



**Department
of Commerce**

Division of Securities

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The Ohio Investment Adviser and Investment Adviser Representative Handbook 3.0

REVISED MARCH 2020

Ohio Department of Commerce, Division of Securities

Licensing Section

Handbook 3.0 replaces Handbook 2.0 dated March 2019

Most updated version available at: www.com.ohio.gov/secu

Revised Handbook March 2020

The securities industry is a moving and changing industry. In order to keep up with the new challenges of investor protection, it is imperative that the Division of Securities make the necessary amendments and changes to policy and laws as it pertains to investment advisers. Therefore, the Division is revising the 2019 Handbook, as a continuation of the Division's outreach and education efforts. All revisions are highlighted in yellow or you can refer to [Appendix K](#) for the specific topic changes and page locator reference. And as always, please feel free to contact our office with any questions.

The Ohio Department of Commerce

The mission of the Ohio Department of Commerce is to safeguard Ohio's citizens and visitors, their property and resources while ensuring reliable marketplaces conducive to business growth and prosperity.

The Ohio Division of Securities

The Division of Securities, within the Ohio Department of Commerce, administers and enforces the Ohio Securities Act. The Division licenses broker-dealers, securities salespersons, investment advisers, and investment adviser representatives. The Division also registers securities offered for sale to Ohioans. When Ohio Securities law is violated, the Division can pursue administrative actions, civil injunctive actions, and criminal referrals.

Mission: Promoting capital formation while protecting Ohio investors from fraudulent securities and investment schemes through the sale of properly registered securities by licensed professionals.

Disclaimer: This compilation of material and information was prepared by the Ohio Division of Securities to provide general information and assistance regarding the Division's oversight of investment advisers and investment adviser representatives in Ohio. This information is not legal advice and is not a substitute for a thorough review of the relevant statutory provisions set out in Chapter 1707 of the Ohio Revised Code and related administrative rules set out in Chapter 1301:6-3 of the Ohio Administrative Code.

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Introduction

The Ohio Securities Act (the “Act”) provides for oversight of investment advisers and investment adviser representatives operating in Ohio. This oversight is administered and enforced by the Division of Securities (the “Division”). Subject to certain limited exceptions, all investment advisers operating in Ohio must be either licensed by the Division or in compliance with certain notice filing requirements. Further, subject to certain limited exceptions, all investment adviser representatives with a place of business in Ohio must be licensed by the Division. Filings and fees for investment adviser notice filings or licensure must be submitted electronically through the Investment Adviser Registration Depository (IARD), a nationwide database and filing system maintained by the Financial Industry Regulatory Authority (FINRA) that is available at www.iard.com. Filings and fees for investment adviser representative licensure must be submitted electronically through the Central Registration Depository (CRD), the companion FINRA database to IARD.

Pursuant to the federal National Securities Markets Improvement Act of 1996, as amended, and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, only certain investment advisers are eligible to be registered with the federal Securities and Exchange Commission (the “Commission”). Generally, there are eleven categories of investment advisers that are permitted to register with the Commission. The most relied upon category is for investment advisers that have assets under management of one hundred million dollars (\$100,000,000) or more. Subject to certain limited exceptions, investment advisers registered with the Commission that are operating in Ohio must comply with the Act’s notice filing requirements.

Investment advisers operating in Ohio that are not registered with the Commission must be licensed by the Division, subject to four limited exceptions.

Similarly, all investment adviser representatives with a place of business in Ohio must be licensed by the Division, subject to five limited exceptions. The general rule requiring licensure for investment adviser representatives holds true

regardless of whether the investment adviser representative is affiliated with a Commission-registered investment adviser or a state-licensed investment adviser.

The starting points for consideration of Ohio investment adviser and investment adviser representative requirements are the definitional sections. “Investment adviser” is defined in Revised Code 1707.01(X). “Investment adviser representative” is defined in Revised Code 1707.01(CC). These definitions track the definitions of these terms contained in federal law.

