

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 and shall include all information required by such forms and any other information the commissioner may require.

(2) A licensing "application" for purposes of section 551.32(1)(b), Wis. 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 subsection (4). The examination shall relate to chapter 551, Wis. 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 who, within 2 years prior to the date the application is filed, has been licensed or qualified under chapter 551, Wis. Stats.; or

(c) 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, a written examination shall be successfully completed by such supervisory personnel representing the investment adviser as the commissioner may require, and the commissioner may require that any such person be qualified under chapter 551, Wis. Stats., as a representative of the investment adviser.

(6) Any application for license which is not completed or withdrawn within 6 months from the date it is initially received may be deemed materially incomplete under section 551.34(1)(a), Wis.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

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, such 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) Ledgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts;

(b) 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;

(c) A record showing all receivables and payables;

(d) Records showing separately for each client the securities purchased or sold, and to the extent it has been made available to the investment adviser, the date and amount of and price at which the purchases or sales were executed, and the name of the broker-dealer who effected the transaction;

(e) Records showing separately all securities bought or sold by clients insofar as known to the investment adviser and indicating thereon with proper identification of the individual account, the date, amount, and price at which such securities were purchased or sold; or, in the alternative, a record showing all securities bought or sold by or for the accounts of all clients of the investment adviser in each month, the total number of shares or principal amount of each security bought or sold and the lowest and highest price at which such purchases or sales were made during the month;

(f) Copies of broker-dealers' confirmations of all transactions placed by the investment adviser for any account, and such other broker-dealers' confirmations as may be supplied to the investment adviser by a client or broker-dealer;

(g) Records of all accounts in which the investment adviser is vested with discretionary authority, including powers of attorney and other evidence of discretionary authority;

(h) Copies of all agreements entered by the investment adviser with respect to any account, which agreements shall set forth the fees to be charged and the manner of computation and method of payment thereof, and copies of all communications, correspondence and other

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records relating to securities transactions with customers including all complaints of customers relating to securities transactions; and

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

(2) Every licensed investment adviser shall preserve for a period of not less than 3 years, the first 2 years in an easily accessible place, all records required under subsection (1), except that records respecting an account required under subsections (1) (g) and (h) shall be preserved by the investment adviser for a period of not less than 3 years after the closing of the account and records required under subsection (1) (i) shall be preserved by the investment adviser for a period of not less than 3 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 above, a microfilm copy thereof may be substituted for the remainder of the required period.

(3) The commissioner may by order exempt any investment adviser from all or part of the requirements of this rule, either unconditionally or upon specified conditions, if by reason of the special nature of its business, the requirements are not necessary in the public interest or for the protection of investors.

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

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 thereto filed by the investment adviser within 10 days of the date such 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, and shall furnish additional information relating thereto as the commissioner may require. A transfer of control of an investment adviser shall constitute an application for withdrawal from the status of a licensed investment adviser pursuant to section 551.34 (6), Wis. Stats., unless the commissioner by order otherwise provides.

(4) Except as provided in Wis. Adm. Code sections SEC 5.04 (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 ADV filed promptly with the commissioner.

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SEC 5.05 Rules of conduct. (1) Each investment adviser shall establish written supervisory procedures and a system for applying such procedures, which may reasonably be expected to prevent and detect any violations of chapter 551, Wis. Stats., and rules and orders thereunder. Such 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.

(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 subsection (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 adviser 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 subsection (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 section 551.23 (8), Wis. 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 chapter 551, Wis. Stats., or any rule or order thereunder. Any such condition, stipulation or provision is void.

(5) No qualified representative or partner, officer or director of a licensed investment adviser shall be an agent or a partner, officer or director of any broker-dealer or shall be a qualified representative or partner, officer or director of any other investment adviser unless such other broker-dealer or investment adviser is affiliated with the investment adviser by reason of direct or indirect common control.

(6) The aggregate ownership by all partners, officers, directors or qualified representatives of a licensed investment adviser, or groups of which they are members, may not exceed 5% of the voting interest in

any other investment adviser or in any broker-dealer, or in any entity controlling or under common control with the other investment adviser or broker-dealer, unless the other investment adviser or broker-dealer is affiliated with the investment adviser by reason of direct or indirect common control, or unless permitted by order of the commissioner. This provision shall not prohibit any person from owning any equity security of an investment adviser or broker-dealer whose securities may be sold in transactions exempt from registration under section 551.23 (3), Wis. Stats.

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

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 section 551.34 (1) (g), Wis. Stats., without limiting those terms to the practices specified herein:

(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; or

(2) Placing an order for the purchase or sale of a security pursuant to discretionary authority if the purchase or sale is in violation of chapter 551, Wis. Stats., or any rule thereunder.

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

SEC 5.07 License period. (1) The initial license of an investment adviser expires December 31 of each year. The qualification of an investment adviser representative expires on the same day as that of the investment adviser which such 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.

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

SEC 5.08 Withdrawal of licenses. (1) An application for withdrawal from the status of a licensed investment adviser under section 551.34 (6), Wis. Stats., shall be filed by the licensee on a form 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 a form prescribed by the commissioner.

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

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.