

STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
City Place, Suite 400
204 North Robinson
Oklahoma City, Oklahoma 73102



ORDER ADOPTING AMENDED PERMANENT RULES

Pursuant to the requirements of Section 303 of the Oklahoma Administrative Procedures Act, a notice of rulemaking intent ("Notice") issued by the Administrator ("Administrator") of the Oklahoma Department of Securities ("Department") was published in "The Oklahoma Register" on January 16, 2024. The Notice proposed changes to the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities.

The following rules were specified in the Notice:

- 660:11-5-2. Definitions [AMENDED]
- 660:11-5-16. Examination requirements for agents and principals of non-FINRA member broker-dealers [AMENDED]
- 660:11-5-26. Merger and acquisition broker exemption [AMENDED]
- 660:11-5-42.1 ~~Standards of ethical practices for practices~~ Dishonest and unethical practices of issuer agents [AMENDED]
- 660:11-7-11. Initial registration [AMENDED]
- 660:11-7-13. Examination requirements for investment adviser representatives [AMENDED]
- 660:11-7-21. Errors and omissions coverage [AMENDED]
- 660:11-7-31. Post-registration reporting requirements [AMENDED]
- 660:11-7-42. Dishonest and unethical practices of investment advisers and investment adviser representatives [AMENDED]
- 660:11-9-34. ~~NASAA guidelines~~ Application of NASAA Statements of Policy and guidelines [AMENDED]
- 660:11-11-5. Application of NASAA Statements of Policy and guidelines [NEW]
- 660:11-11-21. Not for profit debt securities notice filing [AMENDED]
- 660:11-11-42. ~~Interpretation of 'existing security holders'~~ Existing securities holders exemption [AMENDED]
- 660:11-11-54. Intrastate offering exemption [AMENDED]

As provided for in the Notice, all interested persons were afforded a thirty (30) day comment period to make written comments regarding the proposed new rule and rule amendments ("Proposed Rule Amendments").

A rule impact statement was prepared for the Proposed Rule Amendments. The rule impact statement and the text of the Proposed Rule Amendments including the proposed changes were posted on the Department's website as specified in the Notice. The Department electronically

notified the person who had made a timely request for advance notice of the Department's rulemaking proceedings.

Also, as provided for by the Notice, a public hearing regarding the Proposed Rule Amendments was scheduled and conducted on February 22, 2024, at 1:30 p.m., in the office of the Department and virtually through Teams before the Administrator. No one except Department staff attended the hearing.

The Department received one written comment concerning the proposed language in Section 660:11-7-42(b)(13) wherein the Department proposes to adopt the SEC Marketing Rule. The commenter supported the adoption of the SEC Marketing Rule but was concerned that it conflicts with sales literature prohibitions in 660:11-13-4.

The Department staff recommended the correction of minor grammatical errors and citations that were necessary due to changes in federal law and renumbering as necessary to comply with rules on rulemaking.

The Administrator reviewed the comments made by all persons.

The Administrator chose to proceed with amending the language in Rule 660:11-7-42 to adopt the SEC Marketing Rule. The Administrator notes that this amendment will promote uniformity with federal law placing Oklahoma-registered investment advisers on a level playing field with federally-registered investment advisers. Because 660:11-13-4 was not listed in the Notice of Rulemaking Intent, it cannot be amended at this time to address the conflicts. The Administrator will issue an order advising investment advisers that 660:11-7-42(b)(13) will take precedence over the sales literature prohibitions in 660:11-13-4 and will permanently address the conflicts in future rulemaking.

The Administrator adopted the staff recommendations to correct grammatical errors, incorrect citations, and renumbering as needed.

AUTHORITY

Section 1-605.A of the Oklahoma Uniform Securities Act of 2004, 71 O.S. §§1-101 through 1-701 (2024) ("Securities Act"), provides that the Administrator of the Department may:

1. Issue forms and orders and, after notice and comment, may adopt and amend rules necessary or appropriate to carry out this act and may repeal rules, including rules and forms governing registration statements, applications, notice filings, reports, and other records;
2. By rule, define terms, whether or not used in this act, but those definitions may not be inconsistent with this act; and
3. By rule, classify securities, persons, and transactions and adopt different requirements for different classes.

Section 1-605.B of the Securities Act limits this authority to situations in which the Administrator finds that the rule, form, order, or amendment is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes intended by the Securities Act.

Section 1-608 of the Securities Act directs the Administrator to so act in order to achieve uniformity among the states and coordination with federal laws in the form and content of registration statements, applications, reports, and other records, including the adoption of uniform rules, forms, and procedures.

CONCLUSION OF LAW

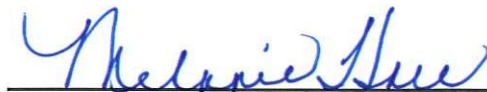
The Administrator finds that the Proposed Rule Amendments are necessary and appropriate in the public interest and for the protection of investors and are consistent with the purposes intended by the Securities Act.

ORDER

BASED UPON AND SUBJECT TO THE FOREGOING, IT IS HEREBY ORDERED that the Proposed Rule Amendments are adopted as set forth in the attached Exhibit A that includes the Proposed Rule Amendments to rules in OAC 660:11.

WITNESS my Hand and the Official Seal of the Oklahoma Department of Securities at Oklahoma City, Oklahoma, and dated this 29th day of February, 2024.

(SEAL)



**MELANIE HALL, ADMINISTRATOR OF THE
OKLAHOMA DEPARTMENT OF SECURITIES**

CHAPTER 11. OKLAHOMA UNIFORM SECURITIES ACT OF 2004

SUBCHAPTER 5. BROKER-DEALERS AND AGENTS

PART 1. GENERAL PROVISIONS

660:11-5-2. Definitions

In addition to the terms defined in 660:11-1-3, the following words and terms when used in this subchapter shall have the following meaning, unless the context clearly indicates otherwise or the words or terms are defined in another Section:

"Branch office" means any location where one or more associated persons of a ~~member~~broker-dealer regularly conducts the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security, or is held out as such, excluding:

- (A) Any location that is established solely for customer service or back office type functions where no sales activities are conducted and that is not held out to the public as a branch office;
- (B) Any location that is the associated person's primary residence; provided that:
 - (i) Only one associated person, or multiple associated persons who reside at that location and are members of the same immediate family, conduct business at the location;
 - (ii) The location is not held out to the public as an office and the associated person does not meet with customers at the location;
 - (iii) Neither customer funds nor securities are handled at that location;
 - (iv) The associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, retail communications, and other communications to the public by such associated person;
 - (v) The associated person's correspondence and communications with the public are subject to the firm's supervision;
 - (vi) Electronic communications (e.g., e-mail) are made through the ~~member's~~broker-dealer's electronic system;
 - (vii) All orders are entered through the designated branch office or an electronic system established by the ~~member~~broker-dealer that is reviewable at the branch office;
 - (viii) Written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the ~~member~~broker-dealer; and
 - (ix) A list of the residence locations is maintained by the ~~member~~broker-dealer;
- (C) Any location, other than a primary residence, that is used for securities business for less than 30 business days in any one calendar year, provided the ~~member~~broker-dealer complies with the provisions of subparagraphs ~~(B)~~ ~~(a)~~(B)(i) through (h)(viii) above;
- (D) Any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office;
- (E) Any location that is used primarily to engage in non-securities activities and from which the associated person(s) effects no more than 25 securities transactions in any one calendar year; provided that any retail communication identifying such location also sets forth the address and telephone number of the location from which the associated person(s) conducting business at the non-branch locations are directly supervised;
- (F) The floor of a registered national securities exchange where a ~~member~~broker-dealer conducts a direct access business with public customers; or
- (G) A temporary location established in response to the implementation of a business continuity plan.

