

Ohio Division of Securities
Administrative Code Chapters 1301:6-1 and 1301:6-3
to the
Ohio Securities Act
Index
As of January 15, 2009

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1301:6-1-01 **Opinion as to value or merit of a security.**

The division will not issue a statement or opinion as to the value or merit of any security nor give its endorsement to any security or plan of sale.

1301:6-1-03 **Public notice of promulgation of rule.**

- (A) Whenever the division proposes to adopt, amend or rescind any rule, the division will hold a public hearing. The hearing will be held at least thirty days after the proposed rule changes have been filed pursuant to section 119.03 of the Revised Code and after reasonable public notice has been given pursuant to this rule.
- (B) Public notice shall consist of a statement of the division's intention to adopt, amend or rescind a rule, a general statement of the subject matter to which the proposed rule adoption, amendment, or rescission relates, a statement of the purpose for adopting, amending, or rescinding the rule, and a statement designating the date, time and place of the hearing.
- (C) Pursuant to section 119.037 of the Revised Code, at least thirty days prior to the date of the hearing, public notice shall be published in the register of Ohio on the internet at <http://www.registerofohio.state.oh.us>. Public notice may also be published in the "Ohio Securities Bulletin" and on the division's web site.

1301:6-1-05 **Computation of time.**

- (A) The division is closed to the public for the entire day on Saturdays, Sundays, and legal holidays established in section 1.14 of the Revised Code.
- (B) When the time for making a filing or submission to the division is prescribed by Chapter 1707. of the Revised Code, the time for making the filing or submission shall be computed by excluding the first and including the last day. If the last day falls on a Saturday, Sunday, or legal holiday, then the filing may be made on the next succeeding day that the division is open to the public.
- (C) When the division is required by Chapter 1707. of the Revised Code to perform an act within a prescribed amount of time, the time for performing the act shall be computed by excluding the first and including the last day. If the last day falls on a Saturday, Sunday, or legal holiday, then the act shall be performed on the next succeeding day that the division is open to the public.

1301:6-3-01 **Definitions.**

- (A) "Having no readily determinable value," as used in division (L)(1) of section 1707.01 of the Revised Code and paragraph (K)(2)(b)(i) of rule 1301:6-3-15 of the Administrative Code, means any securities not listed on an exchange specified in division (E)(1) of section 1707.02 of the Revised Code or approved by the division in accordance with division (E)(2) of section 1707.02 of the Revised Code or securities not actively traded in the over-the-counter market.
- (B) "The distribution by a corporation of its securities," as used in division (K)(1) of section 1707.03 of the Revised Code, includes the distribution on a pro rata basis of shares of a subsidiary to shareholders of the parent corporation.
- (C) For the purposes of Chapter 1301:6-3 of the Administrative Code, "division" shall, where the context indicates, mean the Ohio division of securities.
- (D) "Institutional investor," as used in division (S) of section 1707.01 of the Revised Code, includes, but is not limited to, "qualified institutional buyer," as that term is defined in 17 C.F.R. 230.144A as amended.
- (E) "Affiliated," as used in division (B) of section 1707.14 of the Revised Code, shall mean directly or indirectly through one or more intermediaries controlled by or under common control with another person or enterprise. For the purpose of this rule, "control" shall mean the authority to direct or cause the direction of the management and policies of the dealer through ownership, by contract, or otherwise. Without limiting the range of circumstances where persons or entities are determined to be affiliated, it shall be presumed that two or more persons or entities are affiliated when any person or entity is the owner of record or known beneficial owner of ten percent or more of the voting interests of the persons or entities, or when any person or entity is the owner of record or known beneficial owner of ten per cent or more of the voting interests of the dealer.
- (F) "Branch Office" as used in paragraphs (C)(2)(d), (D) and (M) of rule 1301:6-3-15 of the Administrative Code means:
 - (1) Any location where one or more persons associated with a securities dealer ("associated person(s)") regularly conducts the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security, or is held out as such, excluding:
 - (a) Any location that is established solely for customer service and/or back office type functions where no sales activities are conducted and that is not held out to the public as a branch office;
 - (b) Any location that is the associated person's primary residence; provided that:

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- (i) Only one associated person, or multiple associated persons who reside at that location and are members of the same immediate family, conduct business at the location;
 - (ii) The location is not held out to the public as an office and the associated person does not meet with customers at the location;
 - (iii) Neither customer funds nor securities are handled at that location;
 - (iv) The associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, advertisements and other communications to the public by such associated person;
 - (v) The associated person's correspondence and communications with the public are subject to the dealer's supervision in accordance with "Financial Industry Regulatory Authority" rule 3010 as amended.
 - (vi) Electronic communications including but not limited to e-mail are made through the dealer's electronic system;
 - (vii) All orders are entered through the designated branch office or an electronic system established by the dealer that is reviewable at the branch office;
 - (viii) Written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the dealer; and
 - (ix) A list of the residence locations is maintained by the dealer.
- (c) Any location, other than a primary residence, that is used for securities business for less than thirty days in any one calendar year, provided the dealer complies with the provisions of paragraphs (F)(1)(b)(i) to (F)(1)(b)(ix) of this rule;
- (d) Any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office, except that where such office of

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convenience is located on bank premises, signage necessary to comply with paragraph (H) of rule 1301:6-3-15 of the Administrative Code may be displayed and shall not be deemed "holding out" for purposes of this paragraph;

- (e) Any location that is used primarily to engage in non-securities activities and from which the associated person(s) effects no more than twenty-five securities transactions in any one calendar year, provided that any advertisement or sales literature identifying such location also sets forth the address and telephone number of the location from which the associated person(s) conducting business at the non-branch locations are directly supervised;
 - (f) The floor of a registered national securities exchange where a dealer conducts a direct access business with public customers; or
 - (g) A temporary location established in response to the implementation of a business continuity plan.
- (2) Notwithstanding the exclusions in paragraph (F)(1) of this rule, any location that is responsible for supervising the activities of persons associated with the dealer at one or more non-branch locations of the dealer is considered to be a branch office.
- (G) "Place of business," as used in section 1707.141 of the Revised Code and section 1707.161 of the Revised Code, means:
- (1) An office at which the investment adviser or investment adviser representative regularly provides investment advisory services, solicits, meets with, or otherwise communicates with clients; and
 - (2) Any other location that is held out to the general public as a location at which the investment adviser or investment adviser representative provides investment advisory services, solicits, meets with, or otherwise communicates with clients.
- (H) For the purpose of determining the number of clients in division (A)(4) of section 1707.141 of the Revised Code as a safe harbor and not as the exclusive method for determining who may be deemed a client, the following are deemed a "single client:"
- (1) A natural person, and

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- (a) Any minor child of the natural person;
 - (b) Any relative, spouse, or relative of the spouse of the natural person who has the same principal residence;
 - (c) All accounts of which the natural person and/or the persons referred to in paragraph (H)(1) of this rule are the only primary beneficiaries; and
 - (d) All trusts of which the natural person and/or the persons referred to in paragraph (H)(1) of this rule are the only primary beneficiaries.
- (2) Legal organizations, including:
- (a) A corporation, general partnership, limited partnership, limited liability company, trust, other than a trust referred to in paragraph (H)(1)(d) of this rule, or other legal organization that receives investment advice based on its investment objectives rather than the individual investment objectives of its owners. "Owners" includes shareholders, partners, limited partners, members, or beneficiaries.
 - (b) Two or more legal organizations referred to in paragraph (H)(2)(a) of this rule that have identical owners.
- (l) Special rules. For purposes of paragraph (H) of this rule:
- (1) An owner must be counted as a client if the investment adviser provides investment advisory services to the owner separate and apart from the investment advisory services provided to the legal organization, provided, however, that the determination that an owner is a client will not affect the applicability of this section with regard to any other owner;
 - (2) An owner shall not be counted as a client of an investment adviser solely because the investment adviser, on behalf of the legal organization, offers, promotes, or sells interests in the legal organization to the owner, or reports periodically to the owners as a group solely with respect to the performance of or plans for the legal organization's assets or similar matters;
 - (3) A limited partnership is a client of any general partner or other person acting as investment adviser to the partnership;

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- (4) Any person for whom an investment adviser provides investment advisory services without compensation shall not be counted as a client; and
- (5) An investment adviser that has its principal office and place of business outside the United States must count only clients that are United States residents but an investment adviser that has its principal office and place of business in the United States must count all clients.
- (J) "Investments," as used in division (FF) of section 1707.01 of the Revised Code, has the same meaning as defined in rule 17 C.F.R. 270.2a51-1(b), as amended.
- (K) For purposes of division (E)(1) of section 1707.01 of the Revised Code "dealer" shall not mean any person who is a member in good standing of a self-regulatory agency or stock exchange in Canada and is registered as a broker or dealer in a Canadian province or territory provided all transactions in Ohio are limited to:
 - (1) Canadian residents who are temporarily in Ohio with whom the Canadian broker or dealer has a bona fide business customer relationship; or
 - (2) Self-directed, tax-advantaged retirement plans where the holder or contributor is a Canadian resident.
- (L) Exception to the definition of "investment adviser" in accordance with division (X)(2)(j) of section 1707.01 of the Revised Code. "Investment adviser" does not mean:
 - (1) Any person who, during the course of the preceding twelve months:
 - (a) Has had fewer than fifteen clients;
 - (b) Does not hold himself out generally to the public as an investment adviser; and
 - (c) Has clients consisting solely of:
 - (i) "Accredited investors" as defined in rule 501(a) of Regulation D under the Securities Act of 1933, 15 U.S.C.A. 78a, as amended;
 - (ii) "Excepted persons" as defined in division (EE) of section 1707.01 of the Revised Code;

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- (iii) "Qualified purchasers" as defined in division (FF) of section 1707.01 of the Revised Code;
- (iv) Trusts, provided the trust is not formed or operated for the purpose of evading sections 1707.01 to 1707.45 of the Revised Code;
- (v) An entity in which all of the equity owners and the person providing the investment advice are related by blood, marriage, or adoption, and not more remote than a first cousin; provided, however, that such entity may include persons who acquire an interest from such related person as a gift or bequest or pursuant to an agreement relating to a legal separation or divorce; or
- (vi) Any entity in which the equity owners are persons:
 - (a) Listed in paragraph (L)(1)(c)(i), (L)(1)(c)(ii), or (L)(1)(c)(iii) of this rule.
 - (b) Provided, however, that such entity also may include persons:
 - (i) Serving as an executive officer, director, trustee, general partner, or person serving in a similar capacity, of the entity; or
 - (ii) Serving as an employee of the entity, other than an employee performing solely clerical, secretarial, or administrative functions or duties, which employee, in connection with the employee's regular functions or duties, participates in the investment activities of the entity, provided that, for at least twelve months, the employee has been performing such nonclerical, nonsecretarial, or nonadministrative functions or duties for or on behalf of the entity or performing substantially similar functions or duties for or on behalf of another company.
 - (c) Provided further, that such entity may include persons who acquire an interest from a person listed in

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paragraph (L)(1)(c)(vi)(a) or (L)(1)(c)(vi)(b) of this rule as a gift or bequest or pursuant to an agreement relating to a legal separation or divorce.

- (2) Any person who:
 - (a) Is acting solely as a "solicitor" as defined in paragraph (C)(4)(c) of rule 1301:6-3-44 of the Administrative Code; and
 - (b) Is in compliance with the requirements of paragraph (C)(1) of rule 1301:6-3-44 of the Administrative Code, or is excepted from the requirements of paragraph (C)(1) of rule 1301:6-3-44 of the Administrative Code by virtue of paragraph (C)(2) of rule 1301:6-3-44 of the Administrative Code.
- (M) "Filed with the division" as used in sections 1707.141 and 1707.15 of the Revised Code and "filing with the division" as used in section 1707.151 and 1707.161 of the Revised Code, shall include information submitted to the central registration depository and the investment adviser registration depository maintained by the national association of securities dealers, inc.
- (N) With the exception of paragraphs (F) and (G) of rule 1301:6-3-39.1, for purposes of Chapter 1301:6-3 of the Administrative Code, filing an amendment or update "promptly" shall mean filing not later than thirty calendar days after learning of the facts or circumstances giving rise to the amendment or update.

1301:6-3-02 Exempt securities.

- (A) For purposes of division (E) of section 1707.02 of the Revised Code, the division finds that the following national securities exchanges, or segments or tiers thereof, have listing standards that are substantially similar to those of the New York stock exchange, the American stock exchange, or the NASDAQ global market tier of the NASDAQ stock market LLC, and that securities listed on such exchanges shall be deemed exempt securities:
 - (1) Tier I of the Pacific exchange, incorporated;
 - (2) Tier I of the Philadelphia stock exchange, incorporated;
 - (3) The Chicago board options exchange, incorporated; and
 - (4) NASDAQ capital market tier of the NASDAQ stock market LLC.

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- (B) The designation of securities in paragraphs (A)(1), (A)(2), and (A)(3) of this rule as exempt securities is conditioned on such exchanges' listing standards, or segments or tiers thereof, continuing to be substantially similar to those of the New York stock exchange, the American stock exchange, or the NASDAQ global market tier of the NASDAQ stock market LLC.
- (C) Securities not deemed "payable out of the proceeds of a general tax." A security is not deemed "payable out of the proceeds of a general tax" unless at the time of issuance, machinery has been set up for the servicing of the security out of the proceeds of a general tax in the event that revenues collected or administered by the issuer and allocated to the payment thereof prove to be insufficient. It is not sufficient for this purpose that the full faith and credit of a state is pledged to the payment of a security if it will be necessary, on the failure of specified revenues to meet security charges, to obtain legislative action which would make the security in question payable out of the proceeds of a general tax.
- (D) Commercial paper and promissory notes; sale to the public.
 - (1) Pursuant to division (G) of section 1707.02 of the Revised Code, commercial paper and promissory notes are not offered for sale directly or indirectly to the public where their sale is restricted to:
 - (a) Sales to officers or directors of the issuer, of the parent corporation of the issuer, or of a corporate general partner of the issuer;
 - (b) Sales to general partners of the issuer;
 - (c) Sales to persons who directly or indirectly control the management and policies of the issuer by ownership of voting securities, by contract, or otherwise; or
 - (d) Sales by the issuer of the security to not more than ten persons in this state during any twelve month period, provided that:
 - (i) The issuer reasonably believes after reasonable investigation that the person is purchasing for investment;
 - (ii) No advertisement, article, notice, or other communication shall be published or broadcast or caused to be published or broadcast by the issuer in connection with the sale other than an offering circular or other communication delivered by the issuer to selected individuals;

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- (iii) The aggregate commission, discount, and other remuneration paid or given directly or indirectly for sale of the commercial paper and promissory notes of the issuer, excluding legal, accounting and printing costs, does not exceed ten percent of the initial offering price of the commercial paper and promissory notes; and
- (iv) Any commission, discount, or other remuneration for sales of commercial paper and promissory notes in reliance on this exemption in this state is paid or given only to dealers or salesmen licensed pursuant to Chapter 1707. of the Revised Code; and
- (e) For the purpose of determining compliance with paragraph (D)(1)(d) of this rule, a husband and wife, a child and its parent or guardian when the parent or guardian holds the security for the benefit of the child, a partnership, association or other unincorporated entity, or a trust not formed for the purpose of purchasing the security shall be deemed to be a single purchaser.
- (f) For the purpose of determining compliance with paragraph (D)(1)(d) of this rule, sales of commercial paper and promissory notes registered or sold pursuant to an exemption under section 1707.01 to 1707.45 of the Revised Code other than division (G) of section 1707.02 of the Revised Code or sold pursuant to paragraph (D)(1)(a), (D)(1)(b) or (D)(1)(c) of this rule shall not be integrated with sales made pursuant to paragraph (D)(1)(d) of this rule.
- (2) Commercial paper and promissory notes otherwise offered to all other persons are deemed to be offered to the public for purposes of division (G) of section 1707.02 of the Revised Code.

1301:6-3-03 Exempt transactions.

- (A) Definitions. For the purposes of this rule and section 1707.03 of the Revised Code:
 - (1) "Bank" shall have the meaning specified in division (O) of section 1707.01 of the Revised Code.

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- (2) "Escrow Agreement" shall mean a written instrument established by a dealer registered with the securities and exchange commission in accordance with the standards set forth in 17 CFR 15c2-4(b), as amended, or a written instrument signed by the issuer and the bank, the deposits of which are insured by the federal deposit insurance corporation and which is not an affiliate, subsidiary, or parent of the issuer, which instrument provides for the establishment of an escrow account with the bank, establishes procedures for the prompt deposit into the escrow account of funds received from purchasers, specifies that no funds will be disbursed from the escrow account until a minimum stated amount of the securities have been sold and the proceeds have been deposited into the escrow account, and specifies a termination date when the proceeds held in the escrow account will be returned without deduction to the purchasers if the proceeds for a minimum stated amount of the securities have not been deposited in the escrow account.
 - (3) "Mortgage-backed security" shall mean indebtedness, a participation in indebtedness, or other interest in indebtedness secured by a mortgage lien upon real estate, or a participation in or other interest in a syndicate, pool, trust, or other entity consisting of indebtedness secured by a mortgage lien upon real estate.
 - (4) "Retail repurchase agreement" shall mean indebtedness arising from the sale of a security or pool of securities that is a direct obligation of or is fully guaranteed by the United States government or an agency thereof, or indebtedness collateralized by an interest in a security or pool of securities that is a direct obligation of or is fully guaranteed by the United States government or an agency thereof.
 - (5) "Ten per cent of the initial offering price" shall mean an amount equal to ten percent of the offering price of the securities actually sold.
- (B) Claims of exemption in accordance with division (Q) of section 1707.03 of the Revised Code.
- (1) The issuer or dealer shall file with the division a report of sales on a manually executed form 3-Q not later than sixty days after each sale of any security in reliance on division (Q) of section 1707.03 of the Revised Code. All sales within any sixty-day period which have not been reported on a prior form 3-Q may be included on a single form 3-Q.

