1301:6-3-15.1 **Application for investment adviser's license; responsibilities of licensed investment adviser.**

(A) Definitions. As used in this rule:

(1) "Affiliated person" shall have the same meaning as set forth in section 2(a)(3) of the Investment Company Act of 1940, as amended.

(2) "Assignment" as used in paragraph (H) of this rule includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but if the investment adviser is a partnership, no assignment of an investment advisory contract shall be deemed to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after such admission, shall be only a minority of the members and shall have only a minority interest in the business. A transaction which does not result in a change of actual control or management of an investment adviser is not an assignment for purposes of paragraph (H)(1)(b) of this rule.

(3) "Beneficial ownership" will be interpreted in the same manner as it would be under 17 C.F.R. 240.16a-1(a)(2), as amended, in determining whether a person has beneficial ownership of a security.

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

(5) "Control" shall have the same meaning as set forth in section 2(a)(9) of the Investment Company Act of 1940, as amended.

(6) "Discretionary power" shall not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

(7) "Entering into," in reference to an investment advisory contract by an investment adviser that is licensed or required to be licensed under Chapter

1707. of the Revised Code does not include an extension or renewal without material change of any such contract which is in effect immediately prior to such extension or renewal.

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

(9) "Fulcrum fee" shall mean the fee that is paid or earned when the investment company's performance is equivalent to that of the index or other measure of performance.

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

(11) "Investment advisory contract" means any contract or agreement whereby a person agrees to act as investment adviser to or to manage any investment or trading account of another person other than an investment company registered under Title I of the Investment Company Act of 1940, as amended.

(12) "Investment record" of an appropriate index of securities prices for any period shall mean the sum of the change in the level of the index during such period; and the value, computed consistently with the index, of cash distributions made by companies whose securities comprise the index accumulated to the end of such period; expressed as a percentage of the index level at the beginning of such period. For this purpose, cash distributions on the securities which comprise the index shall be treated as reinvested in the index at least as frequently as the end of each calendar quarter following the payment of the dividend.

(13) "Non-resident investment adviser" shall mean, in the case of an individual, one who resides or has one's principal place of business outside Ohio; in the case of a corporation, one incorporated or having its principal place of business in any place outside Ohio; or, in the case of a partnership or other unincorporated organization or association, one having its principal place of business in any place outside Ohio.

(14) An investment adviser is "primarily engaged in a business or businesses other than advising advisory clients" when, for each of its most recent three fiscal years or for the period of time since organization, whichever is lesser, the

investment adviser derived, on an unconsolidated basis, more than fifty per cent of its total sales and revenues and its income or loss before income taxes and extraordinary items, from the other business or businesses.

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

(16) "Qualified client" shall have the same meaning as set forth in rule 205-3, 17 CFR 275, promulgated under the "Investment Advisers Act of 1940," as amended.~~means:~~

~~(a) A natural person who or a company that immediately after entering into the contract has at least seven hundred fifty thousand dollars under the management of the investment adviser;~~

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

~~(i) Has a net worth, together, in the case of a natural person, with assets held jointly with a spouse, of more than one million five hundred thousand dollars at the time the contract is entered into; or~~

~~(ii) Is a qualified purchaser as defined in division (FF) of section 1707.01 of the Revised Code; or~~

~~(c) A natural person who immediately prior to entering into the contract is:~~

~~(i) An executive officer, director, trustee, general partner, or person serving in a similar capacity, of the investment adviser; or~~

~~(ii) An employee of the investment adviser, other than an employee performing solely clerical, secretarial or administrative functions with regard to the investment adviser, who, in connection with the employee's regular functions or duties, participates in the investment activities of the investment adviser, provided that the employee has been performing the non-clerical, non-secretarial or non-administrative functions or duties for or on behalf of the investment adviser, or substantially similar functions or duties for or on behalf of another company for at least twelve months.~~

(17) "Rolling period" shall mean a period consisting of a specified number of sub-periods of definite length in which the most recent sub-period is

substituted for the earliest sub-period as time passes.

(18) The "specified period" over which the asset value of the company or fund under management is averaged shall mean the period over which the investment performance of the company or fund and the investment record of an appropriate index of securities prices or such other measure of investment performance are computed. However, the "specified period" over which the asset value of the company or fund is averaged for the purpose of computing the fulcrum fee may differ from the period over which the asset value is averaged for computing the performance related portion of the fee, only if:

(a) The performance related portion of the fee is computed over a rolling period and the total fee is payable at the end of each sub-period of the rolling period; and

(b) The fulcrum fee is computed on the basis of the asset value averaged over the most recent sub-period or sub-periods of the rolling period.

