

Chapter SEC 5

LICENSING OF INVESTMENT ADVISERS

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SEC 5.01 Licensing procedure. (1) Applications for initial and renewal licenses and qualifications of investment advisers and their representatives shall be filed on forms prescribed by the commissioner in s. SEC 9.01 (1), Wis. Adm. Code, and shall include all information required by the forms and any other information the commissioner may require.

(2) A licensing "application" for purposes of s. 551.32(1) (b), Stats., means an application that includes all information required by the commissioner.

(3) Each applicant for an initial license as an investment adviser or for qualification as an investment adviser representative is required to pass a written examination prescribed by the commissioner, unless the requirement is waived under sub. (4). The examination shall relate to ch. 551, Stats., the rules of the commissioner thereunder, the applicable federal securities laws and the rules of the U.S. securities and exchange commission thereunder, general matters concerning the securities business, and such other matters as the commissioner may determine. The commissioner may prescribe different examinations for different classes of applicants.

(4) The commissioner may waive, in whole or in part, the examination requirement for:

(a) Any applicant insofar as the examination relates to general matters concerning the securities business, upon receipt of evidence of satisfactory completion of a comparable examination;

(b) Any applicant for qualification as an investment adviser representative, if an undertaking satisfactory to the commissioner is submitted setting forth how the agent will be adequately supervised, and the qualification of the representative is appropriately limited;

(c) Any applicant who, within 2 years prior to the date the application is filed, has been licensed or qualified under ch. 551, Stats.; or

(d) Any person by order of the commissioner under such conditions as the commissioner may prescribe.

(5) Prior to issuance of a license as an investment adviser, at least one employe of the investment adviser must be designated in the license application to act in a supervisory capacity and be qualified as an investment adviser representative for the investment adviser, and must pass a written supervisory examination prescribed by the commissioner unless the examination is waived under sub. (4).

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(6) Any application for license which is not completed or withdrawn within 6 months from the date it is initially received may be deemed materially incomplete under s. 551.34(1)(a), Stats., and the commissioner may issue an order denying effectiveness to the application.

(7) Every investment adviser whose principal office is located in this state shall have at least one person qualified as an investment adviser representative employed on a full-time basis at its principal office.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (1), Register, December, 1979, No. 288, eff. 1-1-80; am. (1) and (6), renum. (4) (b) and (c) to be (4) (c) and (d), cr. (4) (b), r. and recr. (5), Register, December, 1980, No. 300, eff. 1-1-81.

SEC 5.02 Net capital requirement. (1) Every investment adviser shall maintain net capital of not less than \$5,000, which shall be in the form of cash or securities or other liquid assets as determined by the commissioner.

(2) If an investment adviser is an individual, the person shall segregate from personal capital an amount sufficient to satisfy the net capital requirement, and the amount so segregated shall be utilized solely for the business for which the investment adviser is licensed.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78.

SEC 5.03 Investment advisers' records. (1) Every licensed investment adviser shall maintain and keep current the following books and records relating to its business:

(a) All partnership agreements, or all articles of incorporation, by-laws, minute books and stock certificate books of the investment adviser.

(b) A general ledger (or other records in the case of a sole proprietor) reflecting all asset, liability, income, expense, and capital accounts.

(c) A record showing all payments received, including date of receipt, purpose, and from whom received; and all disbursements, including date paid, purpose, and to whom made.

(d) A record showing all receivables and payables.

(e) All trial balances, financial statements, and internal audit working papers which may be prepared relating to the business of the investment adviser.

(f) 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 customer concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any 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 customer and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank, broker or dealer by or through whom executed. Orders entered pursuant to the exercise of discretionary power shall be so designated.

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(g) Copies of all written communications, correspondence, confirmations, appraisals and other records relating to investment activities of customers.

(h) Copies of all complaints of customers relating to investment activities for customers. In this paragraph, "complaint" means any written or oral statement of a customer or any person acting on behalf of a customer alleging a grievance involving the activities of persons under the control of the investment adviser in connection with providing investment advice or placing orders on behalf of customers.