If a person meets the definition of investment adviser or investment adviser representative under Ohio law, the person then must look to the Act’s licensing and notice filing requirements. Revised Code 1707.141 and Revised Code 1707.151 set out the licensing and notice filing requirements for investment advisers, and Revised Code 1707.161 sets out the licensing requirements for investment adviser representatives.

Finally, investment advisers and investment adviser representatives are subject to certain anti-fraud and conduct standards. These standards are contained primarily in Revised Code 1707.44(M) and Ohio Administrative Code 1301:6-3-15.1 and 1301:6-3-44.

Violations of the Act can result in criminal penalties. Revised Code 1707.99 provides that the penalties for certain violations range from fifth degree to first degree felonies. Violations can also give rise to civil liability. Consequently, the Division urges investment advisers and investment adviser representatives to take their compliance responsibilities seriously.

All references to the Ohio Revised Code <http://codes.ohio.gov/orc/1707> and Ohio Administrative Code <http://codes.ohio.gov/oac/1301%3A6-3> can be reviewed on the Ohio Department of Commerce’s website at www.com.ohio.gov (Resources tab).

Part 1 – Licensing – Applications, Renewals, Termination

I. Investment Adviser Licensing

i. Are you an Investment Adviser under Ohio law?

1. "Investment Adviser"

The Ohio definition of "investment adviser" is contained in Revised Code 1707.01(X), and parallels the federal definition (see § 202(a)(11) of the Investment Advisers Act of 1940).

In general, an investment adviser is a person who: (1) for compensation; (2) engages in the business of; (3) advising others as to the value of securities or the advisability of investing in securities.

The flow chart, provided at [Appendix C](#) titled "*Are You an Investment Adviser Under Ohio Law?*" and accompanying notes provide a step-by-step guide through the elements of, and exclusions from, this definition.

2. Three Elements

The **three elements** are broadly construed. The "**compensation**" element is satisfied by the receipt of any economic benefit by the person providing advice. The "**engaged in the business**" element is satisfied if any one of the following occurs: (1) the person holds himself or herself out as an investment adviser or as one who provides investment advice; (2) the person receives compensation that represents a clearly definable charge for providing advice about securities; or (3) the person, on anything other than rare, isolated and non-periodic instances, provides specific investment advice. Finally, as to the **third element, the advice must pertain to "securities."** However, in order to satisfy the "securities" element, the advice need not be about specific securities, but rather only about securities as an investment alternative.

Keep in mind that it is not necessary that a person's activities consist solely of investment advisory services to qualify as an investment adviser. Rather the test is whether any part of the person's activities meet the three elements of "for compensation," "engaged in the business," and "regarding securities." For example, a recommendation to sell securities holdings in order to purchase a

particular insurance product may satisfy the definition of an investment adviser where the insurance sale results in a commission payment.

3. Exclusions from the definition of “Investment Adviser”

Revised Code 1707.01(X)(2) excludes several classes of persons from the Ohio definition of investment adviser. These exclusions track the exclusions from the federal definition of investment adviser. (See § 202(a)(11)(A)-(F) of the Investment Advisers Act of 1940). Whether an exclusion is available depends on all the relevant facts and circumstances.

ii. How to Form an Investment Adviser Firm in Ohio

If you determine that you meet the definition of an Investment Adviser under Ohio law and that you are required to be licensed, you need to take steps to become licensed.

- Determine the legal status of your firm. The most common structures are Corporation, Sole Proprietorship (see [“Establishing an Investment Adviser Firm as a Sole Proprietor”](#)), Limited Partnerships, Partnership, and Limited Liability Company. To determine the best structure for your firm, you should consult with an attorney or accounting professional for guidance.
- Register your firm with the Ohio Secretary of State’s office and obtain an EIN for your firm, if applicable. Helpful sites to visit are: www.sos.state.oh.us and www.irs.gov.
- Establish that your firm has a representative that meets minimum competency requirements and determine if the representative is required to submit fingerprints. Investment Adviser Representative licensing requirements are discussed in the [Minimum Competency Requirements](#) section of this guide.
- Establish an IARD account, through FINRA’s Web IARD at: www.iard.com/accessIARD.asp. This is how a firm applies for licensure and funds the payments for licensing and future renewals. IARD Gateway Call center representatives can be reached at 240-386-4848.
- Applications for licensure must be submitted electronically using the IARD system. Create and file on the IARD System the Form ADV Parts 1A and 1B, Parts 2A and 2B, and wrap fee brochure (Appendix 1), if applicable. These documents make up your firm’s application. The Form ADV in its entirety as well as the Instructions and Glossary are available at: www.sec.gov/about/forms/formadv.pdf.
- Pay the applicable licensing fees for your firm and all IARs as prescribed in Revised Code 1707.17(B).