(19) "Wrap fee program" means a program under which any client is charged a specified fee or fees not based directly upon transactions in a client's account for investment advisory services performed by an investment adviser that is licensed or required to be licensed under Chapter 1707. of the Revised Code, which may include portfolio management or advice concerning the selection of other investment advisers, and execution of client transactions.

(B) License application contents and procedure. Pursuant to division (A) of section 1707.15.1 of the Revised Code, investment adviser license application contents and procedure shall be as follows:

(1) The license application specified in division (A) of section 1707.151 of the Revised Code shall consist of:

(a) Fully completed parts ~~I and II~~ 1 and 2 of the form ADV, uniform application for investment adviser registration, fully completed schedules and disciplinary reporting pages pertaining to part 1 and 2 ~~II~~ of the form ADV, and a fully completed state-registered investment adviser execution page of the form ADV;

(b) The license fee required by division (B)(3) of section 1707.17 of the Revised Code; and

(c) A standard impression sheet prescribed by the superintendent of the

bureau of criminal identification and investigation on which fingerprint impressions by a natural person applying to be licensed as an investment adviser shall be made in accordance with the fingerprint system of identification.

(i) The division shall waive this requirement if the applicant has an approved status by a self regulatory organization or regulatory authority at the time application for licensure is made with the division and the applicant has previously submitted fingerprint impressions to the "Financial Industry Regulatory Authority" or the central registration depository in connection with the approved status.

(ii) The division may require the applicant to reimburse the division for the actual expenses incurred by the division in processing the impression sheets.

(iii) A completed standard impression sheet required by paragraph (B)(1)(c) of this rule shall be delivered to the division by regular United States mail, overnight courier, or hand delivery.

(2) Any person submitting an application for licensure as an investment adviser as specified in division (A) of section 1707.151 of the Revised Code and paragraphs (B)(1)(a) and (B)(1)(b) of this rule shall use the investment adviser registration depository database, or IARD, maintained on the internet by the "Financial Industry Regulatory Authority." A form ADV is considered filed with the division upon acceptance by the IARD.

(3) Renewal of an investment adviser license for the following year shall be accomplished through the renewals program of the IARD.

(4) Prior to the use or operation of any place of business in this state as defined in paragraph (G) of rule 1301:6-3-01 of the Administrative Code, each investment adviser shall file a uniform form BR for each such place of business through the CRD. A form BR is considered filed with the division upon acceptance by the CRD.

(5) Investment advisers and/or investment adviser representatives shall amend forms U-4 as applicable through the CRD to designate the place of business from which each investment adviser representative works.

(6) Every investment adviser licensed by the division shall use the IARD to

promptly file with the division updates and amendments to parts 1 and 2 ~~I and II~~ of the form ADV. Amendments must be filed at least annually, within 90 days of the end of the investment adviser's fiscal year, and more frequently, if required by the current instructions to the form ADV issued by the securities and exchange commission.

(7) Every investment adviser licensed by the division shall use the CRD to promptly file with the division amendments to the form BR.

(C) Examination or designation requirement for sole proprietor investment adviser. As a condition of licensing, every sole proprietor investment adviser licensed by the division and every sole proprietor applicant for licensing as an investment adviser shall furnish to the division evidence satisfactory to the division that he or she has satisfied one of the criteria set forth in paragraphs (C)(1) to (C)(2) of this rule. The division shall consider an investment adviser, or an applicant for licensing as an investment adviser, to have met this requirement if the investment adviser or applicant, has:

(1) Achieved a passing score on one of the following examinations administered by the "Financial Industry Regulatory Authority":

(a) On or after January 1, 2000, the uniform investment adviser law examination, series 65; or

(b) On or after January 1, 2000, the uniform combined state law examination; series 66 and also, at any time, the general securities representative examination, series 7; or

(2) Earned, and is in good standing with the organization that issued, any one of the following credentials:

(a) "Certified Financial Planner" awarded by the "Certified Financial Planner Board of Standards, Inc.";

(b) Chartered financial analyst;

(c) Chartered financial consultant;

(d) Chartered investment counselor; or

(e) Certified public accountant with a personal financial specialist

designation.