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- (2) When the division receives a form 3-Q which appears to be defective, the division shall notify the claimant and shall allow not more than thirty days for the amendment of the form. If the defects are remedied by amendment in a timely manner, the form shall be deemed filed as of the date of the original filing. If the defects are not remedied by proper amendment, the division shall note on its records that the form is defective and that no effective claim of exemption has been made.
 - (3) Where the division determines by examination or otherwise that the information reported on a form 3-Q is inaccurate or incomplete, the division shall notify the claimant and shall afford the claimant an opportunity to present proof to establish that the exemption was properly claimed. In the absence of satisfactory proof to the division that claimant was entitled to claim the exemption, the division shall make a finding that the facts necessary for claiming the exemption did not exist at the time such exemption was claimed and that the claim of exemption is void and was of no effect when made. The division shall thereupon order its records endorsed in accordance with that finding. If the division determines that an exemption has been improperly claimed, it may take action in accordance with Chapter 1707. of the Revised Code.
- (C) Claims of exemption in accordance with division (O) of section 1707.03 of the Revised Code and division (Q) of section 1707.03 of the Revised Code.
- (1) The issuer shall maintain or cause to be maintained books and records which reflect all material transactions involving the sale of securities under division (O) of section 1707.03 of the Revised Code or under division (Q) of section 1707.03 of the Revised Code for a period of five years from the date of the last sale by the issuer under the claim of exemption.
 - (2) For the purpose of determining the date of sale for division (O) or (Q) of section 1707.03 of the Revised Code, a sale shall be deemed to have occurred on the later of:
 - (a) The date that a subscription agreement or its equivalent, signed by the purchaser, is received by the issuer or the dealer, or the purchaser transfers or loses control of the purchase funds, whichever is earlier; or
 - (b) The first date of disbursement of any proceeds of the sale of the securities which have been deposited directly into an escrow account established pursuant to an escrow agreement as defined in paragraph (A)(2) of this rule.

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- (3) No salesperson shall sell securities in reliance on an exemption under division (O) or (Q) of section 1707.03 of the Revised Code other than through or with the salesperson's employing dealer.

- (D) Claims of exemption in accordance with division (O) of section 1707.03 of the Revised Code.
 - (1) An issuer shall be presumed to have established that a purchaser is purchasing for investment, in the absence of information to the contrary, when the issuer obtains a written declaration signed by the purchaser which includes;
 - (a) A statement that the purchaser is aware that no market may exist for the resale of the securities;
 - (b) A statement that the purchaser is purchasing for investment and not for the distribution of the securities; and
 - (c) A statement that the purchaser is aware of any and all restrictions imposed by the issuer on the further distribution of the securities, including, but not limited to, any restrictive legends appearing on the certificate, required holding periods, stop transfer orders, or buy-back rights of the corporation or the holders of its securities.
 - (2) For the purpose of computing the total number of purchasers under division (O)(2) of section 1707.03 of the Revised Code, successive sales by an issuer to a single purchaser shall not be considered to be sales to additional purchasers.

- (E) Additional exemptions in accordance with division (V) of section 1707.03 of the Revised Code.
 - (1) The sale by a bank, a subsidiary of a bank, or a service corporation owned by and organized to provide services to one or more banks of retail repurchase agreements is exempt pursuant to division (V) of section 1707.03 of the Revised Code.
 - (2) The sale by a bank, a subsidiary of a bank, or a service corporation owned by and organized to provide services to one or more banks of mortgage-backed securities is exempt pursuant to division (V) of section 1707.03 of the Revised Code.

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- (3) The sale of any security representing directly or indirectly a fractional interest in a pool of FHA-insured or VA-guaranteed first mortgage loans guaranteed by the full faith and credit of the United States government (commonly referred to as GNMA-backed securities or GNMA pass-through securities), is exempt pursuant to division (V) of section 1707.03 of the Revised Code. The assets of a security sold in reliance on this paragraph may also include cash or other obligations backed by the full faith and credit of the United States government to a maximum of twenty per cent of the total assets of the security.
- (4) The sale of any security representing directly or indirectly a fractional interest in a certificate of deposit or a pool of certificates of deposit is exempt pursuant to division (V) of section 1707.03 of the Revised Code, provided that:
 - (a) The certificates of deposit are issued by a bank with assets of two billion dollars or more;
 - (b) If a pool, no more than ten per cent of the pool's assets may be invested in the certificates of deposit of any one bank; and
 - (c) The total expenses of sale, issuance and distribution of the securities do not exceed three per cent of the gross proceeds of the sale of the securities.
- (5) The sale of any security pursuant to a pension plan, stock plan, profit-sharing plan, compensatory benefit plan, welfare plan, or similar plan is exempt pursuant to division (V) of section 1707.03 of the Revised Code if:
 - (a) The security is sold pursuant to a plan qualified under sections 401 to 425 of the Internal Revenue Code of 1986, 26 U.S.C.A. 1, as amended;
 - (b) The sale of the security is exempt from the provisions of section 5 of the Securities Act of 1933, 15 U.S.C.A. 77a, as amended, because it meets the exemption set forth in rule 701 of the Securities Act of 1933, 15 U.S.C.A. 77 a, as amended, and any commission, discount or other remuneration paid or given for the sale of the security in this state is paid or given only to dealers or salespersons licensed by the division;
 - (c) The security is effectively registered under sections 6 to 8 of the Securities Act of 1933, as amended, and is offered and sold in compliance with the provisions of section 5 of the Securities Act of 1933 as amended; or

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- (d) The security is sold pursuant to a contributory employee welfare benefit plan and trust that are qualified under section 501(c)(9) of the Internal Revenue Code of 1986, 26 U.S.C.A. 1, as amended.
- (6) The sale of a warrant, subscription right, or option to purchase a security exempted by division (E) of section 1707.02 of the Revised Code or the sale of a unit consisting of a warrant, subscription right, or option to purchase a security exempted under division (E) of section 1707.02 of the Revised Code and a security which is exempt under division (E) of section 1707.02 of the Revised Code is exempt pursuant to division (V) of section 1707.03 of the Revised Code.
- (7) Any guarantee, letter of credit, standby purchase agreement, or other credit enhancement that is offered and sold in conjunction with a security that is exempt under division (B) of section 1707.02 of the Revised Code and which is not traded separately is exempt under division (V) of section 1707.03 of the Revised Code.
- (8) The offer of securities by an issuer on the internet, or similar electronic medium, is exempt pursuant to division (V) of section 1707.03 of the Revised Code, provided that:
 - (a) The offer of securities indicates, directly or indirectly, that securities are not being offered to any person in this state and the issuer does not otherwise attempt to sell securities in this state;
 - (b) The offer of securities is not specifically directed to any person in this state by, or on behalf of, the issuer; and
 - (c) No sales of securities are made in this state as a result of the offer of securities until the securities have been registered by description, qualification or coordination, or are the subject matter of a transaction that has been registered by description, or are otherwise exempt or are subject matter of an exempt transaction, and a final prospectus, offering circular or form U-7, if required under the Ohio Securities Act or division regulations, has been delivered to persons in this state prior to such sale.
- (9) The sale of any security, including the issuance of securities in mergers, consolidations, combinations or conversions, by an issuer formed primarily to provide professional services as such term is defined in division (A) of section 1785.01 of the Revised Code is exempt pursuant to division (V) of section 1707.03 of the Revised Code provided that:

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- (a) No commission or other remuneration is paid directly, or indirectly, in connection with the sale of the security; and
- (b) Ownership of the securities of the issuer is limited to:
 - (i) Employees, partners, officers, directors, shareholders, members or managers who perform professional services for the issuer;
 - (ii) Retired employees, partners, officers, directors, shareholders, managers or members who have performed professional services for the issuer
 - (iii) Employee benefit plans holding securities for the benefit of employees, partners, officers, directors, shareholders, members or managers who perform, or who have performed, professional services for the issuer;
 - (iv) The estate of any individual described in paragraph (E)(9)(b)(i), (E)(9)(b)(ii), or (E)(9)(b)(iii) of this rule; or
 - (v) Any other person who acquired such ownership interest by reason of the death of an individual described in paragraph (E)(9)(b)(i), (E)(9)(b)(ii), or (E)(9)(b)(iii) of this rule.
- (10) The sale of a security that is exempt from the provisions of section 5 of the Securities Act of 1933, 15 U.S.C.A. 77a, as amended, because it meets an exemption in rule 801 or 802 of the Securities Act of 1933, 15 U.S.C.A. 77a, as amended, and any commission, discount or other remuneration paid or given for the sale of the security in this state is paid or given only to dealers or salespersons licensed by the division is exempt pursuant to division (V) of section 1707.03 of the Revised Code.
- (11) The sale of any security to a Canadian resident temporarily in Ohio or to a self-directed, tax-advantaged retirement plan where the holder or contributor is a Canadian resident, by a Canadian broker or dealer meeting the requirements of paragraph (J) of rule 1301:6-3-01 of the Administrative Code, is exempt.
- (F) The issuer shall maintain or cause to be maintained books and records which reflect all material transactions involving the sale of securities under division (W) of section 1707.03 of the Revised Code or under division (Y) of section 1707.03 of the Revised Code for a period of five years from the date of the last sale by the issuer under the claim of exemption.

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- (G) An issuer making a filing with the division under division (Q), (W), (X) or (Y) of section 1707.03 of the Revised Code shall file an irrevocable consent to service of process on either a form 11 or a form U-2, if required under section 1707.11 of the Revised Code.

1301:6-3-04.1 Control bids.

- (A) If an offeror makes a control bid for any securities of a subject company pursuant to a tender offer or request or invitation for tenders that is not subject to section 14(d) of the Securities Exchange Act of 1934, 15 U.S.C.A. 78a, as amended, any person who deposits securities pursuant to the tender offer, request or invitation has the right to withdraw such securities during the period such offer, request or invitation remains open.
- (B) The division shall:
- (1) Terminate a control bid filing made pursuant to section 1707.041 of the Revised Code if all of the following conditions are met:
 - (a) Pursuant to division (A)(3) of section 1707.041 of the Revised Code, the division suspends the continuation of the control bid;
 - (b) Pursuant to division of (A)(4) of section 1707.041 of the Revised Code, the division maintains the suspension of the control bid; and
 - (c) The control bid remains suspended for sixty days after the date the division maintains the suspension.
 - (2) Give notice of a termination to the offeror and to the subject company.
 - (3) Permit the offeror to reinstitute the control bid by filing new or amended information with the division pursuant to section 1707.041 of the Revised Code.
- (C) Financial statements of the offeror.
- (1) Financial statements of an offeror shall not be deemed material and are not required to be filed under division (A)(2)(g) of section 1704.041 of the Revised Code when:
 - (a) The consideration offered consists solely of cash, and;

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- (b) The control bid is not subject to any financing condition, and:
 - (c) The offeror is a public reporting company under section 13(a) or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C.A. 78a, as amended, and files reports electronically on the electronic data gathering, analysis, and retrieval system, or the "EDGAR" system, or the control bid is for all outstanding securities of the subject company.
- (2) An offeror that is a public reporting company under section 13(a) or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C.A. 78a, as amended, and files reports electronically on the "EDGAR" system shall be required to file financial statements for the current period and the two most recent annual accounting periods. The offeror may file summary financial information for the current period and for the two most recent annual accounting periods and incorporate by reference financial statements filed with the securities and exchange commission electronically on the "EDGAR" system.

1301:6-3-06 Transactions registered by description.

- (A) Every registration by description filed with the division pursuant to section 1707.06 of the Revised Code shall be filed on an appropriate division form. A registration by description intended to comply with division (A)(1) of section 1707.06 of the Revised Code shall be filed on a division form 6(A)(1), a registration by description intended to comply with division (A)(2) of section 1707.06 of the Revised Code shall be filed on a division form 6(A)(2), a registration by description intended to comply with division (A)(3) of section 1707.06 of the Revised Code shall be filed on a division form 6(A)(3), and a registration by description intended to comply with division (A)(4) of section 1707.06 of the Revised Code shall be filed on a division form 6(A)(4). The registration by description shall be accompanied by any additional exhibits requested by the division for the protection of investors, and the following exhibits, as necessary:
- (1) Where the issuer has engaged in operations for ninety days or more prior to the date of the filing of the registration by description with the division, a balance sheet of the issuer as of a date not more than ninety days prior to the date of filing of the registration by description with the division and statements of income and shareholder's equity for the two years prior to the date of the balance sheet or the period of the issuer's existence if less

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than two years, either audited by an independent public accountant or verified as true in all material respects within the actual knowledge and belief of the chief financial officer or the general partner of the issuer. If any financial statements used in connection with a registration by description are accompanied by a report of an independent public accountant, a letter from the accountant consenting to the use of the report shall be attached to the application; and

- (2) Where the aggregate amount of the securities to be registered by description exceeds two hundred fifty thousand dollars, or where the securities to be registered by description represent interests in oil and gas, an offering circular prepared in accordance with paragraph (D) of this rule;
 - (3) When the issuer has sold securities in violation of the Ohio securities act not more than five years prior to the registration by description, an exhibit stating:
 - (a) The total number of persons to whom the securities were originally sold,
 - (b) The consideration received by the issuer for the securities, showing in detail whether the consideration was in cash or in property or services, and if in property or services, the nature, value and description thereof, and
 - (c) The total number of each type of securities outstanding;
 - (4) One copy of any offering circular, prospectus, advertising, sales literature, or other writing to be used in connection with the offering or sale of the securities registered by description.
- (B) The division shall promptly examine every registration by description filed with it and shall issue a certificate of acknowledgment when it determines that the description conforms to the requirements of and is accompanied by the appropriate fee required by section 1707.08 of the Revised Code.
- (C) No dealer or issuer selling its own securities shall use any prospectus or offering circular in connection with the offering or sale of any securities registered by description unless the prospectus, offering circular, advertising, sales literature, or other writing has first been filed with the division. No dealer or issuer selling its own securities shall use any advertising, sales literature, or other writing other than a prospectus or offering circular in connection with the offering or sale of

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any securities registered by description unless the advertising, sales literature, or other writing has first been approved by the division. All dealers and any issuer selling its own securities shall retain one copy of any prospectus, offering circular, advertising, sales literature, or other writing which it has used in connection with the offering or sale of the securities registered by description for a period of five years from the date of last use of the prospectus, offering circular, advertising, sales literature, or other writing.

- (D) Where the aggregate amount of the securities to be registered by description exceeds two hundred and fifty thousand dollars or where the securities to be registered by description represent interests in oil and gas, the issuer and dealer shall, prior to the earlier of the date that a subscription agreement or its equivalent is signed by a purchaser or the purchaser transfers or loses control of the purchase funds, deliver an offering circular which shall contain the following information to each purchaser of the securities registered by description:
- (1) The issuer's name and address, its type of business entity, the state or jurisdiction of its incorporation or formation, and the date of its incorporation or formation on the outside front cover page;
 - (2) The offering price to the public, discounts or commissions to dealers, and proceeds to the issuer shall be presented in tabular form on the outside front cover page;
 - (3) The amount of securities to be offered for sale, the aggregate offering price to the public, the aggregate underwriting discounts or commissions, the amount of expenses of the issuer, the amount of expenses of the underwriters to be paid by the issuer, and the aggregate proceeds. If the securities are not to be offered for cash, a description of the consideration to be paid for the securities on the outside front cover page;
 - (4) A description of the method by which the offering will be made and, the name and address of every dealer participating in the offering, specifying the extent and amount of participation of each dealer, and indicating the nature of any material relationship between the issuer and any dealer;
 - (5) A statement specifying the purposes for which the proceeds of the sale of the securities registered by description will be used and the amount to be used for each purpose, indicating the present intention of the issuer; with respect to the order of priority in which the proceeds will be used;
 - (6) A description of the experience and expertise of the issuer in the particular business which is the subject of the offering;

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- (7) A description of the significant risks inherent in the particular offering;
- (8) A description of the securities;
- (9) A description of the particular business which is the subject of the offering, which shall include, to the extent material to an understanding of the business of the issuer, the nature and principal market of the issuer's present or proposed products or services, the length of time the issuer has been in commercial production of the present or proposed products or services, the location and ownership interest of the issuer in real property, patents, and other physical property now held or to be acquired by the issuer, the manner in which any new invention or process will be used, and the application or registration numbers of any applicable patents;
- (10) A summary of the background, history, and compensation of the principals, officers, directors, and general partners of the issuer and holders of ten percent or more of the securities of the issuer, which shall include:
 - (a) The names and addresses of all principals, officers, directors, general partners, and ten per cent shareholders of the issuer, and similar information regarding all promoters if the issuer was incorporated or organized less than one year prior to the date of the registration by description;
 - (b) The annual remuneration of all principals, directors, general partners and ten per cent shareholders of the issuer and of the three highest paid officers of the issuer for the year preceding the date of the filing of the registration by description;
 - (c) All direct and indirect interests (by securities holdings or otherwise) of each principal, officer, director, general partner, or promoter:
 - (i) In the issuer or its affiliates and;
 - (ii) In any material transactions within the two years prior to the date of filing of the registration by description or in any proposed material transactions to which the issuer or any of its predecessors or affiliates was or is to be a party.