- Create your firm's Compliance and Cybersecurity Manuals, policies and procedures, business continuity plan and investment advisory agreement. These requirements are discussed in more detail in [Compliance Manual section of this guide](#).
- Install your initial recordkeeping procedures, including your accounting records that you will use for creating the required financial statements. These requirements are discussed in [Books and Records](#).
- Once you have filed your initial application material on the IARD, the Division requires a Pre-Licensing Examination. The exam will require that certain documents be provided. [See Appendix E](#).

iii. Investment Adviser Branch Offices

If you operate a branch office(s) other than your primary office, you need to register the branch office with the Division. Each investment adviser must file a Form BR through IARD to report a "place of business" other than their principle place of business. "Place of business" is defined in OAC 1301:6-3-01(G) to include two categories of locations. First is an office at which an investment adviser or investment adviser representative regularly provides investment advisory services, solicits, meets with, or otherwise communicates with clients. Second is any other location that is held out to the general public as a location at which an investment adviser or investment adviser representative provides investment advisory services, solicits, meets with or otherwise communicates with clients. There is no filing fee for filing the Form BR.

iv. Establishing an Investment Adviser Firm as a Sole Proprietor

Revised Code 1707.151(B) provides that each natural person applicant for an investment adviser license (i.e., as a sole proprietor) must demonstrate their competence to engage in the advisory business. A sole proprietor investment adviser is a natural person who has not created a legal entity to engage in that business. Sole proprietor investment advisers should keep in mind that, as with firms, they are subject to anti-fraud and business conduct standards.

In addition, because sole proprietor investment advisers are distinguished from sole shareholders of corporate investment advisers, sole proprietor investment advisers need not file a Form U-4 with the Division and need not be licensed as an investment adviser representative (unless the person also acts as an investment adviser representative for another investment adviser). However, in addition to

submitting the Form ADV and filing fee through the IARD/CRD system, a sole proprietor must also submit a standard impression sheet for fingerprints provided by the Division if one is not already on file with the Division. For more information about the fingerprinting requirements, see the section on [Fingerprinting](#) in this guide.

A sole proprietor investment adviser must also demonstrate “good business repute” (as discussed in The “Good Business Repute” Standard on page 1) and minimum competency. Under Ohio Administrative Code 1301:6-3-15.1(C), the minimum competency standard for sole proprietors may be satisfied by:

- By achieving a passing score *on or after* January 1, 2000, on the Uniform Investment Adviser Law Examination, Series 65; or the Uniform Combined State Law Examination, Series 66 and at any time, the General Securities Representative Examination, Series 7. *Note: Beginning October 1, 2018, the “General Securities Representative Exam” requires a passing score on both the SIE and the Series 7 top-off.
- By earning and being in good standing with the organization that issued any of the following credentials:
 - Certified Financial Planner awarded by the Certified Financial Planner Board of Standards, Inc.;
 - Chartered Financial Analyst;
 - Chartered Financial Consultant;
 - Chartered Investment Counselor; or
 - Certified Public Accountant with a Personal Financial Specialist designation.