(D) Duty of reasonable supervision. Every investment adviser licensed by the division shall reasonably supervise its investment adviser representatives and other persons, employed by or associated with, the investment adviser with a view toward preventing violations of Chapter 1707. of the Revised Code, the Commodity Exchange Act, 49 Stat 1491, 7 U.S.C. 1, as amended, the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated under those statutes. For purposes of this paragraph, no investment adviser licensed by the division shall be deemed to have failed to satisfy its duty of reasonable supervision if:

(1) The investment adviser has established procedures, and a system for applying the procedures, that would reasonably be expected to prevent and detect, insofar as practicable, any violation by its investment adviser representatives or other persons, employed by or associated with, the investment adviser; and

(2) The investment adviser has reasonably discharged the duties and obligations incumbent on the investment adviser by reason of the established procedures and the system for applying the procedures without reasonable cause to believe that there was not compliance with the procedures and systems.

(E) Books and records. All books and records of investment advisers licensed or required to be licensed under Chapter 1707. of the Revised Code are subject at any time, and from time to time, to reasonable periodic, special, or other examinations by the division as the division deems necessary or appropriate in the public interest or for the protection of investors, clients or potential clients. Every investment adviser licensed or required to be licensed under Chapter 1707. of the Revised Code shall make and keep for the prescribed periods such books and records, furnish copies thereof, and make and disseminate such reports as the division may prescribe as necessary or appropriate in the public interest or for the protection of investors or clients.

(1) Every investment adviser licensed or required to be licensed under Chapter 1707. of the Revised Code shall make and keep true, accurate and current the following books and records relating to its investment advisory business:

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

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

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

(d) All check books, bank statements, ~~canceled checks~~ and ~~cash~~ bank reconciliations of the investment adviser.

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

(f) All trial balances, quarterly financial statements to include balance sheets and income statements, and internal audit working papers relating to the business of the investment adviser.

(g) Originals of all written communications received and copies of all written communications sent by the investment adviser relating to any recommendation made or proposed to be made and any advice given or proposed to be given; any receipt, disbursement or delivery of funds or securities; or the placing or execution of any order to purchase or sell any security. However, with regard to paragraph (E)(1)(g) of this rule, the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, and that if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than ten persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if a notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular or advertisement a memorandum describing the list and the source thereof.

(h) A list or other record of all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities

or transactions of any client.

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

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

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

(l) Records for transactions in securities.

(i) A record of every transaction in a security in which the investment adviser or any advisory representative of the investment adviser has, or by reason of the transaction acquires, any direct or indirect beneficial ownership, except:

(a) Transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and

(b) Transactions in securities which are direct obligations of the United States; bankers' acceptances, bank certificates of deposit, commercial paper, and high quality short-term debt instruments, including repurchase agreements; or shares issued by open-end investment companies registered with the securities and exchange commission.

(ii) The record required by paragraph (E)(1)(l)(i) of this rule shall state

the title and amount of the security involved; the date and nature of the transaction including, but not limited to, purchase, sale or other acquisition or disposition; the price at which it was effected; and the name of the broker, dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten days after the end of the calendar quarter in which the transaction was effected.

(iii) An investment adviser will be considered to have made a record required by paragraph (E)(1)(l) of this rule if:

(a) The investment adviser receives a dealer trade confirmation or account statement in the time period required by paragraph (E)(1)(l) of this rule;

(b) The dealer trade confirmation, account statement or other records of the investment adviser contains all the information required by paragraph (E)(1)(l) of this rule;

(c) The investment adviser keeps the dealer trade confirmation, account statement, and other records containing the information required by paragraph (E)(1)(l) of this rule; and

(d) All dealer trade confirmations and account statements that are printed on paper are organized in a manner that allows easy access to and retrieval of any particular confirmation or statement.

(iv) The term "advisory representative" as used in paragraph (E)(1)(l) of this rule shall mean any partner, officer or director of the investment adviser; any employee who makes any recommendation, who participates in the determination of which recommendation shall be made; or whose functions or duties relate to the determination of which recommendation shall be made; any employee who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations or of the information concerning the recommendations; and any of the following persons who obtain

information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations or of the information concerning the recommendations:

(a) Any person in a control relationship to the investment adviser;

(b) Any affiliated person of the controlling person; and

(c) Any affiliated person of the affiliated person.

