*** DRAFT - NOT YET FILED ***

1301:6-3-44 **Investment adviser and investment adviser representative fraudulent practices; general prohibitions; cross transactions.**

(A) Advertisements by investment advisers and investment adviser representatives.

(1) It shall constitute a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of section 1707.44 of the Revised Code for any investment adviser licensed or required to be licensed under Chapter 1707. of the Revised Code, or any investment adviser representative employed by or associated with an investment adviser licensed or required to be licensed under Chapter 1707. of the Revised Code, directly or indirectly, to publish, circulate, or distribute any advertisement:

(a) Which refers, directly, or indirectly, to any testimonial of any kind concerning the investment adviser or investment adviser representative or concerning any advice, analysis, report or other service rendered by the investment adviser or investment adviser representative; or

(b) Which refers, directly or indirectly, to past specific recommendations of the investment adviser or investment adviser representative which were or would have been profitable to any person; provided, however, that this shall not prohibit an advertisement which sets out or offers to furnish a list of all recommendations made by the investment adviser or investment adviser representative within the immediately preceding period of not less than one year if the advertisement, and the list if it is furnished separately:

(i) States the name of each security recommended, the date and nature of each recommendation including, but not limited to, whether to buy, sell or hold, the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each security as of the most recent practicable date; and

(ii) Contains the following cautionary legend on the first page thereof in print or type as large as the largest print or type used in the body or text thereof:

"It should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list";

or

(c) Which represents, directly or indirectly, 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 his own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in the advertisement the limitations thereof and the difficulties with respect to its use; or

(d) Which contains any statement to the effect that any report, analysis, or other service will be furnished free or without charge, unless the report, analysis or other service actually is or will be furnished entirely free and without any condition or obligation, directly or indirectly; or

(e) Which contains any untrue statement of a material fact, or which is otherwise false or misleading.

(2) For the purposes of this rule the term "advertisement" shall include any notice, circular, letter or other written communication or any communication by electronic means, including but not limited to e-mail, the Internet, any social media sites, CD-ROM or DVD, which are disseminated to more than one person, or any notice or other announcement in any publication or by radio or television, which offers:

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

(b) 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; or

(c) Any other investment advisory service with regard to securities.

(B) Custody or possession of funds or securities of clients.

(1) Safekeeping required. It shall constitute a fraudulent, deceptive or manipulative act, practice or course of business within the meaning of section 1707.44 of the Revised Code for any investment adviser licensed or required to be licensed under Chapter 1707. of the Revised Code, or any investment adviser representative employed by or associated with an investment adviser licensed or required to be licensed under Chapter 1707. of the Revised Code to have

custody of client funds or securities unless:

(a) Qualified custodian. A qualified custodian maintains the funds and securities:

(i) In a separate account for each client under that client's name; or

(ii) In accounts that contain only the investment adviser's or investment adviser representative's clients' funds and securities, under the investment adviser's or investment adviser representative's name as agent or trustee for the clients.

(b) Notice to clients. If an account is opened with a qualified custodian on a client's behalf, either under the client's name or under the investment adviser's or investment adviser representative's name as agent, the client must be notified promptly in writing by the investment adviser or investment adviser representative when the account is opened and following any changes to this information, of the qualified custodian's name, address, and the manner in which the funds or securities are maintained; and

(c) Account statements to clients.

(i) By qualified custodian. An investment adviser or investment adviser representative has a reasonable basis for believing that the qualified custodian sends, to each of the investment adviser or investment adviser representative's clients for which the qualified custodian maintains funds or securities, at least quarterly, an account statement, identifying the amount of funds and of each security in the account at the end of the period setting forth all transactions in the account during that period; or

(ii) By adviser.