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- (d) If the issuer was incorporated or organized within the last three years, the price paid for and the percentage of outstanding securities of the issuer which will be held by directors, officers and promoters, as a group, and the price paid for and the percentage of securities which will be held by the public, if all of the securities to be offered are sold; and
- (11) A description of the financial condition of the issuer audited by an independent certified public accountant or verified as true in all material aspects within the actual knowledge and belief of the chief financial officer of the issuer which shall include:
 - (a) A balance sheet as of a date no more than ninety days prior to the filing of the registration by description; and
 - (b) A statement of income and a statement of other shareholders' equity for the two years prior to the date of the balance sheet or for the period of the issuer's existence, if less than two years.
- (E) Pursuant to section 1707.13 of the Revised Code, the division may suspend any registration by description where:
 - (1) The issuer has sold securities in violation of the Ohio securities act within five years of the date of filing of the registration by description and has not retroactively qualified those securities pursuant to section 1707.39 or 1707.391 of the Revised Code;
 - (2) The issuer has issued securities in exchange for intangibles within six months of the date of filing of a registration by description pursuant to division (A)(1) of section 1707.06 of the Revised Code. If the division finds that the protection of investors will be assured, it may permit an escrow of the securities previously issued for intangibles;
 - (3) The issuer proposes to issue securities for consideration other than cash and has not submitted a sworn appraisal by a competent, disinterested appraiser, other proof as the division may require to establish the dollar value of the consideration, or, if the division finds that the protection of investors will be assured, an escrow of the securities proposed to be issued for consideration other than cash;
 - (4) The person who filed the registration by description has failed to provide the division with supplementary information as required by paragraph (H) of this rule;

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- (5) The issuer, incorporators, or dealer has filed a registration by description which does not comply with the provisions of section 1707.08 of the Revised Code and the issuer, incorporators, or dealer has not amended the registration by description in compliance with section 1707.08 of the Revised Code in response to a notice of deficiency transmitted to the issuer, incorporators, or dealer prior to the offer or sale of the securities; or
 - (6) The registration by description appears to the division to comply with the provisions of section 1707.08 of the Revised Code, but the division has requested additional information to clarify the registration by description for the protection of investors by a letter sent to the address shown on the registration by description by the issuer, incorporators, or dealer, and the issuer, incorporators, or dealer does not provide the additional information requested prior to the offer or sale of the securities.
- (F) Pursuant to division (B) of section 1707.131 of the Revised Code, the division shall refuse any registration by description if the issuer is in the development stage and either has no specific business plan or purpose or has indicated that its business is to engage in a merger or acquisition with an unidentified company or companies, or other entities or persons.
- (G) Pursuant to division (C) of section 1707.131 of the Revised Code, the division may refuse any registration by description if the issuer does not disclose in final offering materials that, with regard to officers, directors, five per cent shareholders, managers, trustees, or general partners:
- (1) Any future transactions will be on terms no less favorable to the issuer than could be obtained from an independent third party; or
 - (2) Any outstanding loans from the issuer are required to be repaid within six months of the offering, except for loans or extensions of credit made by a bank, and any future loans from the issuer will be for bona fide business purposes as approved by a majority of the disinterested directors, managers, trustees, or general partners, or will be a type of transaction involving a director or executive officer of the issuer as permitted by section 13(k) of the Securities Exchange Act of 1934 as amended.
- (H) During the effectiveness of a registration by description, the person who filed the registration by description shall promptly notify the division of:
- (1) Any adverse material change in the financial status of the issuer;

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- (2) Any material change in the proposed use of the proceeds reported in the registration by description;
 - (3) Any change in the identity of the principals, general partner or officers of the issuer; or
 - (4) The occurrence of any event or series of events which would cause any statement contained in the registration by description, prospectus or offering circular to be false or misleading in any material respect.
- (l) The division shall accept amendments to registrations by description which are limited, in compliance with section 1707.08 of the Revised Code, to the correction of errors or omissions.

1301:6-3-08 Registration by description.

- (A) A registration by description shall have a period of effectiveness of sixteen months.
- (B) Notwithstanding paragraph (A) of this rule and upon good cause shown, the division may grant an extended period of effectiveness for a registration by description that does not exceed twenty-four months.

1301:6-3-09 Registration by qualification.

- (A) Application.
 - (1) An application to register securities by qualification in accordance with section 1707.09 of the Revised Code shall be made on a form 9 of the division or on form U-1 of the North American securities administrators association, and shall, as applicable, be accompanied by a division form 11 or a form U-2, and a form U-2(A) of the North American securities administrators association.
 - (2) Whenever any statement or report, however characterized, prepared by an independent accountant is to be used in connection with an offering circular, prospectus, or other advertising, the issuer shall furnish the division a letter from the accountant consenting to the use of the statement or report by the issuer.

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- (3) The division may require that an appropriate cross reference sheet of the North American securities administrators association be submitted with any application.
- (B) Period of effectiveness.
- (1) Unless otherwise specified by division order, a registration by qualification shall have a period of effectiveness of thirteen months from the effective date of the division order. Upon good cause shown, the division may establish a period of effectiveness for a registration by qualification of not more than twenty-four months.
 - (2) During the period of effectiveness of a registration by qualification, the issuer shall advise the division of:
 - (a) Any adverse material change in the financial status of the issuer;
 - (b) Any material change in the compensation agreement between the issuer and a dealer licensed to sell its securities;
 - (c) Any material change in the proposed use of the proceeds of an issue;
 - (d) Any change in the identity of the principals, general partners or officers of the issuer;
 - (e) Any change in the stated investment policies, objectives, or restrictions of the registration; and
 - (f) The occurrence of any event or series of events which have caused any statement contained in a prospectus or circular to be false or misleading in any material respect.
- (C) Escrow of securities or proceeds from sale of securities.
- (1) The division may, for the protection of investors, require the escrow of all or a portion of the securities of an issuer or of the proceeds of sale of securities registered by qualification under terms and conditions of an escrow agreement established by the division in the order qualifying the securities. The division shall have continuing jurisdiction over the escrow agreement so long as the escrow agreement is in effect.

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- (2) No person shall sell securities in violation of the provisions of an escrow agreement entered into in accordance with paragraph (C)(1) of this rule.

- (D) An issuer relying on rule 504 of regulation D of the securities and exchange commission as amended or section 3(a)(11) of the Securities Act of 1933, 15 U.S.C.A. 77a, as amended shall deliver an offering circular or other disclosure document or documents as required by rule 1301:6-3-06 of the Administrative Code prior to the earlier of the date that a subscription agreement or its equivalent is signed by a purchaser or the purchaser transfers or loses control of the purchase funds. Notwithstanding the foregoing, an issuer relying on rule 504 of regulation D of the securities and exchange commission as amended may use a form U-7 of the North American securities administrators association in lieu of the offering circular or other disclosure document or documents required by rule 1301:6-3-06 of the Administrative Code.

1301:6-3-09.1 Registration by coordination.

- (A) A registration statement filed pursuant to section 1707.091 of the Revised Code shall include the following documents in addition to the information specified in divisions (B)(1) and (B)(4) of section 1707.091 of the Revised Code, and the consent to service of process required by section 1707.11 of the Revised Code, unless the division permits otherwise:
 - (1) A copy of the articles of incorporation and code of regulations or bylaws, or their substantial equivalent currently in effect;
 - (2) A copy of any agreements with or among underwriters;
 - (3) A copy of any indenture or other instrument governing the issuance of the security to be registered;
 - (4) A specimen or copy of the security; and
 - (5) Any other information or copies of any other documents filed with the securities and exchange commission.

The application may be made on division forms or on forms U-1, U-2, and U-2(A).

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- (B) The division may issue a stop order denying the effectiveness of the registration statement or suspending its effectiveness, provided the division promptly notifies the issuer or its representative by telegram or telephone, and promptly confirms, when it notifies by telephone, by letter or telegram, if the division finds that the business of the issuer is fraudulently conducted, that the proposed offer or disposal of securities is on grossly unfair terms, or that the plan of issuance and sale of securities would defraud or deceive, or tend to defraud or deceive purchasers. The stop order shall set forth the reasons for such order. When the issuer has complied with the requirements of the division, the division shall promptly notify the issuer or its representative by telegram or telephone, and promptly confirm, when it notifies by telephone, by letter or telegram that the stop order has been terminated. The stop order shall then be void as of the time of entry.
- (C) The division may permit, pursuant to divisions (C)(2) and (C)(3) of section 1707.091 of the Revised Code, a reduction of the time period prior to effectiveness during which a registration statement, a statement of the maximum and minimum proposed offering prices, and the maximum underwriting discount and commissions are required to be on file with the division.
- (D) If the issuer or its representative, pursuant to division (D) of section 1707.091 of the Revised Code, notifies the division of securities by telephone of the date and time when the federal registration statement became effective or when the offering may otherwise be commenced in accordance with the rules, regulations or orders of the securities and exchange commission, and of the contents of the price amendments, if any, it shall promptly, and in any event not later than the first business day after the day on which the telephone notification was made, confirm the information conveyed in such telephone notification by letter or telegram.
- (E) The provisions of rule 1301:6-3-09 of the Administrative Code shall apply to registrations by coordination pursuant to section 1707.091 of the Revised Code.

1301:6-3-09.3 Electronic filings.

- (A) Issuers may elect to submit notice filings to the division electronically.
 - (1) Only investment companies that have registered securities, or have filed a registration statement, under the Investment Company Act of 1940, as amended, or issuers relying on Rule 506 of Regulation D, as amended, may submit electronic filings to the division.

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- (2) Investment companies shall submit a Form NF for electronic filings.
 - (3) Issuers relying on Rule 506 of Regulation D, as amended, shall file a Form D for electronic filings.
 - (4) A Form U-2 Uniform Consent to Service of Process must be submitted if required by section 1707.11 of the Revised Code.
- (B) Electronic signatures.
- (1) For notice filings submitted electronically, a typed signature may be accepted in lieu of a manual signature.
 - (2) A typed signature shall have the same legal effect as a manual signature.
- (C) Fees.
- (1) Fee payment for an electronic filing with the division shall be transferred through the automated clearing house network in cash concentration or disbursement entry format by fedwire transfer.
 - (2) Investment company notice filings shall include fees required under division (A)(2)(a) and (A)(2)(b) of section 1707.092 of the Revised Code.
 - (3) Issuers relying on Rule 506 of Regulation D, as amended, shall submit a one hundred dollar filing fee as required under division (X)(3) of section 1707.03 of the Revised Code.
- (D) Business hours.
- (1) Electronic filings may be submitted from eight a.m. to five p.m. eastern standard time or eastern daylight time as applicable.
 - (2) Electronic filings may be submitted from Monday to Friday, except for legal holidays as listed in section 1.14 of the Revised Code.
 - (3) An electronic filing is deemed filed upon receipt of the required forms and fees.
 - (4) If an issuer in good faith attempts to submit an electronic filing to the division in a timely manner, but the transmission is delayed due to technical difficulties, the electronic filer may request an adjustment to the filing date of the transmission. The division may grant the request if it appears that such an adjustment is appropriate and consistent with the public interest and the protection of investors.

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- (E) Amendments.
- (1) Amendments to a previously submitted electronic filing shall include the file number assigned by the division.
 - (2) Additional fees to amend a previously submitted electronic filing shall be transferred through the automated clearing house network in cash concentration or disbursement entry format by fedwire transfer.
- (F) Errors and omissions. An issuer shall not be subject to the liability and anti-fraud provisions of Chapter 1707. of the Revised Code with respect to an error or omission in an electronic filing resulting solely from electronic transmission errors beyond the control of the electronic filer where the error or omission is corrected by submitting to the division a filing that contains an amendment as soon as reasonably practicable after the electronic filer becomes aware of the error or omission.

1301:6-3-12 Documents open to inspection.

- (A) For purposes of division (B) of section 1707.12 of the Revised Code, information obtained by the division through any offering materials filed with the division in connection with exempt transactions under divisions (Q) and (W) of section 1707.03 of the Revised Code or through any investigation may be made available by the division for inspection by the "Financial Industry Regulatory Authority."
- (B) For purposes of division (C) of section 1707.12 of the Revised Code, confidential law enforcement investigatory records and trial preparation records of the division or any other law enforcement or administrative agency in the possession of the division may be made available by the division for inspection by the "Financial Industry Regulatory Authority."

1301:6-3-13 Withdrawal of application or notice filing.

- (A) If an application to register securities pursuant to section 1707.09, 1707.091, or 1707.39 of the Revised Code has been on file with the division for more than one year without becoming registered, the division may withdraw the application without prejudice and refund the qualification fee.

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- (B) If a notice filing submitted to the division pursuant to section 1707.092 of the Revised Code has been on file with the division for more than one year without becoming effective, the division may withdraw the notice filing and refund the filing fee.

1301:6-3-14 Exceptions to dealer license and securities and exchange commission registration requirements.

- (A) A dealer's license shall be required of a person who acts as a dealer, as defined in division (E) of section 1707.01 of the Revised Code subject, to the provisions of division (A)(1) of section 1707.14 of the Revised Code, and to the following exceptions:
- (1) Without a license, a person may sell the promissory notes or commercial paper of its subsidiary, provided such securities are not offered for sale, directly or indirectly, to the public, as that term is defined in paragraph (D) of rule 1301:6-3-02 of the Administrative Code.
 - (2) Without a license, a person which is organized not for profit and whose net earnings do not inure to the benefit of any person, may sell its subsidiaries' securities which do not constitute evidence of indebtedness or a promise to pay money, provided the total cost of sale does not exceed two per cent of their aggregate sale price, plus five hundred dollars.
 - (3) Without a license, a person may sell any securities of its subsidiary, which have been issued under an approved plan of reorganization, recapitalization or refinancing pursuant to section 1707.04 of the Revised Code.
 - (4) Without a license, a person may sell the securities of its subsidiary in the transactions specified in section 1707.06 of the Revised Code.
 - (5) Without a license, a person may distribute information on available products and services on or through the internet or similar electronic medium provided that:
 - (a) The distribution of information is not specifically directed to any person in this state;
 - (b) The distribution of information consists solely of the dissemination of general information regarding products and services;

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- (c) The distribution of information contains a legend which clearly states that:
 - (i) The person may only act as a dealer or salesperson in this state if the person is first licensed by the division or properly excepted from licensure; and
 - (ii) Follow-up individualized responses by the person in this state that involve acting as a dealer or salesperson will not be made unless the person is first licensed by the division or properly excepted from licensure;
- (d) The distribution of information contains a mechanism, including but not limited to, a technical "firewall" or other implemented policies and procedures, designed to reasonably ensure that prior to any direct communication resulting from the distribution of information, the person is first licensed by the division or properly excepted from licensure;
- (e) In the case of distribution of information by a person who would qualify as a "salesman" as defined in division (F) of section 1707.01 of the Revised Code, in addition to the foregoing:
 - (i) The dealer with whom the person is associated is prominently disclosed in the distribution of information;
 - (ii) The dealer with whom the person is associated retains responsibility for reviewing and approving the content of the distribution of information;
 - (iii) The dealer with whom the person is associated first authorizes the distribution of information; and
 - (iv) The distribution of information is within the scope of authority granted to the person by the dealer with whom the person is associated.
- (6) Without a license, a bank may sell securities to an institutional investor.
- (B) In accordance with division (D) of section 1707.14 of the Revised Code, the division may, by division order, exempt a dealer from the requirement of being registered with the securities and exchange commission set out in division (B) of section 1707.14 of the Revised Code where the division determines that all of the following have been met:

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- (1) The dealer has been continuously licensed by the Ohio division of securities since October 11, 1994;
- (2) The dealer, alone or with any other dealer with which it is affiliated, does not employ more than five securities salespersons at any time;
- (3) No less than eighty per cent of the securities bought and sold by the dealer, as determined by the aggregate price of all securities bought and sold by the dealer, are securities of banks, as the term "bank" is defined in division (O) of section 1707.01 of the Revised Code, which have their principal place of business in Ohio;
- (4) The dealer enters into an undertaking with the division whereby the dealer agrees that it will immediately surrender any exemption from the requirement of being registered with the securities and exchange commission in the event that it fails to disclose in writing to any person to whom it sells securities its compensation, however that compensation is characterized, for the sale of the securities; and
- (5) The dealer enters into an undertaking with the division whereby the dealer agrees that it will immediately surrender any exemption from the requirement of being registered with the securities and exchange commission in the event that it no longer meets the standards set forth in paragraphs (B)(1), (B)(2) and (B)(3) of this rule.

1301:6-3-14.1 Notice filing for certain investment advisers; duty to update.

- (A) The notice filing specified in division (B) of section 1707.141 of the Revised Code shall:
 - (1) Consist of a fully completed part 1 of the form ADV, uniform application for investment adviser registration, fully completed schedules and disciplinary reporting pages pertaining to part 1 of the form ADV, and a fully completed execution page of the form ADV; and
 - (2) Be submitted to the division through the investment adviser registration depository, or IARD, maintained by the national association of securities dealers, inc.
- (B) An investment adviser who is required to make a notice filing with the division shall also submit to the division the notice filing fee required by division (B)(4) of section 1707.17 of the Revised Code.