An applicant who is not affiliated with a FINRA-registered securities dealer may register for the Series 63, Series 65 or Series 66 by submitting to FINRA a completed Form U-10, Uniform Examination Request for Non-FINRA Candidates. These examinations are administered by NASAA (North American Securities

Administrators Association). For information about registration, scheduling, and study guides, visit their website for more information: www.nasaa.org

v. The “Good Business Repute” Standard

In addition to the application requirements described above, Revised Code 1707.151(E) requires the Division to make an affirmative finding that an applicant is of "good business repute" before granting a license. To determine if you meet the “good business repute” standard, the Division is guided by the factors set forth in Ohio Administrative Code 1301:6-3-19(D), which generally includes whether the applicant has:

- Engaged in fraudulent conduct or been found liable for conduct constituting incompetence in financial activities;
- Been subject to administrative, civil or other disciplinary action by a regulatory agency, or failed to fully satisfy any judgment or award;
- Been found guilty of a felony, or of any misdemeanor involving theft, deception or moral turpitude; or
- Engaged in any conduct that would reflect on the applicant's reputation for honesty, integrity and competence in business and personal dealings.

vi. Application Review Process – Approval or Denial

Failure to answer all questions on the appropriate forms, and failure to provide all required information will delay the Division’s review of an application. By rule, the Division may terminate an application with unresolved deficiencies that remains pending for more than 180 days. See OAC 1301:6-3-15.1(K).

Pursuant to Revised Code 1707.151(D), the Division may investigate any license applicant and may require any additional information as it deems necessary in consideration of the application.

If the Division determines that an applicant lacks good business repute, the Division will issue to the applicant a notice of intent to deny the application. The applicant must, within 30 days, either withdraw the application or, pursuant to Revised Code Chapter 119, request an administrative hearing. Failure to withdraw the application or request a hearing within 30 days will result in the issuance by the Division of a final order to deny the application.

II. Investment Adviser Representative Licensing

i. Are you an "Investment Adviser Representative" under Ohio law?

The Ohio definition of "investment adviser representative" ("IAR") is contained in Revised Code 1707.01(CC) and parallels the federal definition (See Commission Rule 203A-3(a)). The flow chart, available at [Appendix C](#), entitled "*Are You an Investment Adviser Representative Under Ohio Law?*" and accompanying notes, provide a step-by-step guide through the elements of this definition.

In general, an investment adviser representative is an individual who gives advice on behalf of an investment adviser to a certain minimum number of natural person clients through regular meetings or communications.

- **Supervised Person:** Specifically, in order to be an investment adviser representative, the person **first must be a "supervised person"** as defined in Revised Code 1707.01(DD) and generally means officers, directors and employees of an investment adviser as well as others who provide advice on behalf of the investment adviser firm.
- **More than five Clients:** The supervised person must have more than five clients who are natural persons other than "excepted persons," and more than 10% of the clients must be natural persons other than "excepted persons." "Excepted person" is defined in Revised Code 1707.01(EF) and generally means certain wealthy and high net worth individuals.
- **Client meetings:** The supervised person must on a regular basis solicit, meet with, or otherwise communicate with clients of the investment adviser.

All three of these elements must be met in order for a person to qualify as an investment adviser representative. However, even if a person meets all three of these elements, Revised Code 1707.01(CC)(1)(b) provides that the person is excluded from the definition of investment adviser representative if the natural person provides advisory services only by means of written materials or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts.

ii. How do I apply to be an IAR in Ohio?

Ohio Revised Code 1707.161(D)(1) states that an application for an investment adviser representative license shall consist of the information, materials, and forms

specified in rules adopted by the Division. Ohio Administrative Code 1301:6-3-16.1(A) specifies that an application shall consist of:

- A completed Form U-4 for each individual for whom the applicant seeks to act as an investment adviser representative;
- The fingerprinting requirement, and
- The license fee prescribed in ORC 1707.17(B).

Annual Cost table	Ohio Fee	IARD User Fee	Totals
Investment Adviser Firm	\$100.00	\$0.0	\$100.00
Investment Adviser Representative	\$35.00	\$15.00	\$50.00

iii. Fingerprinting Requirement

All investment adviser representatives are required to be fingerprinted when applying for a license. However, there are two exceptions to this rule:

- If the investment adviser representative is (or was) licensed as a securities salesperson with the Division and has filed fingerprints with FINRA, it is not necessary to be reprinted, or
- If the investment adviser representative has previously been licensed with the Division and previously filed fingerprints, it is not necessary to be reprinted.