(a) The investment adviser or investment adviser representative sends a quarterly account statement to each of the investment adviser or investment adviser representative's clients for whom the investment adviser or investment adviser representative has custody of funds or securities, identifying the amount of funds and of each security of which the investment adviser or investment adviser representative has custody at the end of the period and

setting forth all transactions in the account during that period;

(b) An independent public accountant verifies all of those funds and securities by actual examination at least once each calendar year at a time chosen by the accountant without prior notice to the investment adviser or investment adviser representative and that is irregular from year to year, and files a certificate on form ADV-E with the division within thirty days after the examination, stating that it has examined the funds and securities and describing the nature and extent of the examination; and

(c) The independent public accountant, upon finding any material discrepancies during the course of the examination, notifies the division within one business day of the finding, by means of a facsimile transmission or electronic mail, followed by first class mail.

(iii) Special rule for limited partnerships, limited liability companies, pooled investment vehicles and trusts. If the investment adviser or investment adviser representative is a general partner of a limited partnership, managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle, or is a trustee of a trust, the account statements required under paragraph (B)(1)(c)(i) or (B)(1)(c)(ii) of this rule must be sent to each limited partner or member or other beneficial owner, or to their independent representative.

(iv) For purposes of paragraph (B)(1)(c)(i) of this rule, an investment adviser or investment adviser representative would have a reasonable basis for believing that the qualified custodian has sent an account statement to clients, if the qualified custodian provides the investment adviser or investment adviser representative with a copy of the account statement that was delivered to the investment adviser's or investment adviser representative's clients.

(v) For purposes of paragraph (B)(1)(c)(i) of this rule, a qualified custodian may use a service provider to deliver account statements, as long as the statements are not routed through the investment adviser or investment adviser representative.

(d) Independent representatives. A client may designate an independent

representative to receive, on his behalf, notices and account statements as required under paragraphs (B)(1)(b) and (B)(1)(c) of this rule;

(2) Exceptions.

(a) With respect to shares of an open-end investment company as defined in Section 5(a)(1) of the Investment Company Act of 1940, as amended, an investment adviser or investment adviser representative may use the open-end investment company's transfer agent in lieu of a qualified custodian for purposes of complying with paragraph (B)(1) of this rule;

(b) Certain privately offered securities.

(i) An investment adviser and investment adviser representative are not required to comply with paragraph (B)(1) of this rule with respect to securities that are:

(a) Acquired from the issuer in a transaction or chain of transactions not involving any public offering;

(b) Uncertificated, and ownership thereof is recorded only on books of the issuer or its transfer agent in the name of the client; and

(c) Transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(ii) Notwithstanding paragraph (B)(2)(b)(i) of this rule, the provisions of paragraph (B)(2)(b) of this rule are available with respect to securities held for the account of a limited partnership or limited liability company, or other type of pooled investment vehicle, only if the limited partnership, limited liability company, or other type of pooled investment vehicle is audited, and the audited financial statements are distributed, as described in paragraph (B)(2)(c) of this rule.

(c) Limited partnerships subject to annual audit. An investment adviser or investment adviser representative is not required to comply with paragraph (B)(1)(c) of this rule with respect to the account of a limited partnership, limited liability company, or another type of pooled investment vehicle, that is subject to audit, as defined in section 2(d) of article 1 of regulation S-X, as amended, at least annually and distributes

its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners or members or other beneficial owners, within one hundred twenty days of the end of its fiscal year; and

(d) Registered investment companies. An investment adviser or investment adviser representative is not required to comply with paragraph (B)(1) of this rule with respect to the account of an investment company registered with the securities and exchange commission under the Investment Company Act of 1940, as amended.

(3) Definitions. For the purpose of this rule:

(a) "Custody" means holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them. Custody includes:

(i) Possession or control of client funds or securities, but not checks drawn by clients and made payable to third parties, unless the investment adviser or investment adviser representative receives the funds or securities inadvertently and returns them to the sender within three business days of receipt;

(ii) Any arrangement, including a general power of attorney, under which the investment adviser or investment adviser representative are authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser's or investment adviser representative's instruction to the custodian; and

(iii) Any capacity including as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust, that gives the investment adviser or investment adviser representative legal ownership of or access to client funds or securities.