(v) An investment adviser shall not be deemed to have violated the provisions of paragraph (E)(1)(l) of this rule because of the investment adviser's failure to record securities transactions of any advisory representative if the investment adviser establishes that the investment adviser instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(m) Records for transactions of securities in addition to those required in paragraph (E)(1)(l) of this rule.

(i) Notwithstanding the provisions of paragraph (E)(1)(l) of this rule, an investment adviser that is primarily engaged in a business or businesses other than advising advisory clients must maintain a record of every transaction in a security in which the investment adviser or any advisory representative of the investment adviser has, or by reason of the transaction acquires, any direct or indirect beneficial ownership, except:

(a) A transaction effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and

(b) Transactions in securities which are direct obligations of the United States; bankers' acceptances, bank certificates of deposit, commercial paper, and high quality short-term debt instruments, including repurchase agreements; or shares issued by open-end investment companies registered with the securities and exchange commission.

(ii) The record required by paragraph (E)(1)(m)(i) of this rule shall state the title and amount of the security involved; the date and nature of the transaction including, but not limited to, purchase, sale or other acquisition or disposition; the price at which it was effected; and the name of the broker, dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten days after the end of the calendar quarter in which the transaction was effected.

(iii) An investment adviser will be considered to have made a record required by paragraph (E)(1)(m) of this rule if:

(a) The investment adviser receives a dealer trade confirmation or account statement in the time period required by paragraph (E)(1)(m) of this rule;

(b) The dealer trade confirmation, account statement or other records of the investment adviser contains all the information required by paragraph (E)(1)(m) of this rule;

(c) The investment adviser keeps the dealer trade confirmation, account statement, and other records containing the information required by paragraph (E)(1)(m) of this rule; and

(d) All dealer trade confirmations and account statements that are printed on paper are organized in a manner that allows easy access to and retrieval of any particular confirmation or statement.

(iv) The term "advisory representative," when used in connection with a company primarily engaged in a business or businesses other than advising advisory clients, shall mean any partner, officer, director or employee of the investment adviser who makes any recommendation, who participates in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which recommendation shall be made, or who, in connection with his duties, obtains any

information concerning which securities are being recommended prior to the effective dissemination of the recommendations or of the information concerning the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations or of the information concerning the recommendations:

(a) Any person in a control relationship to the investment adviser;

(b) Any affiliated person of the controlling person; and

(c) Any affiliated person of the affiliated person.

(v) An investment adviser shall not be deemed to have violated the provisions of paragraph (E)(1)(m) of this rule because of the investment adviser's failure to record securities transactions of any advisory representative if the investment adviser establishes that the investment adviser instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(n) A copy of each written statement and each amendment or revision thereof, given or sent to any client or prospective client of the investment adviser in accordance with the provisions of paragraph (G) of this rule and a record of the dates that each written statement, and each amendment or revision thereof, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

(o) All written acknowledgments of receipts obtained from clients pursuant to paragraph (C)(1)(e) of rule 1301:6-3-44 of the Administrative Code and copies of the disclosure documents delivered to clients by solicitors pursuant to paragraph (C) of rule 1301:6-3-44 of the Administrative Code.

(p) All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of any or all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication, <u>including electronic and internet communications or postings to internet sites,</u> that the investment adviser circulates or distributes, directly or indirectly, to ten or more persons, other than

persons connected with the investment adviser; provided, however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of paragraph (E)(1)(p) of this rule.

(q) All client lists.

(r) All advisory contracts as required by paragraph (H)(2) of this rule.

(s) A copy of the policies and procedures formulated pursuant to paragraph (H) of rule 1301:6-3-44 of the Administrative Code.

(t) A copy of all records documenting the investment adviser's annual review of the policies and procedures formulated pursuant to paragraph (H) of rule 1301:6-3-44 of the Administrative Code.

(2) If an investment adviser subject to paragraph (E)(1) of this rule has custody or possession of securities or funds of any client, the records required to be made and maintained in addition to the requirements under paragraph (E)(1) of this rule shall include:

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

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

(c) Copies of confirmations of all transactions effected by or for the account of any client.

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

(e) If applicable, the certificate of the accountant referenced in paragraph (B)(1)(c)(ii)(b) of rule 1301:6-3-44 of the Administrative Code.

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

(a) Records showing separately for each client the securities purchased and sold, and the date, amount and price of each purchase and sale.

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

(4) Any books or records required by this rule may be maintained by the investment adviser in such manner that the identity of any client to whom the investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation, provided that the corresponding name and other identifying information shall be promptly provided to the division.