"Complaint" means and includes any written statement of a customer or any person acting on behalf of a customer alleging a grievance involving the activities of those persons under the control of the broker-dealer in connection with the solicitation or execution of any transaction or the disposition of securities or funds of that customer.

"Completion of the transaction" means:

- (A) In the case of a customer who purchases a security through or from a broker-dealer, except as provided in (B), the time when such customer pays the broker-dealer any part of the purchase price, or, if payment is effected by bookkeeping entry, the time when such bookkeeping entry is made by the broker-dealer for any part of the purchase price;
- (B) In the case of a customer who purchases a security through or from a broker-dealer and who makes payments therefor prior to the time when payment is requested or notification is given that payment is due, the time when such broker-dealer delivers the security to or into the account of such customer;
- (C) In the case of a customer who sells a security through or to a broker-dealer, except as provided in (D), if any security is not in the custody of the broker-dealer at the time of sale, the time when the security is delivered to the broker-dealer, and if the security is in the custody of the broker-dealer at the time of sale, the time when the broker-dealer transfers the security from the account of such customer;

Exhibit A

(D) In the case of a customer who sells a security through or to a broker-dealer and who delivers such security to such broker-dealer prior to the time when delivery is requested or notification is given that delivery is due, the time when such broker-dealer makes payment to or into the account of such customer.

"Control" means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person is presumed to control a company that:

(A) is a director, general partner, or officer exercising executive responsibility or having similar status or functions;

(B) directly or indirectly has the right to vote 25% or more of a class of a voting security or has the power to sell or direct the sale of 25% or more of a class of voting securities; or

(C) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 25% or more of the capital.

"Customer" means any person who, in the regular course of a broker-dealer's business, has cash or securities in the possession of such broker-dealer. "Customer" shall not include a broker-dealer.

"Direct participation programs" mean programs which provide for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, real estate programs, agricultural programs, cattle programs, condominium securities, Subchapter S corporate offerings, and all other programs of a similar nature, regardless of the industry represented by the program, or any combination thereof; excluded from this definition are real estate investment trusts, tax qualified pension and profit sharing plans pursuant to Sections 401 and 403(a) of the Internal Revenue Code and individual retirement plans Section 408 of that code, tax sheltered annuities pursuant to the provisions of Section 403(b) of the Internal Revenue Code and any company including separate accounts registered pursuant to the 1940 Act.

"Independent investment adviser" means an investment adviser that is not controlled by, does not control, and is not under common control with a broker-dealer.

"Investment company and variable contracts products" means:

(A) redeemable securities of companies registered pursuant to the 1940 Act;

(B) securities of closed-end companies registered pursuant to the 1940 Act during the period of original distribution only; and

(C) variable contracts and insurance premium funding programs and other contracts issued by an insurance company except contracts which are exempt securities pursuant to Section 3(a)(8) of the 1933 Act.

"Issuer agent" means an agent whose activities in the securities business are limited solely to effecting transactions for the benefit of an issuer or issuers as that term is defined in Section 1-102.19 of the Securities Act.

"Municipal securities" mean securities which are direct obligations of, or obligations guaranteed as to principal or interest by, a state or any political subdivision thereof, or any agency or instrumentality of a state or any political subdivision thereof, or any municipal corporate instrumentality of one of more states, or any security which is an industrial development bond as defined in Section 3(a)(29) of the 1934 Act.

"Nonbranch sales office" means any business location of the broker-dealer identified to the public or customers by any means as a location at which a securities business is conducted on behalf of the broker-dealer which location is identified solely in a telephone directory line listing or on a business card or letterhead, which listing, card, or letterhead also sets forth the address and telephone number of the office of the broker-dealer responsible for supervising the activities of the identified location.

"Office" means any location where a broker-dealer and/or one or more of its agents regularly conduct the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale, of any security.

"Option" means any put, call, straddle, or other option or privilege, which is a "security" as defined in ~~Section 2(1) of the 1933 Act~~ Section 1-102(32) of the Securities Act, as amended, but shall not include any tender offer, registered warrant, right, convertible security, or any other option in respect to which the writer is the issuer of the security which may be purchased or sold upon the exercise of the option.

"OSJ" or "Office of supervisory jurisdiction" means any office designated as directly responsible for the review of the activities of registered agents or associated persons in such office and/or in other offices of the broker-dealer. An office of supervisory jurisdiction would be any business location of a broker-dealer at which one or more of the following functions take place:

(A) order execution and/or market making;

(B) structuring of public offerings or private placements;

(C) maintaining custody of customers' funds and/or securities;

(D) final acceptance (approval) of new accounts on behalf of the broker-dealer;

(E) review and endorsement of customer orders pursuant to 660:11-5-42;

(F) final approval of advertising or sales literature for use by agents of the broker-dealer;

(G) responsibility for supervising the activities of persons associated with the broker-dealer at one or more other offices of the broker-dealer.

"Principal" means:

(A) any individual registered with a registered national securities association as a principal or branch manager of a member, broker or dealer, or any other person who has been delegated supervisory responsibility for the firm or its associated persons; or

(B) any person associated with a non-FINRA applicant for registration as a broker-dealer who is or will be actively engaged in the management of the applicant's securities business, including supervision, solicitation, conduct of business or training of persons associated with an applicant for any of these functions, and is designated as a principal by the broker-dealer applicant.

"Public offering price" shall mean the price at which the security involved was offered to the public as set forth in the prospectus of the issuing company.

"Selling group" means any group formed in connection with a public offering, to distribute all or part of an issue of securities by sales made directly to the public by or through members of such selling group, under an agreement which imposes no financial commitment on the members of such group to purchase any such securities except as they may individually or collectively elect to do so.

"Selling syndicate" means any syndicate formed in connection with a public offering, to distribute all or part of an issue of securities by others or sales made directly to the public by or through participants in such syndicate under an agreement which imposes a financial commitment upon the participants in such syndicate to purchase any of such securities.

"Undertaking for Participation in the NASAA/CRD Temporary Agent Transfer Program" means the document entitled "Broker-Dealer Undertaking for Participation in the NASAA/CRD Temporary Agent Transfer Program" which the employing broker-dealer has executed and filed with the CRD.

PART 3. LICENSING PROCEDURES

660:11-5-16. Examination requirements for agents and for principals of non-FINRA member broker-dealers

(a) ~~Examination requirements~~Examinations for agents of a broker-dealer. Proof of compliance with the examination requirements of this Section is prerequisite to a complete filing for registration under the Securities Act.

~~(b) Examination requirements for agents of a broker-dealer. Each applicant for registration as a broker-dealer agent, issuer agent, or principal of a non-FINRA member broker-dealer shall, unless covered by subsection (g), have passed within four (4) years of the date of application the Securities Industry Essentials examination (SIE) and within two (2) years of the date of application the other applicable examinations for the desired category of registration as set forth in subsection (d) or (e). The examinations shall consist of a qualification examination(s) applicable to the category of registration applied for and a uniform state law examination. The Administrator adopts the examinations administered by FINRA as applicable to each individual registrant by category of registration as the required examinations. Each applicant for registration as an agent of a broker-dealer shall, unless covered by (f) of this Section or otherwise waived by the Administrator, have passed, within two years of the date of application:~~

~~(1) the Series 63/Uniform Securities Agent State Law Examination (Series 63) or the Series 66/Uniform Combined State Law Examination (Series 66); and~~

~~(2) all relevant examinations required by FINRA and accepted by the Administrator.~~

~~(c) Limitations on licenses. The activities of each person registered as an agent of a broker-dealer are limited to the corresponding category/categories for which they are qualified by examination, unless waived, and for which they are registered under the Securities Act as set forth on the Form U4.~~

~~(d) Examination categories. Examination categories for agents are as follows~~

~~(1) General securities or government securities - FINRA Members - SIE, Series 7, and Series 63 or 66~~