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- (C) An investment adviser who is required to make a notice filing with the division shall simultaneously submit to the division through the IARD any updates or amendments to the form ADV that are filed with the securities and exchange commission;
- (D) A notice filing submitted to the division in accordance with the provisions of paragraphs (A) and (B) of this rule shall be effective upon receipt by the division and shall expire on December thirty-first of the year in which it was filed, unless renewed prior to its expiration.
- (E) A notice filing may be renewed prior to December thirty-first of each year by submitting the notice filing fee required by division (B)(4) of section 1707.17 of the Revised Code through the renewals program of the IARD.
- (F) A notice filing that has not been renewed by December thirty-first shall be deemed by the division to be terminated as of December thirty-first of the year in which it expired. An investment adviser that has submitted a notice filing to the division may terminate the notice filing by submitting a completed form ADV-W to the division through the IARD.
- (G) In addition to the notice filing requirements of paragraphs (A) through (C) of this rule, the division may require the filing of any other document filed or deemed filed by the investment adviser with the securities and exchange commission.
- (H) A notice filing is considered to have been made with the division when the investment adviser selects "OH" in Item 2B of Part 1A of the form ADV, and the form ADV is accepted by the IARD.
- (I) Upon the discontinuation of the employment or affiliation of a licensed investment adviser representative, the investment adviser with which the investment adviser representative was employed or affiliated shall, within thirty calendar days of the discontinuation, submit to the division through the "IARD" a request to cancel the license of the investment adviser representative. The request shall be made on form U-5, "Uniform Termination Notice For Securities Industry Registration" and shall become effective as described in paragraph (K)(2) of rule 1301:6-3-15.1 of the Administrative Code.

1301:6-3-14.2 Dealers not required under federal law or the law of this state to be registered as a broker or dealer with the securities and exchange commission.

(A) Pursuant to division (C) of section 1707.142 of the Revised Code, a dealer that is not required under federal law or the law of this state to register as a broker or dealer with the securities and exchange commission may elect to comply with paragraphs (B) to (M) of this rule in lieu of requirement contained in section 15 of the Securities and Exchange Act of 1934, 48 Stat. 881, 15 U.S.C. 78o, as amended, section 17 of the Securities and Exchange Act of 1934, 48 State 881, 15 U.S.C. 78q, as amended, and rules of the securities and exchange commission promulgated under those sections.

(B) As used in this rule:

"Dealer" shall mean a dealer licensed by the division that is not required under federal law or the law of this state to be registered as a broker or dealer with the securities and exchange commission.

(C) Records of dealer

(1) Every dealer licensed in this state shall promptly furnish to the division, upon request by the division, legible, true and complete copies of the records required to be preserved and retained pursuant to this rule. The division, in its discretion, may examine the books and records of any licensed dealer or any applicant for a dealer's license.

(2) Every licensed dealer shall preserve and retain for a period of not less than three years, the first two years in an accessible place:

(a) All check books, bank statements, cancelled checks and cash reconciliations;

(b) All bills receivable or payable, or copies thereof, paid or unpaid, relating to the business of the dealer;

(c) Originals of all communications received and copies of all communications sent by the dealer, including interoffice memoranda and communications, relating to the dealer's business and all communications which are subject to rules of a self regulatory organization of which the dealer is a member regarding communications with the public. As used in this paragraph, the term "communications" includes sales scripts;

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- (d) All trial balances, computations of aggregate indebtedness and net capital and working papers in connection therewith, financial statements, branch office reconciliations, and internal audit working papers, relating to the business of the dealer;
- (e) All guarantees of accounts and all powers of attorney and other evidence of the granting of any discretionary authority given in respect of any account, and copies of resolutions empowering an agent to act on behalf of a corporation;
- (f) All written agreements or copies thereof entered into by the dealer relating to its business, including agreements with respect to any account;
- (g) For those dealers affiliated with a self-regulatory organization, records that contain the following information in support of amounts included in the form X-17A-5, "Financial and Operational Combined Uniform Single Report," part II, part IIA, part IIB, part III and applicable schedules filed by dealers subject to any minimum net capital requirement set forth in 17 C.F.R. 240.15c3-1, as amended:
 - (i) Money balance and security position, long or short, including description, quantity, price and valuation of each security including contractual commitments in customers' accounts, in cash and fully secured accounts, partly secured accounts, unsecured accounts, and in securities accounts payable to customers;
 - (ii) Money balance and security position, long or short, including description, quantity, price and valuation of each security including contractual commitments in non-customers' accounts, in cash and fully secured accounts, partly secured and unsecured accounts, and in securities accounts payable to non-customers;
 - (iii) Position, long or short, including description, quantity, price and valuation of each security including contractual commitments included in the computation of net capital as commitments, securities owned, securities owned not readily marketable, and other investments owned not readily marketable;

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- (iv) Amount of secured demand note, description of collateral securing the demand note including quantity, price and valuation of each security and cash balance securing the demand note;
- (v) Description of futures commodity contracts, contract value on trade date, market value, gain or loss, and liquidating equity or deficit in customers' and non-customers' accounts;
- (vi) Description of futures commodity contracts, contract value on trade date, market value, gain or loss and liquidating equity or deficit in trading and investment accounts;
- (vii) Description, money balance, quantity, price and valuation of each spot commodity position or commitments in customers' and non-customers' accounts;
- (viii) Description, money balance, quantity, price and valuation of each spot commodity position or commitments in trading and investment accounts;
- (ix) Number of shares, description of security, exercise price, cost and market value of put and call options including short out of the money options having no market or exercise value, showing listed and unlisted put and call options separately;
- (x) Quantity, price, and valuation of each security underlying the haircut for undue concentration made in the computation for net capital;
- (xi) Description, quantity, price and valuation of each security and commodity position or contractual commitment, long or short, in each joint account in which the dealer has an interest, including each participant's interest and margin deposit;
- (xii) Description, settlement date, contract amount, quantity, market price, and valuation for each aged failed to deliver requiring a charge in the computation of net capital;

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- (xiii) Detail relating to information for possession or control requirements under 17 C.F.R. 240.15c3-3, as amended, and reported on the schedule in part II or part IIA of form X-17A-5;
 - (xiv) Detail of all items, not otherwise substantiated, which are charged or credited in the computation of net capital including cash margin deficiencies, deductions related to securities values and undue concentration, aged securities differences and insurance claims receivable; and
 - (xv) Other information or records specifically prescribed by the division.
- (h) Dealers having physical possession or control of fully paid and excess margin securities shall prepare and maintain a current and detailed description of the procedures used to comply with the possession or control requirements set forth in this rule.
- (i) Internal risk management control systems for OTC derivatives dealers.
- (i) An OTC derivatives dealer shall establish, document, and maintain a system of internal risk management controls to assist it in managing the risks associated with its business activities, including market, credit, leverage, liquidity, legal, and operational risks.
 - (ii) An OTC derivatives dealer shall consider the following when adopting its internal control system guidelines, policies, and procedures:
 - (a) The ownership and governance structure of the OTC derivatives dealer;
 - (b) The composition of the governing body of the OTC derivatives dealer;
 - (c) The management philosophy of the OTC derivatives dealer;
 - (d) The scope and nature of established risk management guidelines;

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- (e) The scope and nature of the permissible OTC derivatives activities;
 - (f) The sophistication and experience of relevant trading, risk management, and internal audit personnel;
 - (g) The sophistication and functionality of information and reporting systems; and
 - (h) The scope and frequency of monitoring, reporting, and auditing activities.
- (iii) An OTC derivatives dealer's internal risk management control system shall include the following elements:
- (a) A risk control unit that reports directly to senior management and is independent from business trading units;
 - (b) Separation of duties between personnel responsible for entering into a transaction and those responsible for recording the transaction in the books and records of the OTC derivatives dealer;
 - (c) Periodic reviews that may be performed by internal audit staff and annual reviews that must be conducted by independent certified public accountants of the OTC derivatives dealer's risk management systems;
 - (d) Definitions of risk, risk monitoring, and risk management; and
 - (e) Written guidelines, approved by the OTC derivatives dealer's governing body, that include and discuss the following:
 - (i) The OTC derivatives dealer's consideration of the elements in paragraph (C)(2)(i)(ii) of this rule;

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- (ii) The scope, and the procedures for determining the scope, of authorized activities or any non-quantitative limitation on the scope of authorized activities;
- (iii) Quantitative guidelines for managing the OTC derivatives dealer's overall risk exposure;
- (iv) The type, scope, and frequency of reporting by management on risk exposures;
- (v) The procedures for and the timing of the governing body's periodic review of the risk monitoring and risk management written guidelines, systems, and processes;
- (vi) The process for monitoring risk independent of the business or trading units whose activities create the risks being monitored;
- (vii) The performance of the risk management function by persons independent from or senior to the business or trading units whose activities create the risks;
- (viii) The authority and resources of the groups or persons performing the risk monitoring and risk management functions;
- (ix) The appropriate response by management when internal risk management guidelines have been exceeded;
- (x) The procedures to monitor and address the risk that an OTC derivatives transaction contract will be unenforceable;
- (xi) The procedures requiring the documentation of the principal terms of OTC derivatives transactions and other relevant information regarding such transactions;

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- (f) Procedures are in place to identify and address any deficiencies in the operating systems and to contain the extent of losses arising from unidentified deficiencies;
 - (g) Procedures are in place to authorize specified employees to commit the OTC derivatives dealer to particular types of transactions, to specify any quantitative limits on such authority, and to provide for the oversight of their exercise of such authority;
 - (h) Procedures are in place to prevent the OTC derivatives dealer from engaging in any securities transaction that is not permitted under the laws to which the OTC derivatives dealer is subject;
 - (i) Procedures are in place to prevent the OTC derivatives dealer from improperly determining whether a counterparty is acting in the capacity of principal or agent;
 - (j) Procedures are in place to provide for adequate documentation of the principal terms of OTC derivatives transactions and other relevant information regarding such transactions;
 - (k) Personnel resources with appropriate expertise are committed to implementing the risk monitoring and risk management systems and processes; and
 - (l) Procedures are in place for the periodic internal and external review of the risk monitoring and risk management functions.
- (j) All notices relating to an internal dealer system provided to the customers of the dealer that sponsors the internal dealer system. Notices, whether written or communicated through the internal dealer trading system or other automated means, shall be preserved under this rule if they are provided to all customers with access to an internal dealer system, or to one or more classes of classes of customers.

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- (3) Every dealer subject to this rule shall preserve and retain for a period of not less than six years after closing any customer's account any account cards or records which relate the terms and conditions with respect to the opening and maintenance of the account.
- (4) Every dealer subject to this rule shall preserve and retain during the life of the enterprise and of any successor enterprise, all organizational documents of the enterprise including partnership agreements, articles of incorporation or charters, articles of organization, minute books and stock certificate books, all forms BDW, all amendments to the foregoing forms, and all documentation showing the licensure of the dealer with any regulatory authority.
- (5) Each report that any securities regulator has requested or required the dealer to make and furnish to the securities regulator pursuant to an order or settlement, and each securities regulatory examination report shall be retained by the dealer until three years after the date of the report.
- (6) Each compliance, supervisory, and procedures manual, including any updates, modifications, and revisions to the manual, describing the policies and practices of the dealer with respect to compliance with applicable laws and rules, and supervision of the activities of each natural person employed by or associated with the dealer shall be retained by the dealer until three years after the termination of the use of the manual.
- (7) All reports produced to review for unusual activity in customer accounts shall be retained by the dealer until eighteen months after the date the report was generated. In lieu of maintaining the reports, a dealer may produce promptly the reports upon request by the division. If a report was generated in a computer system that has been changed in the most recent eighteen month period in a manner such that the report cannot be reproduced using historical data in the same format as it was originally generated, the report may be produced by using the historical data in the current system, but must be accompanied by a record explaining each system change that affected the reports. If a report is generated in a computer system that has been changed in the most recent eighteen month period in a manner such that the report cannot be reproduced in any format using historical data, the dealer shall promptly produce upon a request a record of the parameters that were used to generate the report at the time specified by the division, including a record of the frequency with which the report or reports were generated.

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- (8) The records required to be maintained and preserved pursuant to this rule may be immediately produced or reproduced on microfilm, microfiche or any similar medium, or by means of any digital storage medium or system that meet the conditions set forth in this rule and be maintained and preserved for the required time in that form.
 - (a) If a digital storage medium or system is used by a dealer, the dealer shall comply with the following requirements:
 - (i) Upon request by the division, the dealer must be able to provide its own representation or one from the storage medium vendor or other third party with appropriate expertise that the selected storage media meets these conditions. The electronic storage media must:
 - (a) Preserve the records exclusively in a non-rewriteable, non-erasable format;
 - (b) Verify automatically the quality and accuracy of the storage media recording process;
 - (c) Serialize the original and, if applicable, duplicate units of storage media, and time-date for the required period of retention, the information placed on such electronic storage media; and
 - (d) Have the capacity to readily download indices and records preserved on the electronic storage media to any medium acceptable to the division.
 - (ii) Verify automatically the quality and accuracy of the storage media recording process;
 - (iii) Serialize the original and, if applicable, duplicate units of storage media, and time-date for the required period of retention, the information placed on such electronic storage media; and
 - (iv) Have the capacity to readily download indices and records preserved on the electronic storage media to any medium acceptable to the division.

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- (b) If digital storage medium or system or microfilm, microfiche or similar medium is used by a dealer, the dealer shall:
 - (i) At all times have available, for examination by the division, facilities for immediate, easily readable projection or production of microfilm, microfiche or similar medium or digital storage medium images and for producing easily readable images;
 - (ii) Be ready at all times to provide, and immediately provide, any facsimile enlargement which the division may request;
 - (iii) Store separately from the original, a duplicate copy of the record stored on any medium for the time required;
 - (iv) Organize and index accurately all information maintained on both original and any duplicate storage media. At all times, a dealer must be able to have indices available for examination by the division. Each index must be duplicated and the duplicate copies must be stored separately from the original copy of each index. Original and duplicate indices must be preserved for the time required for the indexed records;
 - (v) The dealer must have in place an audit system providing for accountability regarding inputting of records required to be maintained and preserved pursuant to this rule to digital storage media and inputting any changes made to every original and duplicate record maintained and preserved. At all times, a dealer must be able to have the results of the audit system available for examination by the division. The audit results must be preserved for the time required for the audited records;
 - (vi) The dealer must maintain, keep current, and provide promptly upon request by the division all information necessary to access records and indices stored on the electronic storage media; or place in escrow and keep current a copy of the physical and logical file format of the electronic storage media, the field format of all different information types written on the electronic storage media and the source code, together with the appropriate documentation and information necessary to access records and indices; and

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- (vii) For every dealer exclusively using electronic storage media for some or all of the dealer's record preservation under this rule, at least one third party who has access to and the ability to download information from the dealer's electronic storage media to any acceptable medium under this rule, shall file with the division an undertaking to promptly furnish to the division, upon reasonable request, information as is deemed necessary by the division to download information kept on the dealer's electronic storage media to any medium acceptable to the division, and to take reasonable steps to provide access to information contained on the dealer's electronic storage media, including arrangements for the downloading of any record required to be maintained and preserved by the dealer by this rule. Such arrangements will provide specifically that in the event of a failure on the part of a dealer to download the record into a readable format and after reasonable notice to the dealer, upon being provided with the appropriate electronic storage medium, the undersigned will undertake to do so, as the division may request.
- (9) If a person who has been subject to this rule ceases to transact a business in securities directly with others than members of a national securities exchange or ceases to transact a business in securities through the medium of a member of a national securities exchange, the person shall, for the remainder of the periods of time specified in this section, continue to preserve the records which he theretofore preserved pursuant to this rule.
- (10) For purposes of transactions in municipal securities by municipal securities dealers, compliance with rule G-9 of the "Municipal Securities Rulemaking Board" as amended, will be deemed to be compliance with this rule.
- (11) If the records required to be maintained and preserved pursuant to this rule are prepared or maintained by an outside service bureau, depository, bank which does not operate pursuant to paragraph (C)(13)(y) of this rule, or other recordkeeping service on behalf of the dealer required to maintain and preserve the records, the outside entity shall, upon request by the division, be able to file with the division a written undertaking in a form acceptable to the division, signed by a duly authorized person, to the effect that the records are the property of the dealer required to maintain and preserve the records and will be surrendered promptly on request of the dealer and including the following provision:

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With respect to any books and records maintained or preserved on behalf of [name of dealer], the undersigned hereby undertakes to permit examination of the books and records at any time or from time to time during business hours by representatives of the division, and to promptly furnish to the division true, correct, complete and current hard copy of any or all or any part of the books and records.

Agreement with an outside entity shall not relieve the dealer from the responsibility to prepare and maintain records as specified in this rule.