(5) Retention periods of books and records.

(a) All books and records required to be made under the provisions of paragraphs (E)(1) to (E)(3) of this rule, except for books and records required to be made under the provisions of paragraphs (E)(1)(k) and (E)(1)(p) of this rule, shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on the record, the first two years in an appropriate office of the investment adviser.

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

(c) Books and records required to be made under the provisions of paragraphs (E)(1)(k) and (E)(1)(p) of this rule shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in an appropriate office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice,

circular, advertisement, newspaper article, investment letter, bulletin or other communication.

(6) An investment adviser subject to paragraph (E)(1) of this rule, before ceasing to conduct or discontinuing business as an investment adviser shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this rule for the remainder of the period specified in this rule, and shall notify the division in writing on form ADV-W, of the exact address where the books and records will be maintained during such period.

(7) Micrographic and electronic storage permitted.

(a) The records required to be maintained and preserved pursuant to this rule may be maintained and preserved for the required time ~~by an investment adviser~~ on micrographic media, including microfilm, microfiche, or any similar medium; or electronic storage media, including any digital storage medium or system that satisfies the requirements of this rule.

(b) The investment adviser must:

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

(ii) Provide promptly any of the following that the division may request:

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

(b) A legible, true, and complete printout of the record; and

(c) Means to access, view, and print the records; and

(iii) In the case of records on electronic storage media, the investment adviser must establish and maintain procedures:

(a) To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

(b) To limit access to the records to properly authorized personnel and the division; ~~and~~

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

(d) To ensure that records are retained in accordance with (E)(5) of this rule.

(8) Any book or other record made, kept, maintained and preserved in compliance with paragraph (C) of rule 1301:6-3-15 of the Administrative Code, which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this rule, shall be deemed to be made, kept, maintained and preserved in compliance with this rule. A record made and kept pursuant to any provision of paragraph (E)(1) of this rule, which contains all the information required under any other provision of paragraph (E)(1) of this rule, need not be maintained in duplicate in order to meet the requirements of the other provision of paragraph (E)(1) of this rule.

(9) Non-resident investment advisers.

(a) Except as provided in paragraph (E)(9)(c) of this rule, each non-resident investment adviser licensed or required to be licensed pursuant to Chapter 1707. of the Revised Code shall keep, maintain and preserve, at a place within Ohio designated in a notice from the non-resident investment adviser as provided in paragraph (E)(9)(b) of this rule, true, correct, complete and current copies of books and records which the non-resident investment adviser is required to make, keep current, maintain or preserve pursuant to any provision of any rule adopted by the division.

(b) Except as provided in paragraph (E)(9)(c) of this rule, each non-resident investment adviser subject to paragraph (E)(9) of this rule shall furnish to the division as a part of its application for an investment adviser license a written notice specifying the address of the place within Ohio where the copies of the books and records required to be kept and preserved by the non-resident investment adviser pursuant to paragraph (E)(9)(a) of this rule are located.

(c) Notwithstanding the provisions of paragraphs (E)(9)(a) and (E)(9)(b) of this rule, a non-resident investment adviser need not keep or preserve

within Ohio copies of the books and records referred to in paragraphs (E)(9)(a) and (E)(9)(b) of this rule, if:

(i) The non-resident investment adviser files with the division, as part of its application for an investment adviser license, a written undertaking, in a form acceptable to the division and signed by a duly authorized person, to furnish to the division, upon demand, true, correct, complete and current copies of any or all of the books and records which the non-resident investment adviser is required to make, keep current, maintain, or preserve pursuant to any provision of any rule adopted by the division, or any part of the books and records which may be specified in such demand. The undertaking shall be in substantially the following form:

"The undersigned hereby undertakes to furnish at its own expense to the Ohio Division of Securities, true, correct, complete, and current copies of any or all, or any part, of the books and records which the undersigned is required to make, keep current or preserve pursuant to any provision of any rule adopted by the Division. This undertaking shall be suspended during any period when the undersigned is making, keeping current, and preserving copies of all of said books and records at a place within Ohio in compliance with paragraph (E)(9) of rule 1301:6-3-15.1 of the Administrative Code. This undertaking shall be binding upon the undersigned and the heirs, successors and assigns of the undersigned."

and

(ii) The non-resident investment adviser furnishes to the division, at the non-resident investment adviser's own expense within fourteen days after written demand therefor forwarded by certified mail at the last address of record filed with the division, true, correct, complete and current copies of any or all books and records which the investment adviser is required to make, keep current or preserve pursuant to any provision of any rule adopted by the division, or any part of the books and records which may be specified in said written demand.