For Ohio residents, the Division only accepts electronic fingerprints taken via WebCheck. Below is a website you can use to find a WebCheck location near you:

[Ohio Attorney General WebCheck Community-Listing](#)

A WebCheck facility will request the “reason for printing.” Please have the WebCheck personnel choose “other” and fill in “IAR Registration, pursuant to OAC 1301:6-3-16.1.” The impressions will be forwarded directly to the Attorney Generals’ Bureau of Criminal Investigation (“BCI”) and then be sent to the Division. It may be necessary to notify the WebCheck personnel that the fingerprint results must be sent directly to the Division, not to the adviser/firm to then route them to the Division. The Division can only accept results if they come directly from BCI.

The Division cannot accept fingerprint results directly from the applicant or their employing firm. Please bring the Division’s address to the facility for the results to be sent directly to the Division:

Ohio Department of Commerce
Division of Securities
77 South High Street, 22nd Floor
Columbus Ohio 43215

For non-Ohio residents needing fingerprints, please contact the Division at (614) 644-6292, and a Division-specific fingerprint impression card will be forwarded to you.

iv. Minimum Competency – Series Examinations

Ohio Administrative Code 1301:6-3-16.1(B)(1)

For Investment Adviser Representatives (IAR) taking examinations – On or after October 1, 2018 = An IAR applicant must satisfy the minimum competency requirements for licensure by;

- I. Achieving a passing score on the SIE and
- II. Achieving a passing score on **one** of the following tests administered by FINRA:

- Investment company representative (IR), series 6 top off;
- General securities representative (GS), series 7 top-off;

- Direct participation programs representative (DR), series 22 top-off;
 - General securities principal, series 24;
 - Investment company and variable contracts principal, series 26; or
 - Direct participation programs principal, series 39; OR
- III. Achieve a passing score on one of the following tests administered by NASAA:
- Uniform securities agent state law examination, series 63;
 - Uniform investment adviser law examination, series 65;
 - Uniform combined state law examination, series 66.

For IAR applicants having taken examinations prior to October 1, 2018 – An IAR applicant must have achieved a passing score on one of the following tests administered by FINRA or NASAA to satisfy the minimum competency requirements for licensure:

- Investment company and variable contracts representative, series 6;
- General securities representative, series 7;
- Direct participation programs representative, series 22;
- General securities principal, series 24;
- Investment company and variable contracts principal, series 26;
- Direct participation programs principal, series 39;
- Corporate securities representative, series 62;
- Uniform securities agent state law examination, series 63;
- Uniform investment adviser law examination, series 65;
- Uniform combined state law examination, series 66.

In Ohio, there is no lapse period for the validity of the series examinations. All passing scores on qualifying exams, taken at any time, are considered for meeting minimum competency. If you are a sole proprietor, there are additional requirements, please refer to that section of the handbook.

An applicant who is not affiliated with a FINRA-registered securities dealer may register for the Series 63, Series 65 or Series 66 by submitting to FINRA a completed Form U-10, Uniform Examination Request for Non-FINRA Candidates. These examinations are administered by NASAA (North American Securities Administrators Association). For information about registration, scheduling, and study guides, visit their website for more information: www.nasaa.org

The Series 65 Examination = Request a waiver

When a firm submits an IAR application by updating the individual's U4, there is a chance (if the applicant has not taken the Series 65 or has passed the exam

more than 2 years ago) that FINRA will automatically open a Series 65 Exam Window for this applicant and charge the employing firm for the examination.

Since Ohio does not require the 65, if the applicant already has a qualifying examination or meets other minimum competency, this exam can be WAIVED, and the exam fees can be REIMBURSED to the firm.