(b) "Independent representative" means a person that:

(i) Acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership or members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle, and by law

or contract is obliged to act in the best interest of the advisory client or the limited partners or members, or other beneficial owners;

(ii) Does not control, is not controlled by, and is not under common control with the investment adviser; and

(iii) Does not have, and has not had within the past two years, a material business relationship with the investment adviser.

(c) "Qualified custodian" means:

(i) A bank;

(ii) A broker-dealer registered under section 15(b)(1) of the Securities Exchange Act of 1934, as amended, holding the client assets in customer accounts;

(iii) A futures commission merchant registered under section 4f(a) of the Commodity Exchange Act, 7 U.S.C.A. 1, as amended, holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and

(iv) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

(C) Cash payments for client solicitations. It shall constitute a fraudulent, deceptive or manipulative act, practice or course of business within the meaning of section 1707.44 of the Revised Code for any investment adviser licensed or required to be licensed under Chapter 1707. of the Revised Code, or any investment adviser representative employed by or associated with an investment adviser licensed or required to be licensed under Chapter 1707. of the Revised Code:

(1) Except as provided in paragraph (C)(2) of this rule, to pay a cash fee, directly or indirectly, to a solicitor for solicitation activities, unless:

(a) The investment adviser or investment adviser representative is properly licensed with the division or is properly excepted from licensure;

(b) The cash fee is paid pursuant to written agreement to which the investment adviser or investment adviser representative is a party;

(c) The solicitor:

(i) Is not subject to an order by the securities and exchange commission under section 203(f) of the Investment Advisers Act of 1940, as amended; or

(ii) Has not been convicted within the previous ten years of any felony or misdemeanor involving conduct described in sections 203(e)(2)(A) through 203(e)(2)(D) of the Investment Advisers Act of 1940, as amended; or

(iii) Has not been found by the securities and exchange commission to have engaged, or has not been convicted of engaging, in any of the conduct specified in paragraphs (1), (5) or (6) of section 203(e) of the Investment Advisers Act of 1940, as amended; or

(iv) Is not subject to an order, judgment or decree described in section 203(e)(4) of the Investment Advisers Act of 1940, as amended; or

(v) Is not subject to a final order issued by a state securities regulatory authority.

(d) The investment adviser or investment adviser representative and the solicitor have entered into a written agreement that:

(i) Describes the solicitor's activities on behalf of the investment adviser or investment adviser representative and the compensation received;

(ii) Contains an undertaking by the solicitor to perform his duties under the agreement consistent with the instructions of the investment adviser or investment adviser representative and the provisions of Chapter 1707. of the Revised Code and the rules adopted by the division thereunder;

(iii) Requires the solicitor, when performing any solicitation activities described in the agreement, to provide the client with:

(a) A current copy of the investment adviser's written disclosure statement required by paragraph (G) of rule 1301:6-3-15.1 of the Administrative Code, and

(b) A separate solicitor's written disclosure document as described in paragraph (C)(4)(d) of this rule.

(e) The investment adviser or investment adviser representative receives from the client before entering into any written or oral investment advisory contract with the client, a signed and dated acknowledgment that the client received the investment adviser's or investment adviser representative's written disclosure statement and the solicitor's written disclosure document; and

(f) The investment adviser or investment adviser representative makes a good faith effort to ascertain whether the solicitor has complied with the agreement, and has a reasonable basis for believing that the solicitor has so complied.

(2) The requirements in paragraph (C)(1) of this rule do not apply if:

(a) The cash fee is paid for the solicitation of impersonal investment advice only; or

(b) The solicitor:

(i) Is a partner, officer, director or employee of:

(a) The investment adviser; or

(b) A person which controls, is controlled by, or is under common control with, the investment adviser, and

(ii) Discloses the nature of the solicitor's relationship with the investment adviser or investment adviser representative to the client at the time of the solicitation or referral.

(3) Nothing in this rule relieves any person of any fiduciary or other obligation under any law.

(4) For purposes of this rule:

(a) "Client" includes any prospective client.

(b) "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.