(10) The provisions of paragraph (E) of this rule shall not apply to any investment adviser that is licensed with the division, provided that the investment adviser maintains its principal place of business in a state other than Ohio; is registered as an investment adviser in the state where it maintains its principal place of business; and is in compliance with the record keeping requirements

of the state in which the investment adviser maintains its principal place of business.

(F) Prevention of misuse of nonpublic information. Every investment adviser licensed by the division shall establish, maintain and enforce written policies and procedures reasonably designed, taking into the consideration the nature of the investment adviser's business, to prevent the misuse in violation of Chapter 1707. of the Revised Code or the Securities Exchange Act of 1934, as amended, or the rules or regulations thereunder, of material, nonpublic information by the investment adviser or any person associated with the investment adviser.

(G) Requirement to provide written disclosure statements to clients or prospective clients: brochure rule.

(1) Unless otherwise provided in this rule, an investment adviser licensed or required to be licensed under Chapter 1707. of the Revised Code shall follow all current instructions to the form ADV issued by the securities and exchange commission with regard to the completion, filing, delivery, and updating of form ADV Part 2A brochure statements and form ADV Part 2B brochure supplements.~~, in accordance with the provisions of this rule, furnish each client and prospective client with a written disclosure statement which may be either a copy of part II of its form ADV updated as required by paragraph (B) of this rule; or a written document containing at least the information then so required by part II of form ADV. Except as provided in paragraph (G)(2) of this rule, an investment adviser shall deliver the disclosure statement to a client or prospective client:~~

~~(a) Not less than forty-eight hours prior to entering into any written or oral investment advisory contract with the client or prospective client; or~~

~~(b) At the time of entering into any written or oral investment advisory contract, if the client has a right to terminate the contract without penalty within five business days after entering into the contract.~~

~~(2) Delivery of the statement required by paragraph (G)(1) of this rule need not be made in connection with entering into a contract for impersonal investment advice.~~

~~(3)~~(2) Unless otherwise provided in this rule, an investment adviser licensed or required to be licensed under Chapter 1707. of the Revised Code that is compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding the selection of, other investment advisers in the program, shall follow all current instructions to the form ADV issued by the securities and

exchange commission with regard to the completion, filing, delivery, and updating of form ADV Part 2A Appendix 1 wrap fee program brochure.~~Offer to deliver disclosure statements to client or prospective client.~~

~~(a) Except as provided in paragraph (G)(3)(b) of this rule, an investment adviser licensed or required to be licensed under Chapter 1707. of the Revised Code shall annually, without charge, deliver or offer in writing to deliver upon written request to each of its clients, any of the statements required by paragraph (G) of this rule.~~

~~(b) The delivery or offer required by paragraph (G)(3)(a) of this rule need not be made to clients receiving advisory services solely pursuant to a contract for impersonal investment advice requiring a payment of less than two hundred dollars.~~

~~(c) With respect to a client entering into a contract or receiving advisory services pursuant to a contract for impersonal investment advice which requires a payment of two hundred dollars or more, an offer of the type specified in paragraph (G)(3)(a) of this rule shall also be made at the time of entering into an advisory contract.~~

~~(d) Any statement requested in writing by an advisory client pursuant to an offer required by paragraph (G)(3) of this rule must be mailed or delivered within seven days of the receipt of the request.~~

~~(4) Omission of inapplicable information from the disclosure statement. If an investment adviser renders substantially different types of investment advisory services to different clients, any information required by part II of form ADV may be omitted from the statement furnished pursuant to paragraph (G) of this rule to a client or prospective 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.~~

~~(5)~~(3) Nothing in this rule shall relieve any investment adviser from any obligation pursuant to any provision of Chapter 1707. of the Revised Code or the rules adopted by the division thereunder or other federal or state laws, rules or regulations to disclose any information to its advisory clients or prospective advisory clients not specifically required by this rule.