- (12) Every dealer subject to this rule shall furnish promptly to the division legible, true, complete and current copies of those records of the dealer, that are required to be preserved under this rule, or any other records of the dealer subject to examination by the division, that are requested by the division.
- (13) All dealers shall make and keep current the following books and records relating to its business:
 - (a) As to each "office" which, for purposes of paragraph (C)(13) of this rule is defined as any location where one or more associated persons regularly conduct the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security, and for a period of not less than six years, the first two years in an easily accessible place, blotters or other records of original entry containing an itemized daily record of all purchases, sales, receipts and deliveries of securities, including certificate numbers, all receipts and disbursements of cash, and all other debits and credits. The records shall show the account for which each transaction was effected, the name of the security, the amount of securities, the unit and aggregate purchase or sale price, if any, the trade or transaction date, and the name or other designation and capacity of the person from whom the security was purchased or received or to whom it was sold or delivered. For purposes of this rule, "associated person" is defined as a partner, officer, director, salesperson, trader, manager, or any employee handling funds or securities or soliciting transactions or accounts for the dealer.
 - (b) For a period of not less than six years, the first two years in an easily accessible place, ledgers and other records reflecting all assets and

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- (c) For a period of not less than six years, the first two years in an easily accessible place, ledger accounts or other records itemizing, separately as to each cash and margin account of every customer and of the member, broker or dealer and partners thereof, all purchases, sales, receipts and deliveries of securities and commodities for each account, and all other debits and credits to each account.
- (d) For a period of not less than three years, the first two years in an easily accessible place, ledgers or other records reflecting:
 - (i) All securities in transfer;
 - (ii) Dividends and interest received;
 - (iii) Securities borrowed and securities loaned;
 - (iv) Monies borrowed and monies loaned (together with a record of the collateral therefor and any substitutions in collateral);
 - (v) Securities failed to receive and failed to deliver;
 - (vi) All long and all short stock record differences arising from the examination, count, verification and comparison, by date of examination, count, verification and comparison showing for each security the number of shares of long or short count differences; and
 - (vii) Repurchase and reverse repurchase agreements.
- (e) For a period of not less than six years, the first two years in an easily accessible place, a securities ledger or other record reflecting, separately for each security as of the clearance dates, all long or short positions, including securities in safekeeping and securities that are the subjects of repurchase or reverse repurchase agreements, carried by the dealer for his account or for the account of its customers or partners or others and, showing the location of all securities long and the offsetting position to all securities short, including long security count differences and short security count differences classified by the date of the physical count and verification in which they were discovered, and in all cases the name or designation of the account in which each position is carried.

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- (f) As to each office and for a period of not less than three years, the first two years in an easily accessible place, a memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. The memorandum shall show the terms and conditions of the order or instructions and of any modification or cancellation thereof, the account for which entered, the time the order was received, the time of entry, the price at which executed, the identity of each associated person, if any, responsible for the account, the identity of any other person who entered or accepted the order on behalf of the customer or, if a customer entered the order on an electronic system, a notation of that entry, and, to the extent feasible, the time of execution or cancellation. The memorandum need not show the identity of any person, other than the associated person responsible for the account, who may have entered or accepted the order if the order is entered into an electronic system that generates the memorandum and if that system is not capable of receiving an entry of the identity of any person other than the responsible associated person. In that circumstance, the dealer shall produce upon request by the division a separate record which identifies each other person. Orders entered pursuant to the exercise of discretionary authority by the dealer or any associated person thereof shall be so designated. This memorandum need not be made as to a purchase, sale or redemption of a security on a subscription way basis directly from or to the issuer, if the dealer maintains a copy of the customer's subscription agreement regarding a purchase, or a copy of any other document required by the issuer regarding a sale or redemption. The term "instruction" shall include instructions between partners and employees of the dealer. The term "time of entry" shall mean the time when the dealer transmitted the order or instruction for execution.
- (g) As to each office and for a period of not less than three years, the first two years in an easily accessible place, a memorandum of each purchase and sale for the account of the dealer showing the price and, to the extent feasible, the time of execution; and, in addition, where the purchase or sale is with a customer other than a broker or dealer, a memorandum of each order received, showing the time of receipt, the terms and conditions of the order, the account in which it was entered, the identity of each associated person, if any, responsible for the account, the identity of any other

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person who entered or accepted the order on behalf of the customer or, if a customer entered the order on an electronic system, a notation of that entry. The memorandum need not show the identity of any person other than the associated person responsible for the account who may have entered the order if the order is entered into an electronic system that generates the memorandum and if that system is not capable of receiving an entry of the identity of any person other than the responsible associated person. In that circumstance, the dealer shall produce upon request by the division a separate record which identifies each other person. An order with a customer other than a dealer entered pursuant to the exercise of discretionary authority by the dealer or associated person thereof, shall be so designated.

- (h) For a period of not less than three years, the first two years in an easily accessible place, copies of confirmations of every purchase or sale of securities, including all repurchase and reverse repurchase agreements, and copies of notices of any other debit or credit for securities, cash and other items for the account of customers and partners of the dealer.
- (i) For a period of not less than three years, the first two years in an easily accessible place, a record of each cash and margin account showing:
 - (i) The name and address of the beneficial owner of each account;
 - (ii) Except with respect to exempt employee benefit plan securities, but only to the extent the securities are held by employee benefit plans established by the issuer of the securities, whether or not the beneficial owner of securities registered in the name of the dealer, or a registered clearing agency or its nominee objects to disclosure of his or her identity, address and securities positions to issuers; and
 - (iii) In the case of a margin account, the signature of the owner; provided that, in the case of a joint account or an account of a corporation, the records are required only in respect of the person or persons authorized to transact business for the account.

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- (j) For a period of not less than three years, the first two years in an easily accessible place, a record of all puts, calls, spreads, straddles and other options for which the dealer has any direct or indirect interest or which the dealer has granted or guaranteed, containing, at least, an identification of the security and the number of units involved. An OTC derivatives dealer shall also keep a record of all eligible OTC derivative instruments in which the OTC derivatives dealer has any direct or indirect interest or which it has written or guaranteed, containing, at a minimum, an identification of the security or other instrument, the number of units involved, and the identity of the counterparty.
- (k) A record of the proof of money balances of all ledger accounts in the form of trial balances, and a record of the computation of aggregate indebtedness and net capital, as of the trial balance date, provided;
- (l) For a period until at least three years after the associated person's employment and any other connection with the dealer has terminated, every dealer shall maintain for each office and with regard to each associated person:
 - (i) A record listing every associated person of the dealer;
 - (ii) A record listing every office of the dealer where the associated person regularly conducts the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security for the dealer;
 - (iii) A record listing the central registration depository number, if any, and every internal identification number or code assigned to that person by the dealer;
 - (iv) A questionnaire or application for employment executed by each associated person of the dealer, which questionnaire or application shall be approved in writing by an authorized representative of the dealer and shall contain at least the following information with respect to the person:

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- (a) The associated person's name, address, social security number, and the starting date of the associated person's employment or other association with the dealer;
- (b) The associated person's date of birth;
- (c) A complete, consecutive statement of all the associated person's business connections for at least the preceding ten years, including whether the employment was part-time or full-time;
- (d) A record of any denial of membership or registration, and of any disciplinary action taken, or sanction imposed, upon the associated person by any federal or state agency, or by any national securities exchange or national securities association, including any finding that the associated person was a cause of any disciplinary action or had violated any law;
- (e) A record of any denial, suspension, expulsion or revocation of membership or registration of any dealer with which the associated person was associated in any capacity when such action was taken;
- (f) A record of any permanent or temporary injunction entered against the associated person or dealer with which the associated person was associated in any capacity at the time the injunction was entered;
- (g) A record of any arrest or indictment for any felony, or any misdemeanor pertaining to securities, commodities, banking, insurance or real estate, including, but not limited to, acting or being associated with a broker, a dealer, investment company, investment adviser, futures sponsor, bank, fraud, false statements or omissions, wrongful taking of property or bribery, forgery, counterfeiting or extortion, and the disposition of the foregoing; and

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- (h) A record of any other name or names by which the associated person has been known or which he has used;

Notwithstanding paragraph (C)(13)(I) of this rule, if the associated person has been registered as a salesperson of the dealer with, or his employment has been approved by, the "Financial Industry Regulatory Agency," or the American stock exchange, llc, the Boston stock exchange, inc., the Chicago stock exchange, inc., the Pacific exchange, inc., the Philadelphia stock exchange, inc., the Chicago board options exchange, inc., the Cincinnati stock exchange, inc., or the international securities exchange, then retention of a full, correct, and complete copy of any and all applications for the registration or approval shall be deemed to satisfy the requirements of paragraph (C)(13)(I) of this rule.

- (m) For a period until at least three years after the associated person's employment and any other connection with the dealer has terminated, every dealer shall maintain for each office and with regard to each associated person records required to be maintained pursuant to 17 C.F.R. 240.17f-2(d), as amended.
- (n) For a period of at least three years, every dealer shall maintain copies of all forms X-17F-1A "Report of Missing, Lost, Stolen, or Counterfeit Securities", filed pursuant to 17 C.F.R. 240.17f-1, as amended, all agreements between any national securities exchange, member thereof, registered securities association, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, registered transfer agent, registered clearing agency, participant therein, member of the "Federal Reserve System" and bank whose deposits are insured by the "Federal Deposit Insurance Corporation", regarding registration or other aspects of 17 C.F.R. 240.17f-1, as amended, and all confirmations or other information received from the "United States Securities and Exchange Commission" or its designee as a result of inquiry.

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- (o) Every dealer subject to this rule shall preserve and retain during the life of the enterprise and of any successor enterprise, records required to be maintained pursuant to 17 C.F.R. 240.17f-2(e), as amended.
- (p) Records required to be made pursuant to 17 C.F.R. 240.15c3-3(o) as amended.
- (q) For a period of not less than three years, the first two years in an easily accessible place, the following records regarding any internal dealer system of which a dealer is the sponsor:
 - (i) A record of the dealer's customers that have access to an internal dealer system sponsored by the dealer identifying any affiliations between the customers and the dealer;
 - (ii) Daily summaries of trading in the internal dealer system including:
 - (a) Securities for which transactions have been executed through use of the system; and
 - (b) Transaction volume, separately stated for trading occurring during hours when consolidated trade reporting facilities are and are not in operation:
 - (i) With respect to equity securities, stated in number of trades, number of shares, and total United States dollar value;
 - (ii) With respect to debt securities, stated in total settlement value in United States dollars; and
 - (iii) With respect to other securities, stated in number of trades, number of units of securities, and in dollar value, or other appropriate commonly used measure of value of the securities;
 - (iii) Time-sequenced records of each transaction effected through the internal dealer system, including date and time executed, price, size, security traded, counterparty

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identification information, and method of execution if internal dealer system allows alternative means or locations for execution, such as routing to another market, matching with limit orders, or executing against the quotations of the dealer sponsoring the system.

- (iv) For purposes of paragraph (C)(13)(q) of this rule, "internal dealer system" shall mean any facility, other than a national securities exchange, an exchange exempt from registration based on limited volume, or an alternative trading system that provides a mechanism, automated in full or in part, for collecting, receiving, disseminating, or displaying system orders and facilitating agreement to the basic terms of a purchase or sale of a security between a customer and the sponsor, or between two customers of the sponsor, through use of the internal dealer system or through the dealer sponsor of the system.
- (v) For purposes of paragraph (C)(13)(q) of this rule "sponsor" shall mean any dealer that organizes, operates, administers, or otherwise directly controls an internal dealer trading system or, if the operator of the internal dealer system is not a registered dealer, any dealer that, pursuant to contract, affiliation, or other agreement with the system operator, is involved on a regular basis with executing transactions in connection with use of the internal dealer system, other than solely for its own account or as a customer with access to the internal dealer system.
- (vi) For purposes of paragraph (C)(13)(q) of this rule, "system order" means any order or other communication or indication submitted by any customer with access to the internal dealer system for entry into a trading system announcing an interest in purchasing or selling a security. "System order" does not include inquiries or indications of interest that are not entered into the internal dealer system.
- (r) In an easily accessible place, for a period until at least six years after the earlier of the date an account is closed or the date on which the information is replaced or updated and for each office and for each account with a natural person as a customer or owner:

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- (i) For purposes of this rule:
 - (a) An account record including the customer's or owner's name, tax identification number, address, telephone number, date of birth, employment status, including occupation and whether the customer is an associated person of a dealer, annual income, net worth excluding value of primary residence, and the account's investment objectives. In the case of a joint account, the account record must include personal information for each joint owner who is a natural person, however, financial information for the individual joint owners may be combined. The account record shall indicate whether it has been signed by the associated person responsible for the account, if any, and approved or accepted by a "principal" which for purposes of paragraph (C)(13) of this rule is defined as any individual registered with a registered national securities association as a principal or branch manager of a dealer or any other person who has been delegated supervisory responsibility over associated persons, of the dealer.
 - (b) A record indicating that:
 - (i) The dealer has furnished to each customer or owner within thirty days of the opening of the account, and thereafter at intervals no greater than thirty-six months, a copy of the account record or an alternate document with all information required by paragraph (C)(13)(r) of this rule. The dealer may elect to send this notification with the next statement mailed to the customer or owner after the opening of the account. The dealer may choose to exclude any tax identification number and date of birth from the account record or alternative document furnished to the customer or owner. The dealer shall include with the account record or alternative document provided to each customer or owner an explanation of any

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terms regarding investment objectives. The account record or alternate document furnished to the customer or owner shall include or be accompanied by prominent statements that the customer or owner should mark any corrections and return the account record or alternate document to the dealer, and that the customer or owner should notify the dealer of any future changes to information contained in the account record.

- (ii) For each account record updated to reflect a change in the name or address of the customer or owner, the dealer furnished a notification of that change to the customer's old address, or to each joint owner, and the associated person, if any, responsible for that account, on or before the thirtieth day after the date the dealer received notice of the change.
- (iii) For each change in the account's investment objectives the dealer has furnished to each customer or owner, and the associated person, if any, responsible for that account a copy of the updated customer account record or alternative document with all information required to be furnished by paragraph (C)(13)(r)(i)(b)(i) of this rule, on or before the thirtieth day after the date the dealer received notice of any change, or, if the account was updated for some reason other than the firm receiving notice of a change, after the date the account record was updated. The dealer may elect to send this notification with the next statement scheduled to be mailed to the customer or owner.
- (c) For purposes of paragraph (C)(13)(r) of this rule, the neglect, refusal, or inability of a customer or owner to provide or update any account record information required under paragraph (C)(13)(r)(i)(a) of this rule shall excuse the dealer from obtaining that required information.

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- (d) The account record requirements in paragraph (C)(13)(r)(i)(a) of this rule shall only apply to accounts for which the dealer is, or has within the past thirty-six months been, required to make a suitability determination under the federal securities laws or under the requirements of a self-regulatory organization of which the dealer is a member. In addition, the furnishing requirement in paragraph (C)(13)(r)(i)(b)(i) of this rule shall not be applicable to an account for which, within the last thirty-six months, the dealer has not been required to make a suitability determination under the federal securities laws or under the requirements of a self-regulatory organization of which it is a member. This does not relieve a dealer from any obligation arising from the rules of a self-regulatory organization of which it is a member regarding the collection of information from a customer or owner.
- (ii) If an account is a discretionary account, a record containing the dated signature of each customer or owner granting the authority and the dated signature of each natural person to whom discretionary authority was granted; and
- (iii) A record for each account indicating that each customer or owner was furnished with a copy of each written agreement entered pertaining to that account and that, if requested by the customer or owner, the customer or owner was furnished with a fully executed copy of each agreement.
- (s) A record:

 - (i) For each office, for a period of not less than three years, the first two years in an easily accessible place, and as to each associated person of each written customer complaint received by the dealer concerning that associated person.

The record shall include the complainant's name and address, and account number; the date the complaint was received; the name of any other associated person identified in the complaint; a description of the nature of the complaint; and the disposition of the complaint. Instead of the record, a

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dealer may maintain a copy of each original complaint in a separate file by the associated person named in the complaint along with a record of the disposition of the complaint.

- (ii) Indicating that each customer of the dealer has been provided with a notice containing the address and telephone number of the department of the dealer to which any complaints as to the account may be directed.
- (t) For a period of not less than three years, the first two years in an easily accessible place, a record for each office:
 - (i) As to each associated person listing each purchase and sale of a security attributable, for compensation purposes, to that associated person. The record shall include the amount of compensation if monetary and a description of the compensation if non-monetary. In lieu of making this record, a dealer may elect to produce the required information promptly upon request of the division.
 - (ii) Of all agreements pertaining to the relationship between each associated person and the dealer including a summary of each associated person's compensation arrangement or plan with the dealer, including commission and concession schedules and, to the extent that compensation is based on factors other than remuneration per trade, the method by which the compensation is determined.
- (u) For a period of not less than three years, the first two years in an easily accessible place and for each office, a record, which need not be separate from the advertisements, sales literature, or communications, documenting that the dealer has complied with, or adopted policies and procedures reasonably designed to establish compliance with this rule and which require that advertisements, sales literature, or any other communications with the public by the dealer or its associated persons be approved by a principal.
- (v) For a period of not less than six years, the first two years in an easily accessible place and for each office, a record for each office listing, by name or title, each person and that office who, without delay, can explain the types of records the firm maintains at that office and the information contained in those records.