(c) "Solicitor" means any person who, directly or indirectly, solicits any client for, or refers any client to, an investment adviser or investment adviser representative.

(d) "Solicitor's written disclosure document" means a document containing the following information:

(i) The name of the solicitor;

(ii) The name of the investment adviser or investment adviser representative;

(iii) The nature of the relationship, including an affiliation, between the solicitor and the investment adviser or investment adviser representative;

(iv) A statement that the solicitor will be compensated for his solicitation services by the investment adviser or investment adviser representative;

(v) The terms of the compensation arrangement, including a description of the compensation paid or to be paid to the solicitor;

(vi) The amount, if any, the investment adviser or investment adviser representative will charge the client for solicitation services, in addition to the advisory fee; and

(vii) The amount of any difference between the advisory fee the investment adviser or investment adviser representative charged the client and the advisory fees charged other clients, if the difference is attributable to an arrangement between the

investment adviser or investment adviser representative and a solicitor.

(5) An investment adviser or investment adviser representative shall retain 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, a copy of each written agreement, each acknowledgment, and each solicitor disclosure document required by this rule. The provisions of paragraph (C)(5) of this rule shall not apply to any investment adviser that:

(a) Maintains its principal place of business in a state other than Ohio:

(b) Is registered as an investment adviser in the state where it maintains its principal place of business; and

(c) Is in compliance with the record keeping requirements of the state in which the investment adviser maintains its principal place of business.

(D) Financial and disciplinary information that investment advisers and investment adviser representatives must disclose to clients.

(1) It shall constitute a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of section 1707.44 of the Revised Code for any investment adviser licensed or required to be licensed under Chapter 1707. of the Revised Code, or any investment adviser representative employed by or associated with an investment adviser licensed or required to be licensed under Chapter 1707. of the Revised Code, to fail to disclose to any client or prospective client all material facts with respect to:

(a) A financial condition of the investment adviser or investment adviser representative that is reasonably likely to impair the ability of the investment adviser or investment adviser representative to meet contractual commitments to clients, if the investment adviser or investment adviser representative has discretionary authority, express or implied, or custody over such client's funds or securities, or requires prepayment of advisory fees of more than five hundred dollars from such client, six months or more in advance; or

(b) A legal or disciplinary event that is material to an evaluation of the investment adviser's or investment adviser representative's integrity or ability to meet contractual commitments to clients.

(2) It shall constitute a rebuttable presumption that the following legal or disciplinary events involving the investment adviser or investment adviser representative or a management person of the investment adviser, any of the foregoing being referred to as "person," that were not resolved in the persons' favor or subsequently reversed, suspended, or vacated are material within the meaning of paragraph (D)(1)(b) of this rule for a period of ten years from the time of the event:

(a) A criminal or civil action in a court of competent jurisdiction in which the person:

(i) Was convicted, pleaded guilty or nolo contendere to a felony or misdemeanor, or is the named subject of a pending criminal proceeding, any of the foregoing referred to as "action," and such action involved: an investment-related business, fraud, false statements, or omissions; wrongful taking of property; or bribery, forgery, counterfeiting, or extortion:

(ii) Was found to have been involved in a violation of an investment-related statute or regulation; or

(iii) Was the subject of any order, judgment, or decree permanently or temporarily enjoining the person from, or otherwise limiting the person from, engaging in any investment-related activity.

(b) Administrative proceedings before the securities and exchange commission, any other federal regulatory agency or any state agency, any of the foregoing being referred to as "agency," in which the person:

(i) Was found to have caused an investment-related business to lose its authorization to do business; or

(ii) Was found to have been involved in a violation of an investment-related statute or regulation and was the subject of an order by the agency denying, suspending, or revoking the authorization of the person to act in, or barring or suspending the person's association with, an investment-related business; or otherwise significantly limiting the person's investment-related activities.

(c) Self-regulatory organization proceedings in which the person:

(i) Was found to have caused an investment-related business to lose its authorization to do business; or

(ii) Was found to have been involved in a violation of the self-regulatory organization's rules and was the subject of an order by the self-regulatory organization barring or suspending the person from membership or from association with other members, or expelling the person from membership; fining the person more than two thousand five hundred dollars or otherwise significantly limiting the person's investment-related activities.