To have the fee for the Series 65 examination refunded, you must provide the Division with the firm's name and CRD number, the representative's name and CRD number, the transaction number, and posting date of the transaction. The above information should be e-mailed to: securities-licensing@com.state.oh.us

v. Minimum Competency – Professional Designations

Ohio Administrative Code 1301:6-3-16.1(B)(2)

As an alternative to the Series Examinations, an applicant can qualify for licensure with the Division by providing verification that they are in good standing with the organization that issues credentials for one of the following designations:

- Certified Financial Planner;
- Chartered Financial Analyst;
- Chartered Investment Counselor;
- Chartered Financial Consultant; and
- Certified Public Accountant with a Personal Financial Specialist designation.

vi. IA Dual Registration

Revised Code 1707.161(B)(1) permits an investment adviser representative to be licensed with up to two (2) investment adviser firms. Investment adviser representatives are permitted to be licensed with up to two (2) investment adviser firms regardless if the firms are affiliated or unaffiliated.

If the investment adviser representative is licensed with two (2) unaffiliated investment adviser firms, then they shall do so only after the occurrence of both of the following:

- Being properly licensed, or properly excepted from licensure, as an investment adviser representative for each of the two investment advisers;
and

- Notifying both investment advisers of the dual affiliation via filing of the Form U-4 on the IARD/CRD system and retaining evidence of that notification in his or her records.

vii. The “Good Business Repute” Standard

In addition to the application and minimum competency requirements described above, Revised Code 1707.161(E) requires the Division to make an affirmative finding that an applicant is of "good business repute" before granting a license.

Determining the existence of good business repute. The Division is guided by the factors set forth in Ohio Administrative Code 1301:6-3-19(D), which generally include whether the applicant has:

- Engaged in fraudulent conduct or been found liable for conduct constituting incompetence in financial activities;
- Been subject to administrative, civil or other disciplinary action by a regulatory agency, or failed to fully satisfy any judgment or award;
- Been found guilty of a felony, or of any misdemeanor involving theft, deception or moral turpitude; or
- Engaged in any conduct that would reflect on the applicant's reputation for honesty, integrity and competence in business and personal dealings.

If the Division determines that an applicant lacks good business repute, the Division will issue to the applicant a **notice of intent to deny the application**. The applicant must, within 30 days, either withdraw the application or, pursuant to Revised Code Chapter 119, request an administrative hearing. Failure to withdraw or request a hearing within 30 days will result in the issuance by the Division of a final order to deny the application.

viii. Application Review Process – Approval and Denial

Failure to answer all questions on the appropriate forms, and failure to provide all required information will delay the Division's review of an application. By rule, the Division may terminate an application with unresolved deficiencies that remains pending for more than 180 days. See OAC 1301:6-3-16.1(G).

Pursuant to Revised Code 1707.161(D), the Division may investigate any applicant and may require any additional information as it deems necessary in consideration of the application.

If the Division determines that an applicant lacks good business repute, the Division will issue to the applicant a notice of intent to deny the application. The applicant must, within 30 days, either withdraw the application or, pursuant to Revised Code Chapter 119, request an administrative hearing. Failure to withdraw the application or request a hearing within 30 days will result in the issuance by the Division of a final order to deny the application.

III. Renewal and Expiration of a License

All investment adviser and investment adviser representative licenses expire on December 31st each year unless they are renewed through the Web IARD/CRD. All investment advisers must renew the firm and their investment adviser representatives' licenses through the Web IARD/CRD.

A Preliminary renewal statement is made available to each firm online in Web IARD/CRD in mid-November each year. The firm's renewal account must be funded for the entire preliminary renewal statement amount, regardless of whether there are additions or deletions in the number of investment adviser representatives, in order for the firm and their investment adviser representatives to be renewed. Failure to fund the renewal account with the entire amount of the preliminary renewal account statement will result in the firm and its investment adviser representatives being terminated. The renewal account must be funded prior to Web IARD/CRD shutdown in mid to late December. There are no exceptions in Ohio. You must renew through Web IARD/CRD. Ohio cannot accept payment directly to the Division.

All licenses not renewed by the deadline will terminate as a matter of law – there are no grace periods. Investment advisers and investment adviser representatives that “fail to renew” must re-apply with the Division.