~~(2) General securities - Non-FINRA Members/Issuers - SIE, Series 7, and Series 63 or 66~~

~~(3) Investment company and variable contract products - SIE, Series 6, and Series 63 or 66~~

~~(4) Direct participation programs - SIE, Series 22, and Series 63 or 66~~

~~(5) Municipal securities - Series 7, Series 52, and Series 63 or 66~~

~~(6) Investment banking representative - SIE, Series 79, and Series 63 or 66~~

~~(7) Securities Trader - SIE, Series 57, and Series 63 or 66~~

~~(8) Limited Representative - Private Securities Offerings - SIE, Series 82, and Series 63 or 66~~

~~(9) Research Analyst - SIE, Series 86, Series 87, and Series 63 or 66~~

~~(10) Operations Professional - SIE, Series 99, and Series 63 or 66~~

~~Examinations for agents of issuers. Each applicant for registration as an agent of an issuer, shall, unless waived by the Administrator, have passed, within two years of the date of application:~~

~~(1) the Series 63 or the Series 66; and~~

~~(2) the Series 7/General Securities Representative Examination (Series 7).~~

~~(e) Examination categories. Examinations for principals of non-FINRA member broker-dealers. Examination categories. Each applicant for registration as a principal of a non-FINRA member broker-dealer, are as follows - Series 7, Series 24, and Series 63 or 66 shall, unless waived by the Administrator, have passed, within two years of the date of the application:~~

~~(1) the Series 63 or the Series 66;~~

~~(2) the Series 24/General Securities Principal Examination (Series 24); and~~

~~(3) the Series 7.~~

~~(f) Change in series number. Should FINRA examination series numbers change, the most current examination series applicable to the category of registration shall apply.~~

~~(g) Validity of prior examination scores.~~

(1) Any individual who has been registered as an agent in any state within two years from the date of filing an application for registration shall not be required to retake the required examinations to be eligible for registration.

(2) Any individual who has not been registered as an agent in any state for more than two years but less than five years, who has elected to participate in the FINRA Maintaining Qualifications Program pursuant to FINRA Rule 1240(c), and whose appropriate FINRA qualifying examinations remain valid pursuant to effective participation in the FINRA Maintaining Qualifications Program shall be deemed in compliance with the examination requirements for the FINRA qualifying examination; ~~provided, however, that participation in the FINRA Maintaining Qualifications Program shall not extend the Series 63 or Series 66 for purposes of agent registration of (b)(1) this Section as long as the individual elects to participate in the NASAA Examination Validity Extension Program within two years of agent registration termination.~~

(3) Any individual who has not been registered as an agent in any state for more than two years but less than five years, who has elected to participate in the FINRA Maintaining Qualifications Program pursuant to FINRA Rule 1240(c), and whose appropriate FINRA qualifying examinations remain valid pursuant to effective participation in the FINRA Maintaining Qualifications program, shall be deemed in compliance with the examination requirements of (b)(2) of this Section.

(4) Successful participation in the FINRA Maintaining Qualifications Program shall not extend the Series 63, Series 65, or Series 66 for purposes of investment adviser representative registration.

(g) **Waiver of examination requirement.** The Administrator may waive the examination requirements on a case-by-case basis when such action is determined to be consistent with the purposes fairly intended by the policy and provisions of the Securities Act. Requests for waivers shall be in writing setting forth the justifications therefor.

660:11-5-26. Merger and acquisition broker exemption

(a) **Definitions.** For purposes of this Section:

(1) **"Control"** means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. There is a presumption of control for any person who:

(A) is a director, general partner, member, or manager of a limited liability company, or officer exercising executive responsibility (or has similar status or functions);

(B) has the right to vote 20 percent or more of a class of voting securities or the power to sell or direct the sale of 20 percent or more of a class of voting securities; or

(C) in the case of a partnership or limited liability company, has the right to receive upon dissolution, or has contributed, 20 percent or more of the capital; ~~or,~~

(2) **"Eligible privately held company"** means a company meeting both of the following conditions:

(A) The company does not have any class of securities registered, or required to be registered with the SEC under Section 12 of the 1934 Act, 15 U.S.C. ~~781-78f~~, or with respect to which the company files, or is required to file, periodic information, documents, and reports under subsection 15(d) of the 1934 Act, 15 U.S.C. 78o(d).

(B) In the fiscal year ending immediately before the fiscal year in which the services of the Merger and Acquisition Broker are initially engaged with respect to the securities transaction, the company meets either or both of the following conditions (determined in accordance with the historical financial accounting records of the company):

(i) The earnings of the company before interest, taxes, depreciation, and amortization are less than \$25,000,000.

(ii) The gross revenues of the company are less than \$250,000,000.

(3) **"Merger and Acquisition Broker"** means any broker-dealer and any person associated with a broker-dealer engaged in the business of effecting securities transactions solely in connection with the transfer of ownership of an eligible privately held company, regardless of whether that broker-dealer acts on behalf of a seller or buyer, through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities, or assets of the eligible privately held company; ~~;~~

(A) if the broker-dealer reasonably believes that upon consummation of the transaction, any person acquiring securities or assets of the eligible privately held company, acting alone or in concert, will control and, directly or indirectly, will be active in the management of the eligible privately held company or the business conducted with the assets of the eligible privately held company; and

(B) if any person is offered securities in exchange for securities or assets of the eligible privately held company, such person will, prior to becoming legally bound to consummate the transaction, receive or have reasonable access to the most recent fiscal year-end financial statements of the issuer of the securities as customarily prepared by its management in the normal course of operations, and, if the financial ~~statements~~ statements of the issuer are audited, reviewed, or compiled, any related statement by the independent accountant; a balance sheet dated not more than 120 days before the date of the exchange offer; ~~and~~ and information pertaining to the management, business, results of operation for the period covered by the foregoing financial statements, and any material loss contingencies of the issuer.

(C) A merger and acquisition broker may receive transaction-based or other compensation, as agreed by the parties.

(4) **"Public shell company"** means a company that at the time of a transaction with an eligible privately held company:

(A) has any class of securities registered, or required to be registered, with the SEC under Section 12 of the 1934 Act, 15 U.S.C. 78f, or with respect to which the company files, or is required to file, periodic information, document, and reports under subsection 15(d) of the 1934 Act, 15 U.S.C. 78o(d); and

(B) has no or nominal operations; and

(C) has:

(i) no or nominal assets;

(ii) assets consisting solely of cash and cash equivalents; or

(iii) assets consisting of any amount of cash and cash equivalents and nominal other assets.

(b) Inflation adjustment. ~~On the date that is five years after the date of the enactment of this Section, and every five years thereafter, each dollar amount in subparagraph (a)(2)(B) shall be adjusted by:~~

(1) On the date that is five years after the date of the enactment of this Section, and every five years thereafter, each dollar amount in subparagraph (a)(2)(B) shall be adjusted by:

~~(1)(A)~~ dividing the annual value of the Employment Cost Index for Wages and Salaries, Private Industry Workers (or any successor index), as published by the Bureau of Labor Statistics, for the calendar year preceding the calendar year in which the adjustment is being made by the annual value of such index (or successor) for the calendar year ending December 31, 2020; and

~~(2)(B)~~ multiplying such dollar amount by the quotient obtained under ~~(i) of this subsection (A)~~.

~~(3)(2) Rounding~~—Each dollar amount determined under (i) of this subsection shall be rounded to the nearest multiple of \$100,000.

(c) Exemption. Except as provided in ~~paragraphs (d) and (e) of this Section~~, a Merger and Acquisition Broker shall be exempt from registration as a broker-dealer under this Section.

(d) Excluded Activities. A merger and acquisition broker is not exempt from registration under this paragraph if such broker-dealer does any of the following:

(1) Directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties to the transaction.