(3) The information required to be disclosed by paragraph (D)(1) of this rule shall be disclosed to clients promptly, and to prospective clients not less than forty-eight hours prior to entering into any written or oral investment advisory contract, or no later than the time of entering into such contract if the client has the right to terminate the contract without penalty within five business days after entering into the contract.

(4) For purposes of this rule:

(a) "Management person" means a person with power to exercise, directly or indirectly, a controlling influence over the management or policies of an adviser which is a company or to determine the general investment advice given to clients;

(b) "Found" means determined or ascertained by adjudication or consent in a final self-regulatory organization proceeding, administrative proceeding, or court action;

(c) "Investment-related" means pertaining to securities, commodities, banking, insurance, or real estate including, but not limited to, acting as or being associated with a broker, dealer, investment company, investment adviser, government securities broker or dealer, municipal securities dealer, bank, savings and loan association, entity or person required to be registered under the Commodity Exchange Act, 7 U.S.C.A. 1, as amended, or fiduciary;

(d) "Involved" means acting or aiding, abetting, causing, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act;

(e) "Self-regulatory organization" or "SRO" means any national securities or

commodities exchange, registered association, or registered clearing agency.

(5) For purposes of calculating the ten year period during which events are presumed to be material under paragraph (D)(2) of this rule, the date of a reportable event shall be the date on which the final order, judgment, or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees lapsed.

(6) Compliance with paragraph (D)(2) of this rule shall not relieve any investment adviser or investment adviser representative from the disclosure obligations of paragraph (D)(1) of this rule; compliance with paragraph (D)(1) of this rule, shall not relieve any investment adviser or investment adviser representative from any other disclosure requirement under Chapter 1707. of the Revised Code, the rules and regulations thereunder, or under any other federal or state law.

(7) Investment advisers and investment adviser representatives may disclose this information to clients and prospective clients in their "brochure," the written disclosure statement to clients under paragraph (G) of rule 1301:6-3-15.1 of the Administrative Code; provided, that the delivery of the brochure satisfies the timing of disclosure requirements described in paragraph (D)(3) of this rule.

(E) General prohibitions.

(1) It shall be unlawful for any investment adviser licensed or required to be licensed under Chapter 1707. of the Revised Code, or any investment adviser representative employed by or associated with an investment adviser licensed or required to be licensed under Chapter 1707. of the Revised Code, to:

(a) Represent or imply in any manner whatsoever that the investment adviser or investment adviser representative has been sponsored, recommended, or approved, or that the abilities or qualifications of the investment adviser or investment adviser representative or the investment adviser or investment adviser representative have in any respect been passed upon by the state of Ohio, the department of commerce, the division or any other state or federal agency.

(b) Represent that the investment adviser or investment representative is an investment counsel or to use the name "investment counsel" as descriptive of the business or the investment adviser or investment adviser representative unless:

(i) The principal business consists of acting as an investment adviser or an investment adviser representative; and

(ii) A substantial part of the business consists of rendering investment supervisory services.

(c) Make a false representation to the division in an initial application for licensure, any subsequent application for license renewal, or in the course of any division inquiry into the conduct of the investment adviser's or investment adviser representative's business.

(d) Indirectly, or through or by any other person, do any act or thing which it would be unlawful for such person to do directly under the provisions of Chapter 1707. of the Revised Code or any rule adopted by the division thereunder.

(e) Use any condition, stipulation, or provision binding any person to waive compliance with any provision of Chapter 1707. of the Revised Code or with any rule promulgated thereunder. Any condition, stipulation, or provision so used shall be void.

(f) Engage, or attempt to engage, in any act or practice constituting a breach of fiduciary duty.

(2) No provision of paragraph (E)(1) of this rule shall be construed to prohibit a statement that a person is licensed by the division or the securities administrator of any other state, or registered with the securities and exchange commission, if such statement is true in fact and if the effect of such licensure or registration is not misrepresented.