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- (w) For a period of not less than six years, the first two years in an easily accessible place and for each office, a record listing each principal of a dealer responsible for establishing policies and procedures that are reasonably designed to ensure compliance with the provisions of this rule and any applicable federal requirements or rules of a self-regulatory organization of which the dealer is a member that require acceptance or approval of a record by a principal.
- (x) Paragraph (C)(13) of this rule shall not be deemed to require a dealer to make or keep records of transactions cleared for the dealer as are customarily made and kept by a clearing dealer provided that the clearing dealer has and maintains net capital of not less than that required by 17 C.F.R. 240.15c3-1, as amended.
- (y) Paragraph (C)(13) of this rule shall not be deemed to require a dealer to make or keep records of transactions cleared for the dealer by a bank as are customarily made and kept by a clearing dealer, provided the dealer obtains from the bank an agreement in writing to the effect that the records made and kept by the bank are the property of the dealer and that the bank files with the division a written undertaking in a form acceptable to the division and signed by a duly authorized person, that the books and records are available for examination by the division and that the bank will furnish to the division, upon demand, true, correct, complete, and current copies of any or all of the records. The undertaking shall include the following provisions:

The undersigned hereby undertakes to maintain and preserve on behalf of [dealer name] the books and records required to be maintained and preserved by the dealer pursuant to paragraph (C) of rule 1301:6-3-15 of the Administrative Code and to permit examination of the books and records at any time or from time to time during business hours by the division, and to furnish to the division true, correct, complete, and current copies of any or all, or any part, of the books and records. This undertaking shall be binding upon the undersigned, and the successors and assigns of the undersigned.

Nothing herein contained shall be deemed to relieve the dealer from the responsibility that the books and records be accurately maintained pursuant to this rule.

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- (z) Any report the division, the securities and exchange commission or any self-regulatory organization has requested pursuant to order or settlement, and any examination report shall be retained in an easily accessible place by the dealer for a period of not less than three years after the date of the report.
- (aa) Any compliance, supervisory, and procedures manual, including any updates, modifications, and revisions to the manual, describing the policies and practices of the dealer with respect to compliance and supervision of the activities of each natural person associated with the dealer shall be retained in an easily accessible place by the dealer until three years after the termination of the use of the manual.
- (bb) All reports produced to review for unusual activity in customer accounts shall be retained by the dealer in an easily accessible place for a period until eighteen months after the date the report was generated. In lieu of maintaining the reports, a dealer may produce promptly the reports upon request by the division. If a report was generated in a computer system that has been changed in the most recent eighteen month period in a manner such that the report cannot be reproduced using historical data in the same format as it was originally generated, the report may be produced by using the historical data in the current system, but must be accompanied by a record explaining each system change which affected the reports. If a report is generated in a computer system that has been changed in the most recent eighteen month period in a manner such that the report cannot be reproduced in any format using the historical data, the dealer shall promptly produce upon request a record of the parameters that were used to generate the report at the time specified by the division, including a record of the frequency with which the reports were generated.
- (cc) Records for the most recent two year period required to be made pursuant to paragraphs (C)(13)(a), (C)(13)(f), (C)(13)(g), (C)(13)(l), (C)(13)(r), (C)(13)(s)(i), (C)(13)(t), (C)(13)(u), (C)(13)(v), (C)(13)(w), and (C)(13)(bb) of this rule and paragraph (C)(2)(c) of this rule which relate to an office shall be maintained at the office to which they relate. If an office is a private residence where only one associated person, or multiple associated persons who reside at that location and are members of the same immediate family,

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regularly conducts business, and it is not held out to the public as an office nor are funds or securities of any customer of the dealer handled there, the dealer need not maintain records at that office, but the records must be maintained at another location within the same state as the dealer may select. Rather than maintain the records at each office, the dealer may choose to produce the records promptly at the request of the division.

(D) Branch offices

- (1) Dealers shall file a paper uniform form BR for each new and existing branch office through the CRD. A form BR is considered filed with the division upon acceptance by the CRD.
- (2) Dealers shall amend applicable paper forms U4 through the CRD to assign any securities salespersons working in existing branch offices, to the offices from which they work, and to record the termination of securities salespersons.
- (3) Dealers shall promptly file with the division updates and amendments to paper forms BR, U4, and U5.

(E) Notice of change of dealer information

Whenever there is any change in the principals, partners, officers or directors of a dealer, or any other material change from the information appearing on the original application or most recent license renewal of a dealer, the dealer shall, within thirty calendar days, notify the division in writing of the change, or changes, and shall keep a record of the change or changes. Dealers shall submit changes to the division on a paper form BD.

(F) Notice required upon discontinuance of a salesperson's employment.

- (1) Upon the resignation or discharge of a salesperson, the dealer employing such salesperson shall, within thirty calendar days, deliver to the division a request to cancel the license of the salesperson. The request shall be made on form U-5, "Uniform Termination Notice for Securities Industry Registration." Dealers shall submit changes to the division on a paper form U-5.

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- (2) Except as hereinafter provided, a request to cancel the license or withdraw the license application of a salesperson 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 request to cancel the license or withdraw the license application of a salesperson, the division has instituted a proceeding to suspend or revoke the license, or deny or refuse the license application of the salesperson, the request to cancel the license or withdraw the license application of a salesperson 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.
- (G) **Withdrawal.** Except as hereinafter provided, a notice to withdraw from licensure as a dealer 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 as a dealer, the division has instituted a proceeding to suspend, revoke, deny or refuse the license of the dealer, 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.
- (H) **Sale of securities on bank premises.**
 - (1) **Applicability.** Paragraphs (H)(1) to (H)(4) of this rule shall apply exclusively to broker-dealer services conducted by dealers on the premises of a bank where retail deposits are taken. Paragraph (H) of this rule does not alter or abrogate a dealer's obligations to comply with other applicable laws, rules, or regulations that may govern the operations of dealers and their salespersons, including but not limited to, supervisory obligations. These rules do not apply to broker-dealer services provided to non-retail customers.
 - (2) For purposes of paragraphs (H)(1) to (H)(4) of this rule, the following terms have the meanings indicated:
 - (a) "Bank" means any bank, trust company, savings and loan association, savings bank, or credit union that is incorporated or organized under the laws of the United States, any state of the United States, Canada, or any province of Canada and that is subject to regulation or supervision by that country, state, or province, that is located in this state, and the service corporations located in this state of such bank, trust company, savings and loan association, savings bank, or credit union.

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- (b) "Networking arrangement" means a contractual or other arrangement between a dealer and a bank pursuant to which the dealer conducts broker-dealer services on the premises of the bank where retail deposits are taken.
 - (c) "Broker-dealer services" means the investment banking or securities business carried on by a broker, dealer or municipal securities dealer, other than a bank or department or division of a bank, or government securities broker or dealer, of underwriting or distributing issues of securities, or of purchasing securities and offering the same for sale as a dealer, or of purchasing and selling securities upon the order and for the account of others.
- (3) Standards for dealer conduct. No dealer shall conduct broker-dealer services on the premises of a bank where retail deposits are taken unless the dealer complies initially and continuously with the following requirements:
- (a) Setting. Wherever practical, broker-dealer services shall be conducted in a physical location distinct from the area in which the bank's retail deposits are taken. In all situations, the dealer shall identify its services in a manner that clearly distinguishes those services from the bank's retail deposit-taking activities. The dealer's name shall be clearly displayed in the area in which the dealer conducts its broker-dealer services.
 - (b) Networking arrangements shall be governed by a written agreement that sets forth the responsibilities of the parties and the compensation arrangements. Networking arrangements must provide that supervisory personnel of the dealer and representatives of state securities authorities, where authorized by state law, will be permitted access to the bank's premises where the dealer conducts broker-dealer services in order to inspect the books and records and other relevant information maintained by the dealer with respect to its broker-dealer services. The dealer shall be responsible for ensuring that the networking arrangement clearly outlines the duties and responsibilities of all parties.
 - (c) Customer disclosure and written acknowledgment.
 - (i) Subject to paragraph (H)(4) of this rule, at or prior to the time that a customer's securities brokerage account is opened by a dealer on the premises of a bank where retail deposits are taken, the dealer shall:

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- (a) Disclose, orally and in writing, that the securities products purchased or sold in a transaction with the dealer:
 - (i) Are not insured by the federal deposit insurance corporation;
 - (ii) Are not deposits or other obligations of the bank and are not guaranteed by the bank; and
 - (iii) Are subject to investment risks, including possible loss of the principal invested.
- (b) Make reasonable efforts to obtain from each customer during the account opening process a written acknowledgment of the disclosures required by paragraph (H)(3)(c)(i)(a) of this rule.
- (ii) If broker-dealer services include any written or oral representations concerning insurance coverage, other than federal deposit insurance corporation insurance coverage, then clear and accurate written or oral explanations of the coverage must also be provided to the customers when such representations are first made.
- (d) Communications with the public.
 - (i) Confirmations, advertisements and recommendations:
 - (a) All of the dealer's confirmations and account statements must indicate clearly that the broker-dealer services are provided by the dealer.
 - (b) Subject to paragraph (H)(4) of this rule, advertisements and sales literature that announce the location of a bank where broker-dealer services are provided by the dealer, or that are distributed by the dealer on the premises of a bank, must disclose that securities products:
 - (i) Are not insured by the federal deposit insurance corporation;

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the division, effective for a period of at least one year, and valid for the upcoming year in the case of the renewal of a dealer's license. The surety bond shall indemnify any person who may be damaged by a failure of the dealer to conduct its business in accordance with Chapter 1707. of the Revised Code or rules promulgated thereunder.

- (b) The dealer, if a subsidiary corporation, has obtained and filed with the division a guarantee of liabilities by the corporation directly or indirectly controlling the voting common stock interest of the dealer, effective for a period of at least one year, and valid for the upcoming year in the case of the renewal of a dealer's license. The guarantee shall indemnify any person who may be damaged by a failure of the dealer to conduct its business in accordance with Chapter 1707. of the Revised Code or rules promulgated thereunder. Any guarantor under this paragraph shall itself meet the net capital requirement set forth in paragraph (K)(1) of this rule.

(K) Determination of net capital for dealer.

- (1) "Net capital," as used in this rule, shall mean the difference between total assets and total indebtedness, as determined by generally accepted accounting principles, consistently applied, and thereafter adjusted pursuant to paragraph (K)(2) of this rule.
- (2) In determining the net capital of a dealer, adjustments to the financial statement of the dealer shall be made in accordance with the following schedule:
 - (a) The following items shall be disallowed as assets of a dealer:
 - (i) Furniture and fixtures;
 - (ii) Vehicles, machinery, and equipment;
 - (iii) Real estate not used in the ordinary course of business, unless the value of the real estate is supported by an appraisal prepared by a competent, disinterested appraiser with professional qualifications acceptable to the division;
 - (iv) Prepaid items or expenses;

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- (v) Unsecured notes or accounts receivable not acquired in the ordinary course of business;
 - (vi) Fixed assets which cannot be readily converted to cash; and
 - (vii) Assets of doubtful or uncertain value.
- (b) The following items shall be reduced or increased as applicable:
- (i) Securities owned shall be adjusted to market values. Securities having no "readily determinable value" as defined by rule 1301:6-3-01 of the Administrative Code shall be valued at zero. Securities for which the dealer is the primary market maker shall be valued at zero unless the dealer provides substantial and reliable evidence satisfactory to the division supporting another valuation;
 - (ii) Stock exchange seats shall be adjusted to market values;
 - (iii) Where the market value of the securities pledged as collateral to secure or partially secure accounts receivable is less than the amount due or shown as secured, they shall be reduced to the market value of the securities;
 - (iv) The net value of secured notes or accounts receivable not acquired in the ordinary course of business shall be reduced to the fair market value of the collateral pledged;
 - (v) The net value of notes or accounts receivable acquired in the ordinary course of business shall be reduced by the lesser of ten per cent of their book value or two hundred thousand dollars;
 - (vi) When an interest in real property is exchanged in whole or in part for an equity interest in a dealer, the value of the interest in real estate, as reflected in the financial statements of the dealer, shall be reduced (but not increased) to the value supported by appraisals made by competent, disinterested appraisers with professional designations and qualifications acceptable to the division; and

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- (vii) Subordinated debt which is subject to a subordination agreement satisfactory to the division may be added to the net worth of a dealer.

- (L) Financial statements and related disclosures to be filed with the division by dealer.
 - (1) Annually, within ninety days of the end of its fiscal year, every dealer shall file financial statements and related disclosures required by generally accepted accounting principles with the division prepared in accordance with the following requirements:
 - (a) The financial statements and related disclosures required by generally accepted accounting principles shall be audited by an independent certified public accountant who is duly registered and in good public standing under the laws of the accountant's place of residence or principal office.
 - (b) The financial statements and related disclosures required by generally accepted accounting principles shall be under the oath or affirmation of the dealer attesting that, to the best knowledge and belief of the person making the oath or affirmation, the financial statement and supporting schedules are true and correct and neither the dealer nor any partner, officer or director of the dealer has any proprietary interest in any account classified as that of a customer.
 - (c) The financial statements and related disclosures shall be prepared in accordance with generally accepted accounting principles, consistently applied, and audited in accordance with generally accepted auditing standards, and shall be accompanied by a certificate of the independent public accountant who audited the statement, which certificate shall:
 - (i) State that the financial statements and related disclosures present fairly, in all material respects, the financial position of the dealer;
 - (ii) State that the audit was made in accordance with the applicable generally accepted auditing standards;
 - (iii) Be dated, manually signed, and identify the items of the report covered by the certificate;

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- (iv) State whether the audit omitted any of the minimum audit requirements or any procedure deemed necessary by the independent public accountant under the circumstances of the audit;
 - (v) State clearly the unqualified opinion of the independent public accountant with respect to the accounting principles and practices reflected in the financial statements and related disclosures covered by the certificate; and
 - (vi) Specifically identify any matters to which the independent public accountant takes exception and the effect of each exception on the related item of the report.
- (2) In lieu of the financial statements and related disclosures required by generally accepted accounting principles required by paragraph (L)(1) of this rule, a dealer may submit to the division a manually signed and duly verified duplicate of the current fiscal year end report required by 17 C.F.R. 240.17a-5, as amended.
- (3) The division may require other or additional reports during any calendar year and may require that the reports be audited by an independent certified public accountant and under the oath and affirmation of the dealer.

1301:6-3-15 Application for securities dealer license; responsibilities of licensed securities dealer.

- (A) License application. The license application specified in section 1707.15 of the Revised Code shall consist of:
- (1) A completed form BD of the securities and exchange commission submitted to the division through the central registration depository, or CRD, maintained by the "Financial Industry Regulatory Authority." Dealers not affiliated with the "Financial Industry Regulatory Authority" must submit a paper form BD to the division;
 - (2) The license fee required by division (B)(1) of section 1707.17 of the Revised Code; and

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- (3) In the event that an application for a securities dealer license has been pending for more than one hundred and eighty days and the applicant has failed to correct outstanding deficiencies, the division may terminate the application through the CRD.
- (B) License exam requirements for securities dealer license. As a continuing condition of licensing, every dealer and every applicant for licensing as a dealer shall furnish evidence satisfactory to the division that a natural person who is a principal, officer, director, general partner, or employee of the dealer has passed an examination listed in this paragraph establishing knowledge of securities laws and practices. Every dealer which is not a natural person shall notify the division of the name and relationship to the dealer of the natural person who has passed an approved examination on behalf of the dealer and who will serve as the designated principal on behalf of the dealer. The division shall consider a dealer or an applicant for licensing as a dealer to have met this requirement, if the dealer, applicant or a designated principal of the dealer or applicant has:
- (1) Been continuously licensed as a dealer of securities by the division since May 1, 1991, or
 - (2) Achieved a passing score on one of the following examinations administered by the Financial Industry Regulatory Authority":
 - (a) Registered options principal, series 4,
 - (b) General securities principal, series 24,
 - (c) Investment company and variable contracts products principal, series 26,
 - (d) Direct participation programs principal, series 39,
 - (e) Municipal securities principal, series 53, or
 - (f) "Uniform Combined State Law Exam," series 66.
- (C) Records of dealer

Every dealer licensed in this state that files any report or document required under rules adopted pursuant to section 15 of the Securities Exchange Act of 1934, 48 Stat. 881, 15 U.S.C. 78o, as amended, and section 17 of the Securities Exchange Act of 1934, 48 Stat. 881, 15 U.S.C. 78q, as amended, shall promptly

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furnish to the division, upon request by the division, legible, true and complete copies of those reports and documents. The division, in its discretion, may examine the books and records of any licensed dealer or any applicant for a dealer's license.

(D) Branch offices

- (1) Dealers shall file a uniform form BR for each new and existing branch office through the CRD. A form BR is considered filed with the division upon acceptance by the CRD.
- (2) Dealers shall amend applicable forms U4 through the CRD to assign any securities salespersons working in existing branch offices, to the offices from which they work, and to record the termination of securities salespersons.
- (3) Dealers shall use the CRD to promptly file with the division updates and amendments to forms BR, U4, and U5.
- (4) Dealers not affiliated with the "Financial Industry Regulatory Authority" shall file paper forms BR, U4 and U5 with the division.

(E) Notice of change of dealer information

Whenever there is any change in the principals, partners, officers or directors of a dealer, or any other material change from the information appearing on the original application or most recent license renewal of a dealer, the dealer shall, within thirty calendar days, notify the division in writing of the change, or changes, and shall keep a record of the change or changes. Dealers affiliated with the "Financial Industry Regulatory Authority" shall submit changes to the division on the form BD through the central registration depository and dealers not affiliated with the "Financial Industry Regulatory Authority" shall submit changes to the division on a paper form BD.