(2) Engages on behalf of an issuer in a public offering of any class of securities that is registered, or required to be registered, with the SEC under Section 12 of the 1934 Act, 15 U.S.C. 78f or with respect to which the issuer files, or is required to file, periodic information, documents, and reports under subsection 15(d) of the 1934 Act, 15 U.S.C. 78o(d).

(3) Engages on behalf of any party in a transaction involving a public shell company.

(e) Disqualifications. A merger and acquisition broker is not exempt from registration under this paragraph if such broker-dealer is subject to:

(1) Suspension or revocation of registration under paragraph 15(b)(4) of the 1934 Act, 15 U.S.C. 78o(b)(4);

(2) A statutory disqualification described in paragraph 3(a)(39) of the 1934 Act, 15 U.S.C. 78c(a)(39);

(3) A disqualification under the rules adopted by the SEC under Section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ~~(15 U.S.C. 77d Rule 506(d) of Regulation D under the 1933 Act)~~; or

(4) A final order described in subparagraph (4)(H) of Section 15(b) of the 1934 Act, 15 U.S.C. 78o(b)(4)(H).

PART 7. RECORD KEEPING AND ETHICAL STANDARDS

660:11-5-42.1. ~~Standards of ethical practices~~—Dishonest and unethical practices of issuer agents

(a) Purpose. This rule is intended to set forth the standards of ethical practices for issuer agents. Any noncompliance with the standards of ethical practices specified in this section will constitute unethical practices in the securities business; however, the following is not intended to be a comprehensive listing of all specific events or conditions that may constitute such unethical practices. The standards shall be interpreted in such manner as will aid in effectuating the policy and provisions of the Securities Act, and so as to require that all practices of issuer agents, in connection with their activities in this state shall be just, reasonable and not unfairly discriminatory.

(b) Standards.

(1) An issuer agent, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade. Issuer agents shall not violate any federal securities statute or rule or any rule of a national securities exchange or national securities association of which he is a member with respect to any customer, transaction or business effected in this state.

(2) In recommending to a customer the purchase, sale or exchange of any security, an issuer agent shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs. Prior to making a recommendation to a customer an issuer agent shall also make reasonable efforts to obtain information concerning the customer's financial background, tax status, and investment objectives, and such other information used or considered to be reasonable and necessary by such registered agent in making such recommendation.

(3) No issuer agent shall guarantee a customer against loss in any securities transaction effected by the issuer agent with such customer.

(4) No issuer agent shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive, or other fraudulent device, practice, program, design, or contrivance.

(5) No issuer agent shall fail or refuse to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written request or complaint.

SUBCHAPTER 7. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

PART 3. LICENSING PROCEDURES

660:11-7-11. Initial registration

(a) **Investment adviser.** Investment advisers applying for initial registration pursuant to Section 1-406 of the Securities Act:

(1) shall file with the IARD:

- (A) fully completed Parts I and II of Form ADV;
- (B) a Form BR for each office located within the state of Oklahoma, and if the investment adviser's principal office is located in Oklahoma, all offices located elsewhere; and
- (C) the filing fee specified in Section 1-612 of the Securities Act;

(2) shall file with the Department:

- (A) financial statements as required by 660:11-7-44 unless exempt therefrom;
- (B) a copy of each form of investment advisory contract to be executed by Oklahoma clients and if the principal office of the investment adviser is located in Oklahoma, a copy of each form of investment advisory contract to be executed by any other clients;
- (C) prior to the effective date of registration, proof that the applicant maintains an errors and omissions insurance policy in the amount of at least \$1 million per claim ~~form from~~ an insurer authorized to transact insurance in the state of Oklahoma or from any other insurer approved by the Administrator according to standards established by 660:11-7-21; and
- (D) any additional documentation, supplemental forms, and information as the Administrator may deem necessary; ~~and~~

(3) if a natural person, must have passed the applicable examinations specified in 660:11-7-13; and

(4) if not a natural person, must have a natural person who has filed a Form U4 to apply for registration as an investment adviser representative of the investment adviser and has completed the necessary registration and examination requirements. The investment adviser shall not commence operations in this state until it has an investment adviser representative registered under the Securities Act.

(b) **Investment adviser representative.** Investment adviser representatives applying for initial registration under the Securities Act:

(1) shall file with the CRD:

- (A) a completed or updated Form U-4;
- (B) the filing fee specified in Section 1-612 of the Securities Act;
- (C) proof of applicant's approved status of registration or licensure in a jurisdiction in which he has an office of employment where such registration is required; and
- (D) any additional documentation, supplemental forms, and information as the Administrator may deem necessary;

(2) must have passed the applicable examinations specified in 660:11-7-13.

660:11-7-13. Examination requirements for investment adviser representatives

(a) **Examination ~~requirement~~requirements.** Proof of compliance with the written examination requirements of this Section is prerequisite to a complete filing for registration under the Securities Act.

(b) **Examinations.** Every natural person seeking registration as an investment adviser or investment adviser representative shall, unless covered by ~~subsection~~ (c) or (e) of this Section or otherwise waived by the Administrator, have passed:

- (1) the Series 65/Uniform Investment Adviser Law Examination (Series 65) within two years of the date of application; or
- (2) the Series 66/Uniform Combined State Law Examination (Series 66) and the FINRA Series 7/General Securities Representative Examination (Series 7) within two years of the date of application, and
- (3) the Securities Industry Essential Examination within four years of the date of application.

(c) **Designations acceptable in lieu of examinations.** Compliance with the examination requirements is waived if the applicant has been awarded any of the following designations and at the time of filing an application the designation is current and in good standing:

- (1) Certified Financial Planner ("CFP") awarded by the Certified Financial Planners Board of Standards;
- (2) Chartered Financial Consultant ("ChFC") or Masters of Science and Financial Services ("MSFS") awarded by the American College, Bryn Mawr, Pennsylvania;
- (3) Chartered Financial Analyst ("CFA") awarded by the Institute of Chartered Financial Analysts;
- (4) Personal Financial Specialist ("PFS") awarded by the American Institute of Certified Public Accountants;
- (5) Chartered Investment Counselor ("CIC") awarded by the Investment Adviser Association; or

(6) Any further certificates or credentials that are placed on the NASAA 65 Equivalency List, as maintained and updated by NASAA and the NASAA Exams Advisory Committee.

(d) **Change in series number.** Should FINRA examination series numbers change, the most current examination series applicable to the category of registration shall apply.

(e) Validity of prior examination scores.

(1) Any individual who has been registered as an investment adviser representative in any state within two years from the date of filing an application for registration under the Securities Act shall not be required to retake the examinations to be eligible for registration.

(2) Any individual who is not registered as an investment adviser representative in any state for more than two years but less than five years, who has elected to participate in the FINRA Maintaining Qualifications Program pursuant to FINRA Rule 1240(c), and whose appropriate FINRA qualifying examinations remain valid pursuant to effective participation in the FINRA Maintaining Qualifications Program shall not have to retake the appropriate FINRA qualifying examinations to comply with the examination requirements of (b)(2) of this Section; provided, however, that successful participation in the FINRA Maintaining Qualifications Program shall not extend the Series 65 or the Series 66 for purposes of investment adviser representative registration.