IV. How to Terminate a License – Discontinuing Business

Ohio Administrative Code 1301:6-3-15.1(I)

A notice of withdrawal from licensure shall be filed with the Division via the IARD on Form ADV-W in accordance with its instructions. The IA should include on the Form ADV-W the exact address where the books and records will be maintained

during such period. Investment adviser representatives licensed with the terminating firm should have a Form U5 filed on their behalf.

An investment adviser ceasing to conduct or discontinue business shall arrange for and be responsible for the preservation of the records in compliance with the Ohio Administrative Code for a period of five years after the firm ceases doing business.

PART 2 - Compliance Obligations

I. Books and Records

Ohio Administrative Code 1301:6-3-15.1(E).

The following books and records must be maintained in true and accurate form by investment advisers headquartered in Ohio and licensed with the Division.

i. Financial Records

Ohio Administrative Code 1301:6-3-15.1(E)(1)(a), (b), (d)–(f)

- Cash receipts and disbursement journals and other records of original entry forming the basis for entries in any ledger,
- General and auxiliary ledgers reflecting assets, liabilities, reserves, capital, income and expense accounts,
- All check books, bank statements, and bank reconciliations of the adviser,
- All bills or statements (paid or unpaid) relating to the business of the investment adviser as such,
- All trial balances, quarterly financial statements (which includes balance sheets and income or profit and loss statements), and internal audit working papers relating to the investment adviser's business.

ii. Trading Records

Ohio Administrative Code 1301:6-3-15.1(E)(1)(c) and (h), (E)(2)-(3)

- A memorandum for each order given for the purchase or sale of securities, including terms, conditions and instructions received from the client, and any modification or cancellation of the order. The memorandum must identify the affiliated person who recommended the transaction, the person who placed the order, the account involved, the date of entry, and the bank, broker or dealer that executed the order. Orders entered pursuant to discretionary power are to be so designated.
- A list or record of all accounts in which the adviser has discretionary power as to funds, securities or transactions.

- For advisers that have custody or possession of client funds or securities, records must include (a) a journal of purchases, sales, receipts and deliveries of securities, showing certificate numbers and all other debits and credits to the accounts; (b) a separate ledger account for each client showing purchases, sales, receipts and deliveries, showing the date and price for each transaction and all debits and credits; (c) copies of confirmations of all transactions effected by or for clients' accounts; (d) a record for each security in which any client has a position, showing the name of each client having an interest in the security, the amount or interest of each client, and the location of each such security; and (e) the required accountant's certificate verifying client funds and securities in the adviser's possession.
- For advisers who render investment advisory or management services to clients, records with respect to the portfolio being supervised or managed (to the extent reasonably available or obtainable) must include accurate and current records showing separately for each client the securities purchased and sold; the date, amount, and price of each transaction; and for each security in which any client has a current position, information from which the adviser can promptly furnish the name of each client and its current amount or interest in the security. Client records may be maintained using a code instead of the client's name so long as when requested the name and other identifying information is promptly provided to the Division.

iii. Correspondence

Ohio Administrative Code 1301:6-3-15.1(E)(1)(g)

Originals of all written communications received, and copies of all **written communications sent by the Investment Adviser**:

- relating to recommendations or advice given (or proposed to be given);
- relating to receipt, disbursement or delivery of funds or securities; or
- relating to the placing or execution of any order to purchase or sell securities.

Written communications shall include all writings in any form, including but not limited to, text messages, direct messaging, emails, and email attachments.

The adviser does not need to keep the names and addresses of persons to whom a publication was sent when it was distributed to more than 10 persons but must keep with the copy of the publication a memorandum describing any list to whom the publication was sent and the source of the list. The adviser does not need to keep unsolicited market letters or similar communications of general public distribution not prepared by or for the adviser.

iv. Advertising Records

Ohio Administrative Code 1301:6-3-15.1(E)(1)(k) and (p)

- A copy of any notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication, including electronic and internet communications or postings to internet sites, that are distributed to ten or more persons (other than people connected with the investment adviser). If the communication recommends the purchase or sale of a specific security without giving the reasons for the recommendation, the adviser must keep a memorandum indicating the reasons, and
- All accounts, books, internal working papers, and other records or documents that support the performance or rate of return calculations for managed accounts or securities recommendations that are advertised or circulated to ten or more persons (other than persons connected with the investment adviser). With respect to performance of managed accounts, it is sufficient to retain the account statements and related worksheets.