(i) 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 customer.

(j) A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any customer to the investment adviser or to a third party.

(k) A copy of all written agreements entered into by the investment adviser with any customer, or with any other person if the agreement relates to the business of the investment adviser.

(1) A file containing any advertisement (as defined within the meaning of SEC 206 (4) -1 of the investment advisers act of 1940) used in connection with the offering of the investment advisory services in this state.

(2) Each licensed investment adviser who renders investment supervisory or management service to any customer 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, maintain and keep current:

(a) Records for each customer showing the securities purchased or sold on advice of the adviser, and the date, amount, and price of each purchase and sale.

(b) Records identifying the customer and the current amount or interest owned by each customer for each security in which any customer has a current position.

(3) Every licensed investment adviser shall preserve for a period of not less than 6 years, the first 2 years in an easily accessible place, all records required under sub. (1) except that records respecting an account required under subs. (1) (i), (j) and (k) shall be preserved by the investment adviser for a period of not less than 6 years after the closing of the account and records required under sub. (1) (a) shall be preserved by the investment adviser for a period of not less than 6 years after withdrawal or expiration of its license in this state. After a record or other document has been preserved for 2 years as required in this subsection, a microfilm copy may be substituted for the remainder of the required period.

(4) The commissioner may by order exempt any investment adviser from all or part of the requirements of this section, either unconditionally or upon specified conditions, if by reason of the special nature of its

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business, the commissioner finds that issuance of the order is necessary or appropriate in the public interest or for the protection of investors.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; r. and recr. (1), renum. (2) and (3) to be (3) and (4) and am., cr. (2), Register, December, 1980, No. 300, eff. 1-1-81.

SEC 5.04 Reporting requirements. (1) Each investment adviser shall file annually with the commissioner, within 60 days after the end of its fiscal year, a copy of its annual financial statements, including supporting schedules.

(2) Each investment adviser shall file with the commissioner a copy of any complaint related to its business, transactions, or operations in this state, naming the investment adviser or any of its partners, officers or investment adviser representatives as defendants in any civil or criminal proceeding, or in any administrative or disciplinary proceeding by any public or private regulatory agency, within 20 days of the date the complaint is served on the investment adviser; a copy of any answer or reply to the complaint filed by the investment adviser within 10 days of the date the answer or reply is filed; and a copy of any decision, order or sanction made with respect to any such proceeding within 20 days of the date the decision, order or sanction is rendered.

(3) Each investment adviser shall file with the commissioner a notice of transfer of control or change of name not less than 30 days prior to the date on which the transfer of control or change of name is to become effective, or such shorter period as the commissioner may permit.

(4) Except as provided in subs. (2) and (3), all material changes in the information included in an investment adviser's most recent application for license shall be set forth in an amendment to form IA filed with the commissioner within 30 days after the change occurs.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (2) to (4), Register, December, 1980, No. 300, eff. 1-1-81.

SEC 5.05 Rules of conduct. (1) Each investment adviser shall establish written supervisory procedures and a system for applying the procedures, which may reasonably be expected to prevent and detect any violations of ch. 551, Stats., and rules and orders thereunder. The procedures shall include the designation and qualification of a number of supervisory employees reasonable in relation to the number of its qualified investment adviser representatives, offices and activities in this state.

(2) An investment adviser shall not enter, extend, or renew any investment advisory contract if the 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 the contract may be made without the consent of the customer; or

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

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(d) Fails to disclose, in substance, the term of the advisory agreement, the fee to be charged by the adviser, the formula for computing the advisory fee, the formula for computing the amount of prepaid fee to be returned in the event of contract termination or non-performance, and whether the contract grants discretionary power to the adviser.

(3) Subsection (2) (a) shall not 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. "Assignment," as used in sub. (2) (b) 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 is considered 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 advisor of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business. As used in sub. (2), "investment advisory contract" means any contract or agreement whereby a person agrees to act as investment adviser or to manage any investment or trading account for a person other than persons specified under s. 551.23 (8), Stats.