(3) An individual who terminates their registration as an investment adviser representative may maintain the validity of their Series 65 or the investment adviser portion of the Series 66, as applicable, without being employed by or associated with an investment adviser or federal covered investment adviser for a maximum of five years following the termination of the effectiveness of the investment adviser representative registration if the individual meets all of the following:

(A) the individual previously took and passed the examination for which they seek to maintain validity under this Section;

(B) the individual was registered as an investment adviser representative for at least one year immediately preceding the termination of the investment adviser's registration;

(C) the individual was not subject to a statutory disqualification as defined in Section 3(a)(39) of the 1934 Act while registered as an investment adviser representative or at any period after termination of the registration;

(D) the person elects to participate in the Exam Validity Extension Program ("EVEP") under this paragraph within two years from the effective date of the termination of the investment adviser representative's registration;

(E) the individual does not have a deficiency under the investment adviser representative continuing education program at the time the investment adviser representative's registration becomes ineffective;

(F) the person completes annually on or before December 31 of each calendar year in which the person participates in EVEP:

(i) six (6) continuing education credits of IAR Ethics and Professional Responsibility Content, as defined in 660:11-7-49, offered by an authorized provider, including at least three (3) hours covering the topic of ethics; and

(ii) six (6) continuing education credits of IAR Products and Practice Content, as defined in 660:11-7-49, offered by an authorized provider;

(G) An individual who elects to participate in EVEP is required to complete the continuing education credits required by (F) for each calendar year that elapses after the individual's investment adviser representative registration became ineffective regardless of when the individual elects to participate in EVEP; and

(H) An individual who complies with the FINRA Maintaining Qualification Program under FINRA Rule 1240(c) shall be considered in compliance with (F)(ii).

(f) **Waiver of examination requirement.** The Administrator may waive the examination requirement on a case-by-case basis when such action is determined to be consistent with the purposes fairly intended by the policy and provisions of the Securities Act. Requests for waivers shall be in writing setting forth the justifications therefor.

660:11-7-21. Errors and omissions coverage

(a) Every investment adviser who is required to maintain an errors and omissions insurance policy under 660:11-7-11 must submit proof of an errors and omissions insurance policy to the Department as a condition of registration.

(b) Every investment adviser registered under Section 1-406 of the Securities Act must submit proof of an errors and omissions insurance policy annually as set forth in 660:11-7-31.

(c) For purposes of compliance with 660:11-7-11 and 660:11-7-31, proof of insurance may be demonstrated by submitting to the Department an attestation of compliance on a form available on the Department's website and a policy declaration page or a certificate of liability coverage specifying errors and omissions coverage.

(1) For purposes of compliance with this Section, 660:11-7-11, and 660:11-7-31, a policy may not contain exclusions for investment management and advisory services performed in this state on behalf of the investment adviser or for persons performing investment management and advisory services in this state on behalf of the investment adviser unless the investment adviser and its representatives refrain from performing the excluded investment management and advisory services and disclose the limitations in the investment adviser's Form ADV Part 2A.

(2) The requirements for this insurance may be fulfilled by a policy provided through membership in a professional association so long as the requirements are otherwise met, or at the discretion of the Administrator.

(3) The requirements for this insurance may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.

(d) For purposes of this rule, policies written by admitted or authorized insurers, registered surplus lines insurers, and registered risk retention and purchasing groups will satisfy the errors and omissions requirement of 660:11-7-11 and 660:11-7-31.

(e) Every investment adviser registered under Section 1-406 of the Securities Act shall immediately notify the Department in writing if its errors and omissions insurance policy is cancelled, terminated, or substantially modified.

PART 5. REPORTING REQUIREMENTS

660:11-7-31. Post-registration reporting requirements

(a) **Form ADV amendments.** Every investment adviser registered under Section 1-406 of the Securities Act must amend its Form ADV each year by filing an annual updating amendment within 90 days of the end of its fiscal year. In addition, every investment adviser registered under Section 1-406 of the Securities Act must amend its Form ADV by promptly filing additional amendments (other-than-annual amendments) if required by the written instructions to Form ADV.

(b) **Proof of errors and omissions coverage.** Every investment adviser registered under Section 1-406 of the Securities Act must submit proof of an errors and omissions insurance policy meeting the requirements of ~~660:11-7-11(a)(2)(D)~~ 660:11-7-11(a)(2)(C) to the Department each year within ~~90 days of the end of its fiscal year~~ 30 days of renewal of its policy. The proof must be submitted in compliance with 660:11-7-21.

(c) Financial reports.

(1) **Filing requirement.** Pursuant to Section 1-410.B of the Securities Act, every investment adviser registered under Section 1-406 of the Securities Act who has custody, as that term is defined in 660:11-7-48, of clients' funds or securities or requires prepayment of advisory fees six (6) months or more in advance and in excess of \$1,200.00 per client shall file a post-registration financial report with the Department each fiscal year.

(2) **Report content.** Financial reports shall contain the financial or operating report filing fee specified in Section 1-612 of the Securities Act and an audited statement of financial condition as of the investment adviser's fiscal year end.

(3) **Report filing dates.** Financial reports become due on the last day of the fiscal year to which they apply; however, a grace period is provided before a filing becomes delinquent. The filing must be made within 90 days of the end of the registrant's fiscal year.

(4) **Amendment.** If the information contained in a financial report is or becomes inaccurate or incomplete in a material respect, the investment adviser shall promptly file a correcting amendment.

(d) **Form BR amendments.** Every investment adviser registered under Section 1-406 of the Securities Act must file a Form BR prior to the use or operation of any office in this state. In addition, every investment adviser registered under Section 1-406 of the Securities Act must promptly amend its Form BRs as required by the written instructions to Form BR.

(e) **Incomplete or delinquent filings.** The Department will not accept incomplete or piecemeal filings. Failure to make a required filing before it becomes delinquent may result in the suspension or revocation of registration.

PART 7. RECORD KEEPING AND ETHICAL STANDARDS

660:11-7-42. Dishonest and unethical practices of investment advisers and investment adviser representatives

(a) **Purpose.** This Section is intended to set forth the standards of ethical practices for investment advisers and investment adviser representatives. The standards set forth in this Section apply to federal covered investment advisers and investment adviser representatives only to the extent that application is permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290). Any noncompliance with the standards set forth in this Section will constitute unethical practices in the securities business as the same is set forth in Section 1-411.D.13 of the Securities Act; however, the following is not intended to be a comprehensive listing of all specific events or conditions that may constitute such unethical practices. The standards shall be interpreted in such manner as will aid in effectuating the policy and provisions of the Securities Act, and so as to require that all practices of investment advisers and investment adviser representatives in connection with their activities in this state shall be just, reasonable and not unfairly discriminatory.

(b) **Standards.** Investment advisers and investment adviser representatives shall act in accordance with their fiduciary duty to their clients and shall not engage in dishonest or unethical practices including, although not limited to, the following:

(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 investment profile.

(A) A client's investment profile includes, but is not limited to, the client's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information disclosed by the client or known to the investment adviser or investment adviser representative.

(B) Institutional clients.