v. Client Records

Ohio Administrative Code 1301:6-3-15.1(E)(1)(h)-(j), (q)-(r)

- All client lists, including list of clients that have terminated with the IA,
- All advisory contracts entered into by the adviser or its investment adviser representatives,
- Documentation of client's risk tolerance and investment objectives,
- Originals or copies of all powers of attorney or similar documents from clients granting the adviser discretionary authority, and
- Originals or copies of all written agreements with clients or agreements otherwise relating to the adviser's business.

vi. Fiduciary Duty Records

Ohio Administrative Code 1301:6-3-44(E)(1)(f)

Advisers have a fiduciary duty to act in the best interests of clients and to disclose actual or potential conflicts of interest. Some specific obligations resulting from this fiduciary duty are:

- A duty to employ reasonable care to avoid misleading clients;
- A duty to have a reasonable independent basis for investment advice;
- A duty to ensure that investment advice is suitable; and
- A duty to obtain best execution of client transactions.

This duty requires advisers to make a reasonable inquiry as to the investment objectives, financial situation, needs, and other relevant information necessary to make recommendations that are in the client's best interest. All investment advisers must review their recommendations no less than one time in a three (3) year period. Such review shall be done more frequently if the client has specific needs or circumstances that warrant a more frequent review. Advisers are expected to document their compliance with this requirement.

The Division strongly encourages advisers obtaining clients' Trusted Contact Authorizations as a best practice. This should be separate (although may be similar) to any Trusted Contact Authorizations executed between the client and third parties (e.g., your custodian). A client's Trusted Contact Authorization may be used if the adviser has questions or concerns about the client's health (capacity and well-being) or welfare (financial exploitation), or if the adviser is unable to contact the client. The adviser would then be legally permitted to speak with the person(s) listed about the client. The Trusted Contact Authorization should be signed by the client and updated as needed. While there is no prescribed format for a Trusted Contact Authorization, advisers may wish to refer to FINRA's template while customizing their own. See [Appendix L](#) for FINRA's Trusted Contact Template.

vii. Miscellaneous Records

Ohio Administrative Code 1301:6-3-15.1(E)(1)(I)

A record of every securities transaction (other than in US government securities) over which the adviser or any of its advisory representative has, influence or control and in which the adviser or advisory representative has, or by reason of the transaction acquires, any direct or indirect beneficial ownership. The record must state the title and amount of securities involved, the date and nature of the transaction, the price, and the name of the broker, dealer or bank through whom the transaction was effected. The record may also contain a statement declaring that the recording of the transaction is not an admission that the adviser or representative has a beneficial ownership interest in the security. The transaction must be recorded not later than ten

days after the end of the calendar quarter in which it was effected. “Advisory representative” is defined broadly to include affiliates, partners, officers, directors and those employees connected with the advisory activities. Where 50% or less of the adviser’s business was from advising clients, a narrower group of management officials are covered. An adviser is protected if the adviser instituted adequate procedures and used reasonable diligence to promptly obtain reports of all transactions required to be recorded.

viii. Disclosure Records

Ohio Administrative Code 1301:6-3-15.1(E)(1)(n)

- A copy of the written disclosure statement, Form ADV Part 2A, 2B, Appendix 1, (and each amendment or revision) made available and a record of the dates that they were given or offered to each client or prospective client who subsequently became a client, and
- All written disclosure documents delivered to clients by third-party solicitors and all written acknowledgments of receipt of such documents received back from clients.

ix. Compliance Policies and Procedures

Ohio Administrative Code 1301:6-3-15.1(E)(1)(s) - (t); and 1301:6-3-44(H)

Advisers are required to maintain compliance policies and procedures, and records of their annual review of those compliance policies and procedures. Please note that advisers should maintain copies of the various “versions” of their manual for five years from the end of the fiscal year that the “version” was used.

It is advisable to set up routine compliance procedures, including the update of your compliance manual to stay