the organization is to develop standards and implement methods for assuring competency and whether the organization has standards to address the status of designees who obtained the credential or designation prior to accreditation. The Secretary shall maintain a readily-accessible list, with contact information, of all accreditation organizations he or she recognizes.

16. a. To retain Investment Consulting Services, for compensation that is provided either directly to the consultant or indirectly through a Matching or Expert Network Service, unless the investment adviser obtains a written certification that:

i. describes all confidentiality restrictions relevant to the potential consultation which the consultant has, or reasonably expects to have;

ii. affirmatively states that the consultant will not provide any Confidential Information to the investment adviser; and

iii. is signed and dated by the consultant, and is accurate as of the date of the initial, and any subsequent, consultation(s).

b. Notwithstanding 950 CMR 12.205(9)(c)16.a., an investment adviser who comes into possession of material Confidential Information through a consultation is precluded from trading any relevant security until such time as the Confidential Information is made public.

c. Definitions. For purposes of 950 CMR 12.205(9)(c)16.:

i. Confidential Information means any non-public information, which one is bound by a confidentiality agreement or fiduciary (or similar) duty not to disclose.

ii. Matching or Expert Network Service means a firm that, for compensation, matches consultants with investment advisers.

12.205: continued

iii. Investment Consulting Services means a consultation for the purposes of assisting the investment adviser's decision as to whether to buy, sell, or abstain from buying or selling, positions in client accounts.

d. 950 CMR 12.205(9)(c)16. shall be enforced as of December 1, 2011.

17. Receiving any compensation on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of a client, unless such compensation is received in compliance with Rule 205-3 under the Investment Advisers Act of 1940 (17 CFR 275.205-3).

(10) Supervision.

(a) Each investment adviser shall establish and maintain a system to supervise the activities of each investment adviser representative and other employees that is reasonably designed to achieve compliance with M.G.L. c. 110A, 950 CMR 10.00 through 950 CMR 14.413, the Securities Act of 1933 (15 USC § 77a), 17 CFR Part 230; the Securities Exchange Act of 1934 (15 USC § 78a); 17 CFR Part 240; the Investment Company Act of 1940 (15 USC § 80a-1); 17 CFR Part 270; and the Investment Advisers Act of 1940 (15 USC § 80b-1) under 17 CFR Part 275. Final responsibility for proper supervision shall rest with the investment adviser. This supervisory system shall provide, at a minimum, for the following:

1. The establishment and maintenance of written procedures as required in 950 CMR 12.205(10)(a).

2. The designation of an appropriately registered officer or partner with authority to carry out the supervisory responsibilities of the investment adviser for each type of business in which it engages for which registration as an investment adviser is required.

3. The designation of an appropriately registered investment adviser representative in each office where the investment adviser does business in the Commonwealth with authority to carry out the supervisory responsibilities assigned to that office by the investment adviser.

4. The assignment of each registered investment adviser representative to an appropriately registered investment adviser representative who shall be responsible for supervising that person's activities.

5. Reasonable efforts to determine that all supervisory personnel are qualified by virtue of experience or training to carry out their assigned responsibilities.

6. The participation of each registered investment adviser representative, either individually or collectively, no less than annually, in an interview or meeting conducted by persons designated by the investment adviser at which compliance matters relevant to the activities of the investment adviser representatives are discussed. Such interview or meeting may occur in conjunction with the discussion of other matters and may be conducted at a central or regional location or at the representative's place of business.

(b) Establishment of Written Procedures.

1. Each investment adviser shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of its investment adviser representatives and other employees that are reasonably designed to achieve compliance with applicable state and federal securities laws and regulations.

2. The investment adviser's written supervisory procedures shall set forth the supervisory system established by the investment adviser pursuant to 950 CMR 12.205(10)(a), and shall include the titles, registration status and locations of the required supervisory personnel and the responsibilities of each supervisory person as these relate to the types of business engaged in, and applicable state and federal securities laws and regulations. The investment adviser shall maintain on an internal record the names of all persons who are designated as supervisory personnel and the dates for which such designation is or was effective.

3. A copy of an investment adviser's written supervisory procedures, or the relevant portions thereof, shall be kept at each location where activities are conducted on behalf of the investment advisers with persons located in the Commonwealth. The written supervisory procedures shall be amended to reflect any change in state and federal securities laws and regulations.

12.205: continued

4. Except as provided in 950 CMR 12.205(6)(c), investment advisers with five or fewer investment adviser representatives are excused from the requirements of 950 CMR 12.205(10)(b).

(c) Each investment adviser shall conduct a review, at least annually or more often if circumstances warrant, to determine that it is in compliance with the written supervisory procedures. A record of such review shall be maintained by the investment adviser for five years after the review is conducted.

(d) Each investment adviser shall establish procedures for review and endorsement by supervisory personnel in writing, on an internal record, of all transactions and all correspondence of its investment adviser representatives pertaining to the rendering of investment advice to individual clients.

(e) Each investment adviser shall have the responsibility and duty to ascertain by investigation the good character, business repute, qualifications, and experience of any person prior to making a certification in the application of such person for registration. Where an applicant for registration has previously been registered, the investment adviser shall obtain from the applicant a copy of the Uniform Termination Notice of Securities Industry Registration (Form U-5) filed with the Division by such person's most recent investment adviser employer. The investment adviser shall obtain the Form U-5 as required by 950 CMR 12.205 no later than 60 days following the filing of the application. An investment adviser receiving a Form U-5 pursuant to 950 CMR 12.205 shall review the Form U-5 and any amendments thereto and shall take such action as may be deemed appropriate.