- (i) An investment adviser or an investment adviser representative fulfills the customer-specific suitability obligation for an institutional account, as defined in 660:11-1-3, if
 - (I) the investment adviser or investment adviser representative has a reasonable basis to believe that the institutional client is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving a security or securities; and
 - (II) the institutional client affirmatively indicates that it is exercising independent judgment in evaluating the investment adviser or investment adviser representative's recommendations.
 - (ii) Where an institutional client has delegated decision-making authority to an agent, such as an investment adviser or a bank trust department, these factors shall be applied to the agent.
- (2) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.
- (3) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.
- (4) Placing an order to purchase or sell a security for the account of a client without authority to do so.
- (5) Placing an order to purchase or sell a security for the account of a client upon instruction of a ~~third party~~ third-party without first having obtained a written third-party trading authorization from the client.
- (6) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser or investment adviser representative, or a financial institution engaged in the business of loaning funds.
- (7) Loaning money or securities to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser or investment adviser representative.
- (8) Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser, investment adviser representative, federal covered investment adviser, or any employee, or person affiliated with the investment adviser, investment adviser representative, or federal covered investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, 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 investment adviser, investment adviser representative, federal covered investment adviser, or any employee, or person affiliated with the investment adviser, investment adviser representative, or federal covered investment adviser, without disclosing the source. This prohibition does not apply to a situation where the investment adviser, investment adviser representative or federal covered investment adviser uses published research reports or statistical analyses to render advice or where an investment adviser, investment adviser representative or federal covered investment adviser orders such a report in the normal course of providing service.
- (10) Charging a client an unreasonable advisory fee.
- (11) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment adviser or any of its employees which could reasonably be expected to 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 when compensation for effecting securities transactions pursuant to such advice will be received by the investment adviser, investment adviser representative, or federal covered investment adviser, or their employees or affiliated persons.
- (12) Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered.
- (13) Publishing, circulating, or distributing any advertisement which directly or indirectly does any one of the following:
 - (A) Refers to any testimonial of any kind concerning the investment adviser, investment adviser representative or federal covered investment adviser, or concerning any advice, analysis, report, or other service rendered by such investment adviser or investment adviser representative;
 - (B) Refers to past specific recommendations of the investment adviser, investment adviser representative or federal covered investment adviser that were or would have been profitable to any person; except that an investment adviser or investment adviser representative may furnish or offer to furnish a list of all recommendations made by the investment adviser, investment adviser representative or federal covered investment adviser within the immediately preceding period of not less than one year if the advertisement or list also includes both of the following:
 - (i) The name of each security recommended, the date and nature of each recommendation, the market price at that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each such security;
 - (ii) A legend on the first page in prominent print or type that states that the reader should not assume that recommendations made in the future will be profitable or will equal the performance of the securities in

the list:

(C) Represents that any graph, chart, formula, or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making that person's own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to its use;

(D) Represents that any report, analysis, or other service will be furnished for free or without charge, unless such report, analysis, or other service actually is or will be furnished entirely free and without any direct or indirect condition or obligation;

(E) Represents that the [Administrator] has approved any advertisement;

(F) Contains any untrue statement of a material fact, or that is otherwise false or misleading;

(G) For the purposes of this section, the term "advertisement" shall include any notice, circular, letter, or other written communication addressed to more than one person, or any notice or other announcement in any electronic or paper publication, by radio or television, or by any medium, that offers any one of the following:

(i) Any analysis, report, or publication concerning securities;

(ii) Any analysis, report, or publication that is to be used in making any determination as to when to buy or sell any security or which security to buy or sell;

(iii) Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell;

(iv) Any other investment advisory service with regard to securities Publishing, circulating, or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940 as effective March 5, 2021.

(14) Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client.

(15) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the investment adviser's action does not comply with the requirements of 660:11-7-48.

(16) Entering into, extending, or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment adviser or investment adviser representative and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract. A transaction that does not result in a change of actual control or management of an investment adviser is not an assignment for purposes of this paragraph.

(17) Entering into, extending, or renewing any investment advisory contract, if such contract contains any provision that limits or purports to limit any of the following:

(A) the liability of the investment adviser for conduct or omission arising from the advisory relationship that does not conform to the Securities Act, applicable federal statutes, or common law fiduciary standard of care;

(B) remedies available to the client at law or equity or the jurisdiction or venue where any action shall be filed or heard; or

(C) applicability of the laws of Oklahoma with respect to the construction or interpretation of the provisions of the investment advisory contract.

(18) Failing to adopt, implement, and follow written supervisory procedures that are tailored specifically to their business and that:

(A) address the activities of all its investment adviser representatives and associated persons;

(B) identify who has supervisory responsibilities, including a record of each associated person who has supervisory responsibilities and the date assigned, and procedures for each business line and applicable securities laws for which each supervisor is responsible; and

(C) specifically identify the individual to perform a supervisory function; what specifically the supervisor will review; when or how often the review will take place and how the supervisor's review will be documented.

(19) Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the Securities Act or any section thereunder.

(20) Accessing a client's account by using the client's own unique identifying information such as username and password.

(21) Failing to establish, maintain, and enforce required policies and procedures.

(22) Knowingly selling any security to or purchasing any security from a client while acting as principal for its own advisory account, or knowingly effecting any sale or purchase of any security for the account of the client while acting as broker-dealer for a person other than the client, without disclosing to the client in writing before the completion of the transaction the capacity in which it is acting and obtaining the consent of the client to the transaction.

(A) The prohibitions of this paragraph (22) shall not apply to any transactions with a customer of a broker-dealer if the broker-dealer is not acting as an investment adviser in relation to the transaction.

(B) The prohibition of this paragraph (22) shall not apply to any transaction with a customer of a broker-dealer if the broker-dealer acts as an investment adviser solely:

- (i) by means of publicly distributed written materials or publicly made oral statements;
- (ii) by means of written materials or oral statements not purporting to meet the objectives or needs of specific individuals or accounts;
- (iii) through the issuance of statistical information containing no expressions of opinion as to the investment merits of a particular security; or
- (iv) any combination of the foregoing services.

(C) Publicly distributed written materials or publicly made oral statements shall disclose that, if the purchaser of the advisory communication uses the investment adviser's services in connection with the sale or purchase of a security which is a subject of the communication, the investment adviser may act as principal for its own account or as agent for another person. Compliance by the investment adviser with the foregoing disclosure requirement shall not relieve it of any other disclosure obligations under the Securities Act.

(D) The prohibition of this paragraph (22) shall not apply to an investment adviser effecting an agency cross transaction for an advisory client provided the following conditions are met:

- (i) The advisory client executes a written consent prospectively authorizing the investment adviser to effect agency cross transactions for such client;
- (ii) Before obtaining such written consent from the client, the investment adviser makes full written disclosure to the client that, with respect to agency cross transactions, the investment adviser will act as broker-dealer for, receive commissions from, and have a potentially conflicting division of loyalties and responsibilities regarding both parties to the transactions;
- (iii) At or before the completion of each agency cross transaction, the investment adviser or any other person relying on this subparagraph sends the client a written confirmation. The written confirmation shall include:

- (I) A statement of the nature of the transaction;
- (II) The date the transaction took place;
- (III) An offer to furnish, upon request, the time when the transaction took place; and
- (IV) the source and amount of any other remuneration the investment adviser received or will receive in connection with the transaction. In the case of a purchase, if the investment adviser was not participating in a tender offer, the written confirmation shall state whether the investment adviser has been receiving or will receive any other remuneration and that the investment adviser will furnish the source and amount of such remuneration to the client upon the client's written consent.

(iv) At least annually, and with or as part of any written statement or summary of the account from the investment adviser, the investment adviser or any other person relying on this subparagraph (D) send each client a written disclosure statement identifying:

- (I) The total number of agency cross transactions during the period for the client since the date of the last such statement or summary; and
- (II) The total amount of all commissions or other remuneration the investment adviser received or will receive in connection with agency cross transactions for the client during such period.

(v) Each written disclosure and confirmation required by this subparagraph (D) must include a conspicuous statement that the client may revoke the written consent required under (i) of this subparagraph (D) at any time by providing written notice to the investment adviser.

(vi) No agency cross transaction may be effected in which the same investment adviser recommended the transaction to both any seller and any purchaser.

(vii) Nothing in the subparagraph (D) shall be construed to relieve an investment adviser or investment adviser representative from acting in the best interests of the client, including fulfilling his duty with respect to the best price and execution for the particular transaction for the client nor shall it relieve any investment adviser or investment adviser representative of any other disclosure obligations imposed by the Securities Act.

(E) Definitions for purposes of this paragraph (22).

- (i) "Agency cross transaction for an advisory client" means a transaction in which a person acts as an investment adviser in relation to a transaction in which the investment adviser, or any person controlling, controlled by, or under common control with such investment adviser, including an investment adviser representative, acts as a broker-dealer for both the advisory client and another person on the other side of the transaction. When acting in such capacity such person is required to be registered as a broker-dealer in this state unless excluded from the definition.
- (ii) "Publicly distributed written materials" means written materials which are distributed to 35 or more persons who pay for those materials.
- (iii) "Publicly made oral statements" means oral statements made simultaneously to 35 or more persons who pay for access to those statements.