(F) Notice required upon discontinuance of a salesperson's employment.

- (1) Upon the resignation or discharge of a salesperson, the dealer employing such salesperson shall, within thirty calendar days, deliver to the division a request to cancel the license of the salesperson. The request shall be made on form U-5, "Uniform Termination Notice for Securities Industry Registration." Dealers affiliated with the "Financial Industry Regulatory Authority" shall submit the form U-5 to the division through the central registration depository. Dealers not affiliated with the "Financial Industry Regulatory Authority" shall submit changes to the division on a paper form U-5.

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- (2) Except as hereinafter provided, a request to cancel the license or withdraw the license application of a salesperson 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 request to cancel the license or withdraw the license application of a salesperson, the division has instituted a proceeding to suspend or revoke the license, or deny or refuse the license application of the salesperson, the request to cancel the license or withdraw the license application of a salesperson 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.
- (G) **Withdrawal.** Except as hereinafter provided, a notice to withdraw from licensure as a dealer 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 as a dealer, the division has instituted a proceeding to suspend, revoke, deny or refuse the license of the dealer, 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.
- (H) **Sale of securities on bank premises.**
- (1) **Applicability.** Paragraphs (H)(1) to (H)(4) of this rule shall apply exclusively to broker-dealer services conducted by dealers on the premises of a bank where retail deposits are taken. Paragraph (H) of this rule does not alter or abrogate a dealer's obligations to comply with other applicable laws, rules, or regulations that may govern the operations of dealers and their salespersons, including but not limited to, supervisory obligations. These rules do not apply to broker-dealer services provided to non-retail customers.
- (2) **Definitions.** For purposes of paragraphs (H)(1) to (H)(4) of this rule, the following terms have the meanings indicated:
- (a) "Bank" means any bank, trust company, savings and loan association, savings bank, or credit union that is incorporated or organized under the laws of the United States, any state of the United States, Canada, or any province of Canada and that is subject to regulation or supervision by that country, state, or province, that is located in this state, and the service corporations located in this state of such bank, trust company, savings and loan association, savings bank, or credit union.

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- (b) "Networking arrangement" means a contractual or other arrangement between a dealer and a bank pursuant to which the dealer conducts broker-dealer services on the premises of the bank where retail deposits are taken.
 - (c) "Broker-dealer services" means the investment banking or securities business carried on by a broker, dealer or municipal securities dealer, other than a bank or department or division of a bank, or government securities broker or dealer, of underwriting or distributing issues of securities, or of purchasing securities and offering the same for sale as a dealer, or of purchasing and selling securities upon the order and for the account of others.
- (3) Standards for dealer conduct. No dealer shall conduct broker-dealer services on the premises of a bank where retail deposits are taken unless the dealer complies initially and continuously with the following requirements:
- (a) Setting. Wherever practical, broker-dealer services shall be conducted in a physical location distinct from the area in which the bank's retail deposits are taken. In all situations, the dealer shall identify its services in a manner that clearly distinguishes those services from the bank's retail deposit-taking activities. The dealer's name shall be clearly displayed in the area in which the dealer conducts its broker-dealer services.
 - (b) Networking arrangements shall be governed by a written agreement that sets forth the responsibilities of the parties and the compensation arrangements. Networking arrangements must provide that supervisory personnel of the dealer and representatives of state securities authorities, where authorized by state law, will be permitted access to the bank's premises where the dealer conducts broker-dealer services in order to inspect the books and records and other relevant information maintained by the dealer with respect to its broker-dealer services. The dealer shall be responsible for ensuring that the networking arrangement clearly outlines the duties and responsibilities of all parties.
 - (c) Customer disclosure and written acknowledgment.
 - (i) Subject to paragraph (H)(4) of this rule, at or prior to the time that a customer's securities brokerage account is opened by a dealer on the premises of a bank where retail deposits are taken, the dealer shall:

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- (a) Disclose, orally and in writing, that the securities products purchased or sold in a transaction with the dealer:
 - (i) Are not insured by the federal deposit insurance corporation;
 - (ii) Are not deposits or other obligations of the bank and are not guaranteed by the bank; and
 - (iii) Are subject to investment risks, including possible loss of the principal invested.
- (b) Make reasonable efforts to obtain from each customer during the account opening process a written acknowledgment of the disclosures required by paragraph (H)(3)(c)(i)(a) of this rule.
- (ii) If broker-dealer services include any written or oral representations concerning insurance coverage, other than federal deposit insurance corporation insurance coverage, then clear and accurate written or oral explanations of the coverage must also be provided to the customers when such representations are first made.
- (d) Communications with the public.
 - (i) Confirmations, advertisements and recommendations:
 - (a) All of the dealer's confirmations and account statements must indicate clearly that the broker-dealer services are provided by the dealer.
 - (b) Subject to paragraph (H)(4) of this rule, advertisements and sales literature that announce the location of a bank where broker-dealer services are provided by the dealer, or that are distributed by the dealer on the premises of a bank, must disclose that securities products:
 - (i) Are not insured by the federal deposit insurance corporation;

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(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.

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- (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.

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- (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" 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.

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

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- (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.

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- (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 I and II of the form ADV.
 - (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

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- (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:

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- (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 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, financial 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,

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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 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 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

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- (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)(I)(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)(I) 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)(I) 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)(I) 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)(I) 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.

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- (iv) The term "advisory representative" as used in paragraph (E)(1)(I) 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)(I) 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)(I) of this rule.
 - (i) Notwithstanding the provisions of paragraph (E)(1)(I) 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:

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- (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

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- (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 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:

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- (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.

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- (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:

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- (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.
- (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.

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- (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

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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, in accordance with the provisions of this rule, furnish each client and

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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) 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.

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- (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) 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

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

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- (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.

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- (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

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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

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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 and the applicant has failed to correct outstanding deficiencies, the division may terminate the application through the IARD.

1301:6-3-16 Application for salesperson's license; updating.

- (A) The division shall not issue a license to any applicant for licensing as a salesperson who has not first furnished evidence to the division that he or she has:
 - (1) Been licensed as a salesperson by the division within the two years immediately preceding the date of the application; or
 - (2) Achieved a passing score on one or more of the following examinations administered by the "Financial Industry Regulatory Agency":
 - (a) "SECO exam," series 2,

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- (b) Registered options principal, series 4
 - (c) Investment company and variable contracts products representative, series 6,
 - (d) General securities representative, series 7,
 - (e) Direct participation programs representative, series 22,
 - (f) General securities principal, series 24,
 - (g) Investment company and variable contracts products principal, series 26,
 - (h) Direct participation programs principal, series 39,
 - (i) Registered options representative, series 42,
 - (j) Municipal securities representative, series 52,
 - (k) Municipal securities principal, series 53,
 - (l) Corporate securities representative, series 62,
 - (m) "Uniform Securities Agent State Law Exam," series 63, or
 - (n) Uniform combined state law exam, series 66.
- (B) The license application specified in section 1707.16 of the Revised Code shall be submitted to the division by the dealer with whom the applicant salesperson proposes to be employed or affiliated, through the central registration depository or "CRD" maintained on the internet by the "Financial Industry Regulatory Agency." The license application shall consist of the following:
- (1) A completed form U-4, "Uniform Application for Securities Industry Registration or Transfer";
 - (2) The license fee required by division (B)(2) of section 1707.17 of the Revised Code;
 - (3) A fingerprint card and fingerprint record transmittal form submitted to the "CRD" for processing by the "federal bureau of investigation" or "FBI." The division shall be notified by the "FBI" of the fingerprint card processing results through the "CRD."

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- (C) All applicants for licensing as a salesperson and all licensed salespersons are under a continuing obligation to update the information required by form U-4, "Uniform Application for Securities Industry Registration or Transfer," as changes occur. Such updates shall be provided by filing the appropriate page or pages of the form U-4 that bears the updated information.

1301:6-3-16.1 Application for an investment adviser representative's license.

- (A) License application contents and procedure. Pursuant to division (D) of section 1707.161 of the Revised Code, investment adviser representative license application and procedure shall be as follows:
- (1) The license application specified in division (D) of section 1707.161 of the Revised Code shall consist of:
 - (a) A properly completed form U-4, "Uniform Application for Securities Industry Registration or Transfer" for each investment adviser for whom the applicant seeks to act as an investment adviser representative;
 - (b) The license fee required by division (B)(5) of section 1707.17 of the Revised Code;
 - (c) A properly completed standard impression sheet prescribed by the superintendent of the bureau of criminal identification and investigation on which fingerprint impressions by the natural person applying to be licensed as an investment adviser representative 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 national association of securities dealers, inc. 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.

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- (iii) A completed standard impression sheet required by paragraph (A)(1)(c) of this rule shall be delivered to the division by regular United States mail, overnight courier, or hand delivery.
 - (2) An application for licensure of an investment adviser representative shall be submitted to the division by the investment adviser with whom the applicant investment adviser representative proposes to be employed or affiliated, through the central registration depository or "CRD", maintained on the Internet by the "National Association of Securities Dealers, Inc."
 - (3) A form U-4 is considered filed with the division upon acceptance by the "CRD".
- (B) Examination or designation requirement. As a condition of licensing, every investment adviser representative licensed by the division and every applicant for licensing as an investment adviser representative shall furnish evidence to the division that he or she has satisfied one of the criteria listed in paragraphs (B)(1) to (B)(2) of this rule. The division shall consider an investment adviser representative or an applicant for licensing as an investment adviser representative to have met this requirement if the investment adviser representative or applicant has:
 - (1) Achieved a passing score on one of the following examinations administered by the national association of securities dealers, inc.:
 - (a) Investment company and variable contracts representative, series 6;
 - (b) General securities representative, series 7;
 - (c) Direct participation programs representative, series 22;
 - (d) General securities principal, series 24;
 - (e) Investment company and variable contracts principal, series 26;
 - (f) Direct participation programs principal, series 39;
 - (g) Corporate securities representative, series 62;
 - (h) Uniform securities agent state law examination, series 63;

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- (i) Uniform investment adviser law examination, series 65;
 - (j) Uniform combined state law examination, series 66; 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.
- (C) Updating. Updates to the form U-4 shall be promptly filed with the division through the "CRD".
- (D) For purposes of this rule:
 - (1) Upon the discontinuation of the employment or affiliation of a licensed investment adviser representative, the investment adviser with which the investment adviser representative was employed or affiliated, shall, within thirty calendar days of the discontinuation, submit to the division through the "CRD" a request to cancel the license of the investment adviser representative. The request shall be made on form U-5, "Uniform Termination Notice For Securities Industry Registration." The request to cancel the license shall become effective as described in paragraph (J)(2) of rule 1301:6-3-15.1 of the Administrative Code.
 - (2) Every request to cancel the license of an investment adviser representative 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.
- (E) In the event the investment adviser representative acts as an investment adviser representative for two nonaffiliated investment advisers, the investment adviser representative will retain in his or her records, evidence that the investment adviser representative has notified both investment advisers of the dual affiliation.

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- (F) Renewal of an investment adviser representative license for the following year shall be accomplished through the renewals program of the "CRD".

1301:6-3-16.3 Application for a state retirement system investment officer's license.

- (A) License application contents and procedure. Pursuant to division (A) of section 1707.163 of the Revised Code, state retirement system investment officer license application and procedure shall be as follows:
 - (1) The license application shall consist of:
 - (a) A properly completed form "SRSIO;"
 - (b) The license fee required by division (B)(6) of section 1707.17 of the Revised Code;
 - (c) A properly completed standard impression sheet prescribed by the superintendent of the bureau of criminal identification and investigation on which fingerprint impressions by the natural person applying to be licensed as a state retirement system investment officer shall be made in accordance with the fingerprint system of identification.
 - (i) The division may require the applicant to reimburse the division for the actual expenses incurred by the division in processing the impression sheets.
 - (ii) A completed standard impression sheet required by paragraph (A)(1)(c) of this rule shall be delivered to the division by regular United States mail, overnight courier, or hand delivery.
 - (2) An application for licensure of a state retirement system investment officer shall be submitted to the division by the state retirement system with whom the applicant proposes to be employed.
 - (3) A form "SRSIO" is considered filed with the division upon receipt.
- (B) Education and experience or designation requirement for applicants employed by a state retirement system on September 15, 2004. As a condition of

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licensing, every state retirement system investment officer applicant employed by a state retirement system on September 15, 2004, shall furnish evidence to the division that he or she has satisfied one of the criteria listed in paragraphs (B)(1) to (B)(2) of this rule. The division shall consider a state retirement system investment officer applicant for licensing to have met this requirement if the state retirement system investment officer applicant was employed on or before September 14, 2004 and:

- (1) Satisfied one of the following education and experience background requirements:
 - (a) A bachelor's degree from an accredited college or university and five years of relevant investment experience;
 - (b) A master's degree from an accredited college or university;
 - (c) A doctorate degree from an accredited college or university; 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 designation;
 - (c) Chartered financial consultant;
 - (d) Chartered investment counselor; or
 - (e) Certified public accountant with a personal financial specialist designation.
- (C) Examination or designation requirement for applicants employed by a state retirement system after September 15, 2004 for licensing as a state retirement system investment officer. As a condition of licensing, every applicant for licensing as a state retirement system investment officer shall furnish evidence to the division that he or she has satisfied one of the criteria listed in paragraphs (C)(1) to (C)(2) of this rule. The division shall consider an applicant for licensing as a state retirement system investment officer to have met this requirement if the applicant has:
- (1) Achieved a passing score on one of the following examinations:

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- (a) Uniform securities agent state law examination, series 63 administered by the "Financial Industry Regulatory Authority";
 - (b) Uniform investment adviser law examination, series 65 administered by the "Financial Industry Regulatory Authority";
 - (c) Uniform combined state law examination, series 66 administered by the "Financial Industry Regulatory Authority"; or
 - (d) Level one examination offered by the "CFA Institute."
- (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) Updating. Updates to the form "SRSIO" shall be promptly filed with the division.
- (E) Termination:
- (1) Upon the discontinuation of the employment of a state retirement system investment officer, the state retirement system with which the state retirement system investment officer was employed shall, within thirty calendar days of the discontinuation, submit to the division a written request to cancel the license of the state retirement system investment officer. The request to cancel the license shall state if the termination of the state retirement system officer was for cause and the basis of the for cause termination.
 - (2) A request to cancel the license or withdraw the license application of a state retirement system investment officer of a state retirement system shall become effective on the sixtieth day after the filing thereof with the

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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 a state retirement system investment officer, the division has instituted a proceeding to suspend or revoke the license, or deny or refuse the license application of the state retirement system investment officer, the request to cancel the license or withdraw the license application of a state retirement system investment officer 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 state retirement systems and the beneficiaries.

- (F) Renewals. An annual renewal application shall include:
- (1) The license fee required by division (B)(6) of section 1707.17 of the Revised Code;
 - (2) Renewal notice;
 - (a) A renewal form verifying that the information on the applicant's previously submitted form "SRSIO" is current; or
 - (b) An updated form "SRSIO" with current information.

1301:6-3-16.5 Application for a bureau of workers' compensation chief investment officer license.

- (A) License application contents and procedure. Pursuant to division (A) of section 1707.16.5 of the Revised Code, the bureau of workers' compensation chief investment officer license application and procedure shall be as follows:
- (1) The license application shall consist of:
 - (a) A properly completed form "BWCCIO;"
 - (b) The license fee required by division (B)(7) of section 1707.17 of the Revised Code;
 - (c) A properly completed standard impression sheet prescribed by the superintendent of the bureau of criminal identification and investigation on which fingerprint impressions by the natural person

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applying to be licensed as a bureau of workers' compensation chief investment officer shall be made in accordance with the fingerprint system of identification.

- (i) The division may require the applicant to reimburse the division for the actual expenses incurred by the division in processing the impression sheets.
 - (ii) A completed standard impression sheet required by paragraph (A)(1)(c) of this rule shall be delivered to the division by regular United States mail, overnight courier, or hand delivery.
- (2) An application for licensure of the bureau of workers' compensation chief investment officer shall be submitted to the division by the bureau of workers' compensation.
- (3) A form "BWCCIO" is considered filed with the division upon receipt.
- (B) An applicant for licensure of the bureau of workers' compensation chief investment officer shall include documentation that the applicant has been designated as a chartered financial analyst by the CFA Institute and remains in good standing as required by division (A) of section 4123.441 of the Revised Code.
- (C) Updating. Updates to the form "BWCCIO" shall be promptly filed with the Division.
- (D) Termination:
 - (1) Upon the discontinuation of the employment of the bureau of workers' compensation chief investment officer, the bureau of workers' compensation shall, within thirty calendar days of the discontinuation, submit to the division a written request to cancel the license of the bureau of workers' compensation chief investment officer. The request to cancel the license shall state if the termination of the bureau of workers' compensation chief investment officer was for cause and the basis of the for cause termination.
 - (2) A request to cancel the license or withdraw the license application of the bureau of workers' compensation chief investment officer of the bureau of workers' compensation shall become effective on the sixtieth day after the

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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 the bureau of workers' compensation chief investment officer, the division has instituted a proceeding to suspend, revoke, deny or refuse the license of the bureau of workers' compensation chief investment officer, the request to cancel the license or withdraw the license application of the bureau of workers' compensation chief investment officer 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 bureau of workers' compensation.