(f) Any applicant for registration who receives a request for a copy of his or her Form U-5 from an investment adviser pursuant to 950 CMR 12.205 shall provide such copy to the investment adviser within two business days from the request if the Form U-5 has been provided to such person by his or her former employer. If a former employer has failed to provide the Form U-5 to the applicant for registration, such person shall promptly request the Form U-5, and shall provide it to the requesting investment adviser within two business days of receipt thereof. The applicant shall promptly provide any subsequent amendments to a Form U-5 he or she receives to the requesting investment adviser.

12.206: Funding Portal Notice Filing

(1) Definition. Funding Portal shall have the same meaning as defined in the Securities Exchange Act of 1934, § 3(a)(80).

(2) Conditions for Notice Filing by Funding Portals. Each notice filer shall:

(a) Have a principal place of business in the Commonwealth; and

(b) Be a Funding Portal Member of a national securities association registered under the Securities Exchange Act of 1934, § 15A.

(3) Notice Filing Procedures for Funding Portals. Notice for a Funding Portal in the Commonwealth shall be made by promptly filing with the Division a copy of the Form Funding Portal (FP) as filed with the SEC.

(4) Amendments. Each notice filer shall promptly notify the Division of any amendments made to Form Funding Portal (FP) as filed with the SEC by filing a copy of such amendment with the Division.

(5) Withdrawals by Funding Portals.

(a) Funding Portals withdrawing from Funding Portal Membership of a national securities association registered under the Securities Exchange Act of 1934, § 15A and SEC registration shall file with the Division a copy of the Form Funding Portal (FP) as filed with the SEC.

(b) Funding Portals no longer with a principal place of business in Massachusetts shall provide the Division with written notice of such fact.

12.206: continued

(6) Enforcement Date. 950 CMR 12.206 shall be enforced as of June 1, 2019.

12.207: Fiduciary Duty of Broker-dealers and Agents

(1) The following practices are a non-exclusive list of practices by a broker-dealer or agent which shall be deemed "unethical or dishonest conduct or practices" for purposes of M.G.L. c. 110A, § 204(a)(2)(G):

(a) Failing to act in accordance with a fiduciary duty to a customer when providing investment advice or recommending an investment strategy, the opening of or transferring of assets to any type of account, or the purchase, sale, or exchange of any security.

(b) Failing to act in accordance with a fiduciary duty to a customer during any period in which the broker-dealer or agent:

1. Has or exercises discretion in a customer's account, unless the discretion relates solely to the time and/or price for the execution of the order;

2. Has a contractual fiduciary duty; or

3. Has a contractual obligation to monitor a customer's account on a regular or periodic basis, as such regular or periodic basis is determined by agreement with the customer.

(2) To meet the fiduciary duty, each broker-dealer or agent shall adhere to duties of utmost care and loyalty to the customer.

(a) The duty of care requires a broker-dealer or agent to use the care, skill, prudence, and diligence that a person acting in a like capacity and familiar with such matters would use, taking into consideration all of the relevant facts and circumstances. For purposes of 950 CMR 12.207(2), a broker-dealer or agent shall make reasonable inquiry, including:

1. The risks, costs, and conflicts of interest related to all recommendations made and investment advice given;

2. The customer's investment objectives, risk tolerance, financial situation, and needs; and

3. Any other relevant information.

(b) The duty of loyalty requires a broker-dealer or agent to:

1. Disclose all material conflicts of interest;

2. Make all reasonably practicable efforts to avoid conflicts of interest, eliminate conflicts that cannot reasonably be avoided, and mitigate conflicts that cannot reasonably be avoided or eliminated; and

3. Make recommendations and provide investment advice without regard to the financial or any other interest of any party other than the customer.

(c) Disclosing conflicts alone does not meet or demonstrate the duty of loyalty.

(d) It shall be presumed to constitute a breach of the duty of loyalty for a broker-dealer or agent to recommend any investment strategy, the opening of or transferring of assets to a specific type of account, or the purchase, sale, or exchange of any security, if the recommendation is made in connection with any sales contest.

(e) Notwithstanding the foregoing, investment advice or a recommendation regarding the purchase, sale, or exchange of any security in M.G.L. c. 110A, § 402(a)(1) to or for a customer shall be excluded from the scope of 950 CMR 12.207(2)(b).

(3) For purposes of 950 CMR 12.207, the term "customer" shall include current and prospective customers, but shall not include:

(a) A bank, savings and loan association, insurance company, trust company, or registered investment company;

(b) A broker-dealer registered with a state securities commission (or agency or office performing like functions);

(c) An investment adviser registered with the SEC under the Investment Advisers Act of 1940 § 203 or with a state securities commission (or agency or office performing like functions); or

(d) Any other institutional buyer, as defined in 950 CMR 12.205(1)(a)6. and 950 CMR 14.401: *Definitions*.

12.207: continued

(4) Nothing in 950 CMR 12.207 shall be construed to apply to a person acting in the capacity of a fiduciary to an employee benefit plan, its participants, or its beneficiaries, as those terms are defined in the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001 *et seq*.

(5) Nothing in 950 CMR 12.207 shall be construed to establish any requirements for capital, custody, margin, financial responsibility, making and keeping of records, bonding, or financial or operational reporting for any broker-dealer or agent that differ from, or are in addition to, the requirements established under 15 U.S.C. § 78o(i).

(6) 950 CMR 12.207 shall be enforced as of September 1, 2020.

REGULATORY AUTHORITY

950 CMR 12.200: M.G.L. c. 110A, § 412(a).