- (23) Sharing an office with a person who is not an advisory affiliate without:
- (A) reducing any agreement with the unaffiliated person to writing;
 - (B) taking appropriate measures, including, but not limited to, adequate disclosures to eliminate the appearance of an agency relationship with the unaffiliated person when one does not otherwise exist; and
 - (C) complying with all applicable Oklahoma and federal laws requiring the safeguarding of customer data from the unaffiliated person.
- (24) Failing to pay and fully satisfy any final judgment or arbitration award resulting from an investment-related, client or customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the client and the investment adviser or investment adviser representative or between the customer and the broker-dealer or broker-dealer agent, in writing, and the broker-dealer or broker-dealer agent complies with the terms of the alternative payment arrangement.
- (25) Attempting to avoid payment of any final judgment or arbitration award resulting from an investment-related, client or customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the client and the investment adviser or investment adviser representative or between the customer and the broker-dealer or broker-dealer agent, in writing, and the broker-dealer or broker-dealer agent complies with the terms of the alternative payment arrangements.
- (26) Failing to pay and fully satisfy any fine, civil penalty, order of restitution, order of disgorgement, or similar monetary payment obligation imposed upon the investment adviser or investment adviser representative by the Securities and Exchange Commission, the securities or other financial services regulator of any state or province, or any self-regulatory organization.

SUBCHAPTER 9. REGISTRATION OF SECURITIES

PART 5. GUIDELINES AND POLICIES APPLICABLE TO OFFERINGS OF REGISTERED SECURITIES

660:11-9-34. NASAA Application of NASAA Statements of Policy and guidelines

- (a) Application of NASAA Statements of Policy and guidelines. The Administrator in ~~his~~the Administrator's discretion may apply any Statements of Policy or guidelines adopted by NASAA, or its successors, to a registration of securities pursuant to the Securities Act.
- (b) Cross-reference sheet. Issuers, or interested persons on the issuer's behalf, shall prepare a cross-reference sheet setting out each section of the ~~statement of policy~~Statement of Policy or guideline applied by the Administrator pursuant to this ~~rule~~Section, and reflecting the document and page numbers where compliance with each section of the ~~statement of policy~~Statement of Policy or guideline is disclosed. Any variance or failure to comply with particular sections of an applicable ~~statement of policy~~Statement of Policy or guideline shall be noted by the issuer ~~or his attorney~~, and the reasons for the variance shall be fully stated.
- (c) Failure to comply. Failure to comply with any provision of an applicable Statement of Policy or guideline promulgated by NASAA may serve as the grounds for denial of the registration.
- (d) Waiver provisions. The Administrator in ~~his~~the Administrator's discretion may waive any of the requirements of the ~~statements of policy~~Statements of Policy or guidelines upon written request of the registrant, if the Administrator finds that the requirement is not necessary to protect the public interest under the circumstances. Any such request shall be filed with the registration statement and shall indicate the reasons why the requirement is not necessary under the circumstances described in the registration statement.

SUBCHAPTER 11. EXEMPTIONS FROM SECURITIES REGISTRATION

PART 1. GENERAL PROVISIONS

660:11-11-5. Application of NASAA Statements of Policy and guidelines

- (a) Application of NASAA Statements of Policy and guidelines. The Administrator in the Administrator's discretion may apply any Statements of Policy or guidelines adopted by NASAA, or its successors, as applicable, to the proposed offer or sale of a security for which notice of exemption of securities must be filed under the Securities Act.
- (b) Cross-reference sheet. Issuers, or interested persons on the issuer's behalf, shall prepare a cross-reference sheet setting out each section of the Statement of Policy or guideline applied by the Administrator pursuant to this Section, and reflecting the document and page numbers where compliance with each section of the Statement of Policy or guideline is disclosed. Any variance or failure to comply with particular sections of an applicable Statement of Policy or guideline shall be noted by the issuer and the reasons for the variance shall be fully stated.
- (c) Failure to comply. Failure to comply with any provision of an applicable Statement of Policy or guideline promulgated by NASAA may serve as the grounds for denial of the registration.
- (d) Waiver provisions. The Administrator in the Administrator's discretion may waive any of the requirements of the Statements of Policy or guidelines upon written request of the registrant, if the Administrator finds that the requirement is not necessary to protect

the public interest under the circumstances. Any such request shall be filed with the registration statement and shall indicate the reasons why the requirement is not necessary under the circumstances described in the registration statement.

PART 3. EXEMPT SECURITIES

660:11-11-21. Not for profit debt securities notice filing

(a) **Securities exempt.** With respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness, such issuers relying upon the exemption from registration provided in Section 1-201.7 of the Securities Act shall file a notice with the Administrator at least ten (10) full business days prior to the first offering of sale pursuant to such claim. Such exemption shall become effective ten (10) full business days after the filing of a complete notice if the Administrator has not disallowed the exemption.

(b) **Notice information.** The notice required in (a) shall specify, in writing, the material terms of the proposed offer or sale to include, although not limited to, the following:

- (1) the identity of the issuer;
- (2) the amount and type of securities to be sold pursuant to the exemption;
- (3) a description of the use of proceeds of the securities; and
- (4) the person or persons by whom offers and sales will be made.

(c) **Notice requirements.** The following items must be included as a part of the notice in (a):

- (1) the offering statement, if any;
- (2) a consent to service of process on Form U-2 and (if applicable) Form U-2A; and
- (3) the fee required by Section 1-612 of the Securities Act.

(d) **Sales and advertising literature.** All proposed sales and advertising literature to be used in connection with the proposed offer or sale of the securities shall be filed with the Administrator only upon request.

(e) ~~NASAA Statements of Policy or guidelines.~~ The Statements of Policy or guidelines adopted by NASAA may be applied, as applicable, to the proposed offer or sale of a security for which a notice must be filed pursuant to this rule. Failure to comply with the provisions of an applicable Statement of Policy or guideline promulgated by NASAA may serve as the grounds for disallowance of the exemption from registration provided by Section 1-201.7 of the Securities Act.

(f) ~~Waiver.~~ The Administrator may waive any term or condition set forth in this ~~rule~~Section.

PART 5. EXEMPT TRANSACTIONS

660:11-11-42. ~~Interpretation of 'existing security holders'~~Existing securities holders exemption

(a) **Terms of the exemption.** Under the authority of Section 1-202.15 of the Securities Act, transactions meeting the following conditions are exempt from Sections 1-301 and 1-504 of the Securities Act:

(1) Sales to existing security holders. The issuer meets all of the requirements set forth in Section 1-202.15 of the Securities Act.

(2) Initial notice filing. The issuer, at least ten (10) business days prior to the first sale of the securities, shall file a notice of the proposed offering directly with the Department. The proposed notice must disclose the following in writing;

(A) Notice information. The notice shall specify, in writing, the material terms of the proposed offer or sale to include, although not limited to, the following;

- (i) the identity of the issuer;
- (ii) the amount and type of securities to be sold pursuant to the exemption;
- (iii) a description of the type of proceeds of the securities; and
- (iv) the person or persons by whom offers and sales will be made.

(B) Notice requirements. The following items must be included as a part of the notice:

- (i) the offering statement, if any;
- (ii) a consent to service of process on Form U-2 and, if applicable, Form U-2A; and
- (iii) the fee required by Section 1-612 of the Securities Act.

(b) Sales and advertising literature. All proposed sales and advertising literature to be used in connection with the proposed offer or sale of the securities shall be filed with the Administrator only upon the Administrator's request.