(F) Exemption of investment advisers and investment adviser representatives licensed as dealers in connection with the provision of certain investment advisory services.

(1) Any person licensed as an investment adviser under Chapter 1707. of the Revised Code, and any person licensed as an investment adviser representative under Chapter 1707. of the Revised Code who is employed by or associated with an investment adviser licensed under Chapter 1707. of the Revised Code, that is also licensed as a dealer or salesperson under Chapter 1707. of the Revised Code, shall be exempt from division (M)(1)(c) of section 1707.44 of the Revised Code in connection with any transaction in relation to which the dealer or salesperson is acting as an investment adviser or investment adviser representative solely:

(a) By means of publicly distributed written materials or publicly made oral statements;

(b) By means of written materials or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts:

(c) Through the issuance of statistical information containing no expressions of opinion as to the investment merits of a particular security; or

(d) Any combination of the foregoing services;

(e) Provided, however, that for the purposes of paragraph (F)(1) of this rule, such materials and oral statements include a statement that if the purchaser of the advisory communication uses the services of the investment adviser or investment adviser representative in connection with a sale or purchase of a security which is a subject of such communication, the investment adviser or investment adviser representative may act as principal for its own account or as agent for another person.

(2) For the purpose of this rule, publicly distributed written materials are those which are distributed to thirty five or more persons who pay for such materials, and publicly made oral statements are those made simultaneously to thirty five or more persons who pay for access to such statements.

(3) The requirement that the investment adviser or investment adviser representative disclose that it may act as principal or agent for another person in the sale or purchase of a security that is the subject of investment advice does not relieve the investment adviser or investment adviser representative of any disclosure obligation which, depending upon the nature of the relationship between the investment adviser or investment adviser representative and the client, may be imposed by division (M)(1)(a) of section 1707.44 of the Revised Code or division (M)(1)(b) of section 1707.44 of the Revised Code or the rules adopted by the division thereunder.

(G) Agency cross transactions for advisory clients.

(1) Any investment adviser, investment adviser representative, or person licensed as a dealer or salesperson by the division, that is a broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934, as amended, which controls or is controlled by, or under common control with an investment adviser or investment adviser representative, shall be deemed in

compliance with the provisions of division (M)(1)(c) of section 1707.44 of the Revised Code in effecting an agency cross transaction for an advisory client, if:

(a) The advisory client has executed a written consent prospectively authorizing the investment adviser, investment adviser representative, or any other person relying on this rule, to effect agency cross transactions for such advisory client, provided that such written consent is obtained after full written disclosure that with respect to agency cross-transactions the investment adviser, investment adviser representative, or such other person will act as broker for, receive commissions from, and have a potentially conflicting division of loyalties and responsibilities regarding, both parties to such transactions:

(b) The investment adviser, investment adviser representative or any other person relying on this rule, sends to each such client a written confirmation at or before the completion of each such transaction, which confirmation includes:

(i) A statement of the nature of such transaction:

(ii) The date such transaction took place:

(iii) An offer to furnish, upon request, the time when such transaction took place; and

(iv) The source and amount of any other remuneration received or to be received by the investment adviser and any other person relying on this rule in connection with the transaction; provided, however, that if, in the case of a purchase, neither the investment adviser, investment adviser representative nor any other person relying on this rule was participating in a distribution, or in the case of a sale, neither the investment adviser, investment adviser representative nor any other person relying on this rule was participating in a tender offer, the written confirmation may state whether any other remuneration has been or will be received and that the source and amount of such other remuneration will be furnished upon written request of such customer:

(c) The investment adviser, investment adviser representative, or any other person relying on this rule, sends to each such client, at least annually, and with or as part of any written statement or summary of such

account from the investment adviser, investment adviser representative or such other person, a written disclosure statement identifying the total number of such transactions during the period since the date of the last such statement or summary, and the total amount of all commissions or other remuneration received or to be received by the investment adviser, investment adviser representative or any other person relying on this rule in connection with such transactions during such period:

(d) Each written disclosure statement and confirmation required by this rule includes a conspicuous statement that the written consent referred to in paragraph (G)(1)(a) of this rule may be revoked at any time by written notice to the investment adviser, investment adviser representative or to any other person relying on this rule, from the advisory client; and

(e) No such transaction is effected in which the same investment adviser, or investment adviser representative, and any person controlling, controlled by or under common control with such investment adviser or investment adviser representative, recommended the transaction to both any seller and any purchaser.