(E) Renewals. An annual renewal application shall include:

- (1) The license fee required by division (B)(6) of section 1707.17 of the Revised Code; and
- (2) Renewal Notice:
 - (a) A renewal form verifying that the information on the applicant's previously submitted form "BWCCIO" is current; or
 - (b) An updated form "BWCCIO" with current information.

1301:6-3-19 Deceptive practices and good business repute.

(A) No dealer or salesperson shall:

- (1) Engage in any pattern of unreasonable or unjustified delay in the delivery of securities sold;
- (2) Induce trading in a customer's account which is excessive in size or frequency in view of the financial resources of the customer or character of the account;
- (3) Execute a transaction on behalf of a customer without authority to do so;
- (4) Exercise any discretionary authority in selling, pledging, hypothecating or purchasing securities for a customer without first obtaining a manually signed, written authorization from the customer, unless the discretionary authority relates solely to the time or price for execution of orders;

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- (5) Sell, purchase, or recommend the sale or purchase of any security without reasonable grounds to believe that the transaction or recommendation is suitable for the customer, based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known to dealer or salesperson;
- (6) Sell, purchase, effect any transaction in or induce the purchase or sale of any security by means of any device, practice, plan, program, design or contrivance declared to be manipulative, deceptive or fraudulent and recognized as such in courts of law or equity, or by any administrative tribunal, state or federal, on or after July 22, 1929, or by the rules, by-laws, code of ethics or other published standard of any self-regulatory association of securities dealers or salesperson of which the dealer or salesperson was a member at the time of the transaction;
- (7) Share any commission, discount, or other remuneration from the purchase or sale of a security with any person not licensed as a dealer or salesperson in Ohio or in the jurisdiction where the purchase or sale of the security took place:
 - (a) Notwithstanding the provisions of paragraph (A)(7) of this rule, a dealer or salesperson:
 - (i) May share a commission, discount, or other remuneration from the purchase or sale of a security with:
 - (a) A bank, as that term is defined in division (O) of section 1707.01 of the Revised Code;
 - (b) A bank holding company approved by the board of governors of the federal reserve bank pursuant to the Bank Holding Company Act of 1956, 12 U.S.C. 1841, as amended; or
 - (c) A financial holding company approved by the board of governors of the federal reserve bank pursuant to the Bank Holding Company Act of 1956, 12 U.S.C. 1841, as amended;
 - (ii) May provide to an employee of a bank compensation for the referral of a customer if the compensation is a nominal one-time cash fee of a fixed dollar amount and the payment of the fee is not contingent on whether the referral results in a purchase or sale of a security.

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- (8) Enter into any transaction with or for a customer at a price not reasonably related to the current market price of the security involved in the transaction;
- (9) Fail to disclose, in writing, to a customer prior to the sale of a security that the dealer or salesperson controls, is controlled by, is under common control with, or is affiliated with the issuer of that security;
- (10) Borrow any money or securities from a customer other than for obligations of dealers arising out of customary option transactions, activity in margin accounts, the maintenance of customer free credit balances, delivery failures in the ordinary course of business, loans from banks and other insured financial institutions, and deposits made pursuant to written subordination agreements or pursuant to securities loan agreements made to cover short positions;
- (11) Sell or otherwise dispose of any security upon representations contrary to the statements contained in the application for registration or for qualification by exemption or in a manner contrary to the terms of any order of the division relating to the securities;
- (12) Execute any transaction in a margin account without first securing from the customer a manually signed, written margin agreement;
- (13) Share directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the dealer which the salesperson represents;
- (14) Receive any commission, discount or other remuneration in excess of that provided for in Chapter 1707. of the Revised Code;
- (15) Fail to furnish to a customer purchasing securities in an offering either a final prospectus or a preliminary prospectus and additional documents which would include all information required for a final prospectus, no later than the date of confirmation of the transaction;
- (16) Represent to a customer that the dealer or salesperson will guarantee any person against losses in any securities transaction;
- (17) For securities not listed on a recognized securities exchange or quoted on an automated quotation system, fail to make reasonably available upon request to any person financial statements and related disclosures of the

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issuer, a profit and loss statement of the issuer, the names of the issuer's proprietor, partners or officers, the nature of the business of the issuer and any other information available to the dealer reasonably necessary for evaluating the desirability or lack of desirability of investing in the securities of an issuer, which information shall not be dated not more than fifteen months prior to the date of delivery by the dealer or salesperson;

- (18) Establish or maintain an account containing fictitious information in order to execute transactions which would otherwise be prohibited; or
 - (19) Effect any securities transaction not recorded on the regular books or records of the dealer which the salesperson represents, unless the transaction is authorized in writing by the dealer prior to execution of the transaction.
- (B) No dealer shall:
- (1) Fail to institute reasonable procedures and to adopt reasonable precautions designed to avoid the sale or other disposition of any security by a salesperson employed by the dealer upon representations contrary to the statements contained in the registration by description or application for registration by qualification or in a manner contrary to the terms of any order of the division relating to the securities;
 - (2) Fail to segregate customer's free securities or securities held for safekeeping;
 - (3) Hypothecate a customer's securities without having a lien thereon unless the dealer first secures from the customer a manually signed, written consent, except as permitted by the rules of the securities and exchange commission;
 - (4) Charge unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities or other services related to its securities business;
 - (5) Offer to buy from or sell to any person any security at a stated price unless the dealer is prepared to purchase or sell at the price and under the conditions stated at the time of the offer to buy or sell;

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- (6) When participating or otherwise financially interested in the primary or secondary distribution of any security which is not admitted to trading on a national securities exchange, represent that a security is being offered to a customer "at market" or at a price reasonably related to the market price unless the dealer knows or has reasonable grounds to believe that a market for the security exists other than that made, created or controlled by the dealer, or by any person for whom he is acting or with whom he is associated in the distribution, or any person controlled by, controlling or under common control with the dealer;
 - (7) Require any person to purchase any security as a condition of employment;
 - (8) Fail to make a bona fide public offering of all of the securities allotted to the dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member;
 - (9) Fail to reasonably supervise a salesperson or other persons associated with the dealer or to establish reasonable procedures designed to avoid violations of Chapter 1707. of the Revised Code or of Chapter 1301:6-3 of the Administrative Code by salespersons or other persons associated with the dealer; or
 - (10) Require any securities customer, by agreement or otherwise, to litigate, arbitrate, or mediate any matter arising out of a sale of securities in this state at a location outside Ohio unless the dealer has clearly disclosed the existence of any requirement to litigate, arbitrate, or mediate outside Ohio prior to the sale of securities giving rise to the dispute to be litigated, arbitrated, or mediated.
- (C) For the protection of investors, the conduct described in paragraphs (A)(1) to (A)(19) and (B)(1) to (B)(10) of this rule shall be defined as deceptive practices or devices in the purchase or sale of securities, as that term is employed in section 1707.19 of the Revised Code.
- (D) In determining "good business repute," as that term is used in sections 1707.15, 1707.151, 1707.16, 1707.161, 1707.163, 1707.165, and 1707.19 of the Revised Code, and paragraph (M)(2) of rule 1301:6-3-15 of the Administrative Code, the division shall consider whether the applicant, investment adviser, investment adviser representative, dealer, salesperson, state retirement system investment officer, or bureau of workers' compensation chief investment officer:

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- (1) Has engaged in any act or practice declared to be a fraud, fraudulent act, fraudulent practice or fraudulent transaction and recognized as such in courts of law or equity or by any administrative tribunal, state or federal, on or after July 22, 1929, or by the code of ethics of any association of investment advisers, investment adviser representatives, securities salespersons or dealers of which the applicant, investment adviser, investment adviser representative, dealer or salesperson was a member at the time of commission of the prohibited act or practice;
- (2) Has been the subject of any cease and desist order, permanent or temporary injunction, bar, or consent order against the applicant, investment adviser, investment adviser representative, dealer, salesperson, state retirement system officer, bureau of workers' compensation chief investment officer or any dealer, investment adviser or state retirement system with whom the applicant, investment adviser representative, or salesperson was associated in any capacity at the time the order, injunction, or bar was issued;
- (3) Has been found guilty of any felony, or of any misdemeanor involving theft, deception, or moral turpitude;
- (4) Has been found liable for conduct constituting incompetence, misconduct or gross negligence in the sale of securities, in the rendering of investment advice, in any financial services industry, or in acting as a state retirement system investment officer or acting as a bureau of workers' compensation chief investment officer;
- (5) Exercised management or policy control or has owned ten per cent or more of the voting securities of a firm which has failed in business, made a compromise with creditors, filed a bankruptcy petition, or been declared bankrupt;
- (6) Has been refused or denied membership, registration or licensing by any state or federal agency, by any association of investment advisers, investment adviser representatives, securities salespersons or dealers, by any professional association granted disciplinary or regulatory authority by state or federal law, or by any recognized securities exchange;
- (7) Has been the subject of any suspension, expulsion, bar, revocation, fine, censure or any other disciplinary action by any state or federal agency, by any association of investment advisers, investment adviser

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- representatives, securities salesperson or dealers, by any professional association granted disciplinary or regulatory authority by state or federal law, or by any recognized securities exchange;
- (8) Has violated any provision of paragraph (A) or (B) of this rule, any provision of Chapter 1707. of the Revised Code or any rule promulgated thereunder;
 - (9) Has engaged in any conduct which would reflect on the reputation for honesty, integrity, and competence in business and personal dealings of the applicant, investment adviser, investment adviser representative, dealer, salesperson or state retirement system investment officer or bureau of workers' compensation chief investment officer including, but not limited to, forgery, embezzlement, nondisclosure, incomplete disclosure, misstatement of material facts, and manipulative or deceptive practices;
 - (10) Has failed to fully satisfy any judgment or award issued by a court of competent jurisdiction, administrative law judge, arbitrator, or mediator in any criminal, civil, administrative, arbitration or mediation proceeding or pursuant to an agreement to settle any such proceeding;
 - (11) Has been the subject of any complaint, arbitration or civil litigation that alleges a violation of state or federal law, or the rules or code of ethics of any association of investment advisers, investment adviser representatives, securities salespersons or dealers, any professional association granted disciplinary or regulatory authority by state or federal law, or by any recognized securities exchange, excluding any complaint that has been denied or any arbitration or civil litigation that resulted in a judgment or an award against the party bringing the action; or
 - (12) Has established a reputation for honesty, integrity, and competence in business and personal dealings.
- (E) The rules set out in rule 1301:6-3-44 of the Administrative Code regarding the acts and practices of investment advisers and investment adviser representatives are prescribed for the protection of investors, clients and potential clients.

1301:6-3-23 Enforcement powers.

- (A) Hearings conducted by the division pursuant solely to section 1707.23 of the Revised Code shall be investigative in nature with attendance restricted by the division to those persons whose presence is necessary for the efficient conduct of the hearing, and shall be conducted by an attorney designated by the division who is admitted to the practice of law in Ohio.
- (B) The division may, in its sole discretion, prepare a transcript of any investigative hearing at its expense. A copy of any transcript prepared at the expense of the division shall be furnished to the witness at the expense of the witness upon written request. No photographic recording or transceiving devices except those acceptable to the division shall be permitted at investigative hearings.
- (C) Every witness in an investigative hearing shall be afforded an opportunity to make a statement. The witness shall be advised of the right to secure legal counsel and to have counsel present during questioning.
- (D) The rules of evidence applicable in judicial proceedings shall apply to investigative hearings by the division so far as practicable, taking into consideration the investigative and administrative character of such hearings and the powers of investigation of the division.
- (E) No rule or adjudication of the division shall result from an investigative hearing unless an opportunity for a hearing is afforded in accordance with sections 119.01 to 119.13 of the Revised Code.
- (F) For the purposes of division (C) of section 1707.23 of the Revised Code, "party" or "parties" to an investigative hearing are those persons required by the division to testify at the hearing.

1301:6-3-39.1 Retroactive exemption, qualification or registration.

- (A) An application may be made pursuant to section 1707.391 of the Revised Code to exempt, qualify or register securities when the only deficiency is a failure to timely file or a failure to properly file with the division the appropriate form due to excusable neglect and the issuer is not otherwise in violation of section 1707.13 of the Revised Code.
 - (1) For the purposes of this rule, "failure to timely file" means the failure to file an application to exempt, qualify or register securities within the time required by the applicable section of the Ohio Securities Act or the rules adopted thereunder.

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- (2) For the purposes of this rule, "failure to properly file" means the filing of an application to exempt, qualify or register securities which was not proper because the application was incomplete, because there was a clerical error made in completing the application, because an error was made regarding the facts underlying the application, or because the application was made on the wrong form.
 - (3) For the purposes of this rule, "date of sale," shall be the earlier of the date that a subscription agreement or its equivalent is signed by the purchaser or the date that the purchaser transfers or loses control of the purchase funds, or the date of disbursement of funds subject to an escrow agreement specifically approved by the division or established in accordance with the administrative rules of the division.
- (B) For the purposes of section 1707.391 of the Revised Code, "excusable neglect" shall include, but not be limited to:
- (1) The failure to file a form 3-Q with the division within six months of the earliest date of sale of securities for which exemption in reliance on division (Q) of section 1707.03 of the Revised Code is sought;
 - (2) The failure to file a form 3-W with the division within six months of the earliest date of sale of securities for which exemption in reliance on division (W) of section 1707.03 of the Revised Code is sought;
 - (3) The failure to file a form 3-Y with the division within six months of the earliest date of sale of securities for which exemption in reliance on division (Y) of section 1707.03 of the Revised Code is sought;
 - (4) The failure to file a form 6 with the division within one month of the earliest date of sale of securities for which registration by description in reliance on section 1707.08 of the Revised Code is sought.
- (C) For the purposes of section 1707.391 of the Revised Code, "excusable neglect" shall not include: any failure to timely or properly file an application to exempt, qualify, or register securities by an issuer who has itself, or together with its affiliates, filed more than two applications for retroactive exemption, qualification, or registration within twelve months of the date of the filing of the form 391 under consideration unless the issuer establishes in writing to the division that there is good cause to include the failure to timely or properly file within excusable neglect.

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- (D) An application to exempt, qualify or register securities pursuant to section 1707.391 of the Revised Code shall include:
- (1) A form 391 cover page attached to the properly completed appropriate form (e.g., form 3(O), form U-1, etc.) which should have been timely or properly filed;
 - (2) All exhibits required by the form 391 and the appropriate form which should have been filed;
 - (3) A sworn statement from the issuer or its legal counsel in a form acceptable to the division stating that no purchaser or offeree of the securities was prejudiced by the failure to timely or properly file; and
 - (4) A sworn statement from the issuer or its legal counsel stating:
 - (a) The reason for the failure to timely or properly file;
 - (b) The number of times the issuer or an affiliate has filed a form 391 during the preceding twelve months.
- (E) The notice to an applicant of the denial of an application based on a finding of lack of excusable neglect required by section 1707.391 of the Revised Code may be delivered by the division by any reasonable means, including but not limited to telephone, telegram, transmission by any form of public or private mail, oral communication, in person, or other electronic means. Any telephone or other oral communication of the denial of an application shall be promptly confirmed by the division in writing. The notice shall include a brief statement of the reason or reasons for the division's determination of a lack of excusable neglect.
- (F) An issuer that has not timely or properly made a notice filing with the division under division (X) of section 1707.03 of the Revised Code shall promptly file with the division:
- (1) A form D;
 - (2) A consent to service, if required under section 1707.11 of the Revised Code, on either form 11 or form U-2; and
 - (3) The fee required under division (X) of section 1707.03 of the Revised Code and the fee under section 1707.391 of the Revised Code.

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- (G) An investment company which has not timely or properly submitted a notice filing under section 1707.092 of the Revised Code or that has sold securities in excess of the amount designated on an effective notice filing shall promptly submit to the division:
- (1) A notice filing consisting of either:
 - (a) A copy of the issuer's federal registration statement as filed with the securities and exchange commission; or
 - (b) A form U-1 or form NF, and a copy of the issuer's prospectus and statement of additional information.
 - (2) A consent to service of process, if required under section 1707.11 of the Revised Code, on either form 11 or form U-2, unless previously submitted; and
 - (3) The fees required under either division (A)(1)(b) or (A)(2)(b) of section 1707.092 of the Revised Code, unless previously submitted, and the required fees under section 1707.391 of the Revised Code.

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

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- (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

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- (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, 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.

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- (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

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- (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.

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- (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

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- (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;

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- (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;

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- (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;
- (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

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- (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.

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- (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.

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- (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.

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- (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;

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- (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.

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- (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.
- (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

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(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.

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(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

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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.

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- (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

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- (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.

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- (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 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.

1301:6-3-48 **Records retention.**

- (A) The division shall draft schedules for the retention of consents to service of process filed with the division as part of a registration by description, a registration by qualification, a registration by coordination, a filing to claim an exemption, or a notice filing, the scheduled retention period of which shall be no less than eight years.

- (B) The division shall draft schedules for the retention of the originals or copies of documents filed with the division as license applications for investment advisers, investment adviser representatives, dealers, and salespersons, and the originals or copies of documents filed with the division as notice filings submitted by federally registered investment advisers, the scheduled retention period of which shall be no less than five years.

- (C) The division shall draft schedules for the retention of all documents, testimony transcripts, investigative reports, and investigative notes that the division has compiled in original or copy form, the scheduled retention period of which shall be no less than five years from the date the enforcement file containing this documentation is deemed closed by the division.