(c) Gifts excluded. For purposes of the exemption from registration set forth in Section 1-202.15 of the Securities Act, the term "existing security holder" shall not include a person who is a security holder of an issuer only by the receipt of securities as a gift by said issuer; consequently, the exemption from registration set forth in Section 1-202.15 of the Securities Act would not be available in connection with transactions to such security holders. For purposes of this ~~rule~~Section, a distribution of securities shall be deemed to be a gift if the security holder does not give consideration in exchange for the securities.

(d) Waiver. The Administrator may waive any term or condition set forth in this Section.

660:11-11-54. Intrastate offering exemption

(a) **Terms of the Exemption.** Under the authority of Section 1-202.25 of the Securities Act, transactions meeting the following conditions are exempt from Sections 1-301 and 1-504 of the Securities Act:

- (1) **Intrastate offers and sales.** The issuer meets all of the requirements set forth in Section 1-202.25 of the Securities Act.

(2) **Minimum offering amount.** Investors shall receive a return of all their subscription funds if the minimum offering amount is not raised by the time stated in the disclosure document. Non-cash contributions from control persons or other insiders shall not be considered in fulfilling the minimum offering amount.

(3) **Initial notice filing.** The issuer, at least ten (10) business days prior to the first sale of the securities, shall file a notice of the proposed offering directly with the Department. The notice must include the following:

(A) the names and addresses of the issuer, all persons who will be involved in the offer or sale of securities on behalf of the issuer, and any bank or other depository institution in which investor funds will be deposited;

(B) a copy of the disclosure document to be provided to each prospective purchaser in connection with the offering within a reasonable period of time before the date of sale containing at least the following:

(i) the name, legal status, physical address, and website address of the issuer;

(ii) the names of the directors, officers, and any other control persons with descriptions of each person's background and qualifications;

(iii) a description of the business of the issuer and the anticipated business plan of the issuer;

(iv) a description of the stated purpose and intended use of the proceeds of the offering sought by the issuer, including compensation paid to any officer, director, or control person;

(v) the target offering amount and the deadline to reach the target offering amount, and any minimum amount required to close the offering if such minimum is less than the target offering amount;

(vi) the amount of commission or other remuneration to be paid to any broker-dealer or agent involved in the offer or sale of the securities;

(vii) financial information about the issuer, certified by the issuer's chief executive officer and chief financial officer, or other individual serving in a similar capacity, to be true and complete in all material respects, including:

(I) annual financial statements, unless the issuer is newly organized and has not reached its first fiscal year end, that are dated as of the end of the issuer's most recently completed fiscal year; are prepared in accordance with generally accepted accounting principles in the United States; include a balance sheet, statement of income, statement of cash flows, statement of changes in stockholders' equity and notes to the financial statements; and comply with the applicable standard set forth in (4) of this subsection; and

(II) interim financial statements including an unaudited balance sheet and statement of income for the issuer's most recently completed fiscal quarter, but only if the issuer is newly organized and has not reached its first fiscal year end or the date of the issuer's most recently completed fiscal year end is more than one hundred twenty (120) days prior to the date of filing.

(C) a description of any litigation, legal proceedings, or pending regulatory action involving the issuer, its officers, directors, or control persons;

(D) a statement that:

(i) sales will only be made to any one person in an amount up to \$5,000.00 unless the persons are accredited investors as that term is defined in Rule 501 of Regulation D of the ~~Securities Act of 1933~~ Act (17 C.F.R. 230.501);

(ii) sales will only be made to residents of the state of Oklahoma at the time of the sale of the security;

(iii) the securities have not been registered with or approved by the state of Oklahoma and are being offered and sold pursuant to an exemption from registration and, therefore, cannot be resold unless the securities are registered or qualify for an exemption from registration under federal and state law;

(iv) for a period of six (6) months from the date of the sale by the issuer of the securities, any resale of the securities (or the underlying securities in the case of convertible securities) shall be made only to persons resident within the state of Oklahoma; and

(v) there is no ready market for the sale of the securities acquired from this offering and it may be difficult or impossible for a purchaser to sell or otherwise dispose of this investment;

(E) a copy of the escrow agreement;

(F) a consent to service of process on Form U-2 and (if applicable) Form U-2A; and

(G) the fee as set forth in Section 1-612 of the Securities Act.

(4) **Annual financial statement standards.** The annual financial statements required in (3)(B)(vii)(I) of this subsection must meet the following applicable standard:

(A) For offerings that have an aggregate offering amount of \$500,000 or less, the issuer may provide unaudited and unreviewed financial statements. However, if the issuer has obtained financial statements that have been compiled, reviewed, or audited by an independent certified public accountant, the issuer must provide those financial statements;

(B) For offering that have an aggregate offering amount of more than \$500,000 but less than \$1,000,000, the financial statements must be compiled by an independent certified public accountant. However, if the issuer has obtained financial statements that have either been reviewed or audited by an independent certified public accountant, the issuer must provide those financial statements; or

(C) For offerings that have an aggregate offering amount of \$1,000,000 or more, the financial statements must be reviewed by an independent certified public accountant. However, if the issuer has obtained financial statements that have been audited by an independent certified public accountant, the issuer must provide those financial statements.

(5) **Continuing notice filings.** For offerings that continue beyond one year from the commencement date of the offering, the issuer shall file with the Department, no later than thirty (30) days after the end of each quarter, updated interim financial statements including an unaudited balance sheet and statement of income for the issuer's most recently completed fiscal quarter, certified by the issuer's chief executive officer and chief financial officer, or other individual serving in a similar capacity, to be true and complete in all material respects.

(6) **Final notice filing.** The issuer shall file with the Department, no later than thirty (30) days after the termination of the offering, a final notice that the offering has been terminated. The final notice must include the following:

(A) the Oklahoma exemption file number for the offering of securities to which the final notice relates;

(B) the commencement date of the offering and the termination date of the offering;

(C) a sales report that discloses the dollar amount of securities sold in Oklahoma in connection with the offering, in the following format:

(i) Beginning offering amount;

(ii) Minus: Amount sold during the offering;

(iii) Balance unsold at the termination of the offering; and

(D) If the offering did not achieve the minimum offering amount, the issuer shall provide written confirmation to the Department that all offering proceeds that were raised in the offering were returned to each purchaser and that each purchaser did receive their investment proceeds.

(7) **Fees.** There are no fees required to be paid for the continuing notices or the final notice.

(8) **Piecemeal filings.** Any notice required under this ~~section~~Section is not considered filed if it is incomplete. Piecemeal filings shall not be accepted.

(9) **Required legend.** The issuer shall, in connection with any securities sold by it under this Section, place a prominent legend on the certificate or other document evidencing the security stating that: "Offers and sales of these securities were made under an exemption from registration and have not been registered under the Securities Act of 1933 or the Oklahoma Uniform Securities Act of 2004. For a period of six months from the date of the sale by the issuer of these securities, any resale of these securities (or the underlying securities in the case of convertible securities) shall be made only to persons resident within the state of Oklahoma."

(10) **Evidence from purchaser.** The issuer shall obtain from each purchaser a written representation of residency within the state of Oklahoma before a sale may be made. Such representation shall include an affirmation made by the purchaser that the purchaser is at least eighteen (18) years of age and purchasing the securities for investment. The issuer shall also obtain a copy of any one of the following from the purchaser:

(A) valid Oklahoma driver's license or official identification card issued by the State of Oklahoma;

(B) current Oklahoma voter registration card; or

(C) county property tax records showing the individual owns and occupies property in Oklahoma as his or her primary residence.

~~(b) Application of NASAA Statements of Policy and guidelines. The Department may apply the provisions of applicable Statements of Policy or guidelines adopted by NASAA to any offering of securities made pursuant to this exemption from registration. Failure to comply with any such provision may serve as the basis for withdrawing or further conditioning the exemption as to a particular offering.~~Waiver. The Administrator may waive any term or condition set forth in this Section.