(2) For purposes of paragraph (G) of this rule the term "agency cross-transaction for an advisory client" shall mean a transaction in which a person acts as an investment adviser, or investment adviser representative, in relation to a transaction in which such investment adviser, investment adviser representative or any person controlling, controlled by or under common control with such investment adviser or investment adviser representative, acts as broker for both such advisory client and for another person on the other side of the transaction.

(3) This rule shall not be construed as relieving in any way the investment adviser, investment adviser representative or another person relying on this rule from acting in the best interests of the advisory client, including fulfilling the duty with respect to the best price and execution for the particular transaction for the advisory client; nor shall it relieve such person or persons from any disclosure obligation which may be imposed by division (M)(1)(a) of section 1707.44 of the Revised Code or division (M)(1)(b) of section of 1707.44 of the Revised Code other sections of Chapter 1707. of the Revised Code, or the rules adopted by the division thereunder.

(H) Compliance procedures and practices

(1) It shall be unlawful for any investment adviser licensed or required to be licensed under Chapter 1707. of the Revised Code, or any investment adviser

representative employed by or associated with an investment adviser licensed or required to be licensed under Chapter 1707. of the Revised Code, to provide investment advice to clients unless the investment adviser or investment adviser representative:

(a) Adopts and implements written policies and procedures reasonably designed to prevent violations by the investment adviser, or its supervised persons as that term is defined in division (DD) of section 1707.01 of the Revised Code, of the provisions of Chapter 1707. of the Revised Code or any rule adopted by the division thereunder;

(b) Reviews, no less frequently than annually, the adequacy of the policies and procedures adopted under paragraph (H)(1)(a) of this rule and the effectiveness of their implementation; and

(c) Designates an individual, who is a supervised person, as that term is defined in division (DD) of section 1707.01 of the Revised Code, responsible for administering the policies and procedures adopted under paragraph (H)(1)(a) of this rule.

(I) The provisions of this rule regarding the acts and practices of investment advisers and investment adviser representatives are prescribed for the protection of investors, clients and potential clients.

(J) Senior professional designations and certifications

(1) The use of a senior specific certification or designation by any person in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person, shall be a fraudulent and deceptive practice in the purchase or sale of securities or engaging in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing or selling securities within the meaning of sections 1707.01 to 1707.99 of the Revised Code. The prohibited use of such certifications or professional designations includes, but is not limited to, the following:

(a) Use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(b) Use of a nonexistent or self-conferred certification or professional designation;

(c) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and

(d) Use of a certification or professional designation that was obtained from a designating or certifying organization that:

(i) Is primarily engaged in the business of instruction in sales and/or marketing;

(ii) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(iii) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(iv) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

(2) There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of paragraph (J)(1)(d) of this rule above when the organization has been accredited by:

(a) "The American National Standards Institute"; or

(b) "The National Commission for Certifying Agencies"; or

(c) an organization that is on the United States department of education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.

(3) In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation

indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

(a) Use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "registered," "chartered," "adviser," "specialist", "consultant," "planner," or like words, in the name of the certification or professional designation; and

(b) The manner in which those words are combined.

(4) For purposes of this rule, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

(a) Indicates seniority or standing within the organization; or

(b) Specifies an individual's area of specialization within the organization. For purposes of this paragraph, financial services regulatory agency includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940, as amended.

(5) Nothing in this rule shall limit the division's authority to enforce existing provisions of law.

Effective:

Five Year Review (FYR) Dates:

_____

Certification

_____

Date

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