(4) An investment adviser shall not enter any contract with a customer if the contract contains any condition, stipulation or provision binding the customer to waive any rights under ch. 551, Stats., or any rule or order thereunder. Any such condition, stipulation or provision is void.

(5) No licensed investment adviser may enter into, extend or renew any investment advisory contract with a customer in this state unless the contract is in writing and a copy of the contract is given to the customer within 15 days after the execution of the contract.

(6) Each investment adviser who renders account supervisory or management services shall provide at least annually to each Wisconsin customer a written summary of the customer's account which includes information setting forth the name, quantity and market value of each security under management, and the total value of cash and securities under management.

(7) Every licensed investment adviser must employ at least one person designated to act in a supervisory capacity who is qualified as an investment adviser representative in this state and has satisfied the supervisory examination requirement in s. SEC 5.01 (5), Wis. Adm. Code; provided that if a licensed investment adviser is not in compliance with the requirements of this paragraph, it has 90 days from the first date of noncompliance to meet the requirements of this paragraph.

History: Cr. December, 1977, No. 264, eff. 1-1-78; am. (1), r. (5) and (6), cr. (2) (d), (5) to (7), Register, December, 1980, No. 300, eff. 1-1-81.

SEC 5.06 Prohibited business practices. The following are deemed "dishonest or unethical business practices" or "taking unfair advantage of a customer" by an investment adviser under s. 551.34 (1) (g), Stats., without limiting those terms to the practices specified in this section:

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

(2) Placing an order to purchase or sell a security for the account of a customer upon instructions of a third party without first having obtained written third party trading authorization from the customer;

(3) Inducing trading in a customer's account that is excessive in size or frequency in view of the financial resources and character of the account;

(4) Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other information known by the investment adviser;

(5) Placing an order to purchase or sell a security for the account of a customer without authority to do so;

(6) Borrowing money or securities from, or lending money or securities to, a customer;

(7) Representing itself as a financial or investment planner, consultant, or adviser, when the representation does not accurately describe the nature of the services offered, the qualifications of the person offering the services, and the method of compensation for the services;

(8) Placing an order for the purchase or sale of a security if the security is not registered or the security or transaction is not exempt from registration under ch. 551, Stats.

(9) Placing an order to purchase or sell a security for a customer through a broker-dealer or agent not licensed under ch. 551, Stats., unless the customer is a person referenced in s. 551.23 (8), Stats.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (intro.) and (1), renum. (2) to be (8) and am., cr. (2) to (7), Register, December, 1980, No. 300, eff. 1-1-81.

SEC 5.07 License period. (1) The initial license of an investment adviser expires April 30 of each year. The qualification of an investment adviser representative expires on the same day as that of the investment adviser which the person represents. The commissioner may by order limit the period of, or specify an earlier expiration date for, any license.

(2) The qualification of an investment adviser representative is not effective during any period when the investment adviser which that person represents is not licensed or during any period when the representative is not employed by a specified investment adviser licensed under ch. 551, Stats.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am., Register, December, 1980, No. 300, eff. 1-1-81.

SEC 5.08 Withdrawal of licenses. (1) An application for withdrawal from the status of a licensed investment adviser under s. 551.34 (6), Register, December, 1980, No. 300

Stats., shall be filed by the licensee on Form IAW (WI) prescribed by the commissioner, and shall include a report on the status of all customer accounts of the licensee in this state and any additional information the commissioner may require.

(2) An application for withdrawal from the status of a qualified investment adviser representative shall be filed by the investment adviser which the person represents within 10 days of the termination of the representative's employment on Form IAREPW prescribed by the commissioner.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (1) and (2), Register, December, 1979, No. 288, eff. 1-1-80.

SEC 5.09 Denial, suspension, revocation and censure. Any order denying, suspending or revoking the license of an investment adviser or censuring a licensee may include such other sanctions as the commissioner finds appropriate.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78.