~~(6) Investment advisers as sponsors of wrap fee programs.~~

~~(a) An investment adviser, licensed or required to be licensed under Chapter 1707. of the Revised Code that is compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding the selection of,~~

~~other investment advisers in the program, shall, in lieu of the written disclosure statement required by paragraph (G)(1) of this rule and in accordance with the other provisions of this rule, furnish each client and prospective client of the wrap fee program with a written disclosure statement containing at least the information required by schedule H of form ADV. Any additional information included in the disclosure statement should be limited to information concerning wrap fee programs sponsored by the investment adviser.~~

~~(b) If an investment adviser is required under paragraph (G)(6) of this rule to furnish disclosure statements to clients or prospective clients of more than one wrap fee program, the investment adviser may omit from the disclosure statements furnished to clients and prospective clients of a wrap fee program or programs, any information required by schedule H that is not applicable to clients or prospective clients of that wrap fee program or programs.~~

~~(c) An investment adviser need not furnish the written disclosure statement required by paragraph (G)(6)(a) of this rule to clients and prospective clients of a wrap fee program if another investment adviser is required to furnish and does furnish the written disclosure statement to all clients and prospective clients of the wrap fee program.~~

~~(d) An investment adviser that is required under paragraph (G)(6) of this rule to furnish a disclosure statement to clients of a wrap fee program shall furnish the disclosure statement to each client and prospective client of the wrap fee program not less than forty-eight hours prior to entering into any wrap fee program contract with such client or prospective client; or at the time of entering into any wrap fee program contract if the client has the right to terminate the contract without penalty within five business days of entering into the contract.~~

(H) Investment advisory contracts and compensation.

(1) No investment adviser licensed or required to be licensed under Chapter 1707. of the Revised Code shall, directly or indirectly, enter into, extend, or renew any investment advisory contract, or in any way perform any investment advisory contract if such contract:

(a) Provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(b) Fails to provide, in substance, that no assignment of such contract shall be made by the investment adviser without the consent of the other party

to the contract; or

(c) Fails to provide, in substance, that the investment adviser, if a partnership, will notify the other party to the contract of any change in the membership of such partnership within a reasonable time after such change.

(2) All advisory contracts to which an investment adviser or investment adviser representative licensed or required to be licensed under Chapter 1707. of the Revised Code is a party shall be in writing, signed and dated by the client and the adviser.

(3) Paragraph (H)(1)(a) of this rule shall not:

(a) Be construed to prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates, or taken as of a definite date;

(b) Apply to an investment advisory contract with any person, except a trust, governmental plan, collective trust fund or separate account referred to in section 3(c)(11) of Title I of the Investment Company Act of 1940, as amended, provided that the contract relates to the investment of assets in excess of one million dollars, if the contract provides for compensation based on the asset value of the company or fund under management averaged over a specified period and increasing and decreasing proportionately with the investment performance of the company or fund over a specified period in relation to the investment record of an appropriate index of securities prices or such other measure of investment performance as the division by rule may specify;

(c) Apply with respect to any investment advisory contract between an investment adviser and a business development company, as defined in the Investment Advisers Act of 1940 as amended, if:

(i) The compensation provided for in such contract does not exceed twenty per cent of the realized capital gains upon the funds of the business development company over a specified period or as of definite dates, computed net of all realized capital losses and unrealized capital depreciation, and the condition of section 61(a)(3)(B)(iii) of Title I of the Investment Company Act of 1940, as amended; and

(ii) The business development company does not have outstanding any option, warrant or right issued pursuant to section 61(a)(3)(B) of Title I of the Investment Company Act of 1940, as amended, and does not have a profit-sharing plan described in section 57(n) of Title I of the Investment Company Act of 1940, as amended;

(d) Apply to an investment advisory contract with a company excepted from the definition of an investment company under section 3(c)(7) of Title I of the Investment Company Act of 1940, as amended; or

(e) Apply to an investment advisory contract with a person who is not a resident of the United States.

(4) For purposes of paragraph (H)(2)(b) of this rule, the point from which increases and decreases in compensation are measured shall be the fee which is paid or earned when the investment performance of such company or fund is equivalent to that of the index or other measure of performance, and an index of securities prices shall be deemed appropriate unless the division by rule shall determine otherwise.

(5) The division, by rule, upon its own motion, or by order upon application, may conditionally or unconditionally exempt any person or transaction, or any class or classes of persons or transactions, from paragraph (H)(1)(a) of this rule, if and to the extent that the exemption relates to an investment advisory contract with any person that the division determines does not need the protections of paragraph (H)(1)(a) of this rule, on the basis of such factors as financial sophistication, net worth, knowledge of and experience in financial matters, amount of assets under management, relationship with a registered investment adviser, and such other factors as the division determines are consistent with this rule.

(6) Exception from the compensation prohibition for investment advisers.

(a) Paragraph (H)(1)(a) of this rule will not be deemed to prohibit an investment adviser from entering into, performing, renewing or extending an investment advisory contract that provides for compensation to the investment adviser on the basis of a share of the capital gains upon, or the capital appreciation of, the funds, or any portion of the funds, of a client; provided, however, that the client entering into the contract subject to this rule is a "qualified client", as defined in paragraph (A) of this rule.

(b) In the case of a private investment company, as defined in paragraph (A) of this rule or a business development company, as defined in section 202(a)(22) of the Investment Advisers Act of 1940, as amended, each equity owner of any such company, except for the investment adviser entering into the contract and any other equity owners not charged a fee on the basis of a share of capital gains or capital appreciation, will be considered a client for purposes of paragraph (H)(5)(a) of this rule.

(c) An investment adviser that is subject to paragraph (H) of this rule and that entered into a contract before August 20, 1998, and satisfied the conditions of rule 205-3, 17 C.F.R. 275.205-3, under the Investment Advisers Act of 1940, as in effect on the date that the contract was entered into will be considered to satisfy the conditions of this section; provided, however, that this section will apply with respect to any natural person or company who is not a party to the contract prior to and becomes a party to the contract after August 20, 1998.

(I) Withdrawal from licensure as an investment adviser.

(1) Notice of withdrawal from licensure as an investment adviser shall be filed with the division via the IARD on form ADV-W in accordance with the instructions contained therein.

(2) Except as hereinafter provided, a notice to withdraw from licensure shall become effective on the sixtieth day after the filing thereof with the division, or within such shorter period of time as the division may determine. If, prior to the effective date of a notice of withdrawal from licensure, the division has instituted a proceeding to suspend, revoke, deny or refuse the license of the investment adviser, the notice of withdrawal shall not become effective except at such time and upon such terms and conditions as the division deems necessary or appropriate in the public interest or for the protection of investors, clients or prospective clients.

(3) Every notice of withdrawal by an investment adviser that is licensed under Chapter 1707. of the Revised Code and that is filed pursuant to this rule shall constitute a "report" within the meaning of applicable provisions of Chapter 1707. of the Revised Code and the rules adopted by the division thereunder.

(4) An investment adviser who is required to make a notice filing with the division pursuant to division (B) of section 1707.141 of the Revised Code may terminate the notice filing by either notifying the division of the termination or by failing to timely renew the notice filing. Notice to the division may be

provided by filing form ADV-W with the division via the IARD.

(J) Notice required upon discontinuation of employment or affiliation of an investment adviser representative.

(1) Upon the discontinuation of the employment or affiliation of an investment adviser representative with an investment adviser licensed with the division, the investment adviser licensed with the division shall, within thirty calendar days, deliver to the division a request to cancel the license of the investment adviser representative held through the investment adviser submitting the request. The request shall be made on form U-5, "Uniform Termination Notice For Securities Industry Registration."

(2) Except as hereinafter provided, a request to cancel the license or withdraw the license application of an investment adviser representative held through the investment adviser submitting the request shall become effective on the sixtieth day after the filing thereof with the division, or within such shorter period of time as the division may determine. If, prior to the effectiveness of a request to cancel the license or withdraw the license application of an investment adviser representative held through the investment adviser submitting the request, the division has instituted a proceeding to suspend or revoke the license, or deny or refuse the license application of the investment adviser representative, the request to cancel the license or withdraw the license application of an investment adviser representative shall not become effective except at such time and upon such terms and conditions as the division deems necessary or appropriate in the public interest or for the protection of investors, clients, or prospective clients.

(3) The requirements of paragraph (J) of this rule are in addition to the requirements of paragraph (B)(3) of this rule.

(K) In the event that an application for an investment adviser license has been pending for more than ~~a year~~ one hundred eighty days and the applicant has failed to correct outstanding deficiencies, the division may terminate the application through the IARD thirty days after informing the applicant that the application is subject to termination.

Effective:

Five Year Review (FYR) Dates:

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Certification

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Date

Promulgated Under:	119.03
Statutory Authority:	1707.20
Rule Amplifies:	1707.15.1
Prior Effective Dates:	3/18/99, 7/29/99, 1/28/00, 5/25/00, 11/27/00, 12/5/00, 11/5/01, 1/1/02, 7/17/03, 11/25/04, 07/03/06, 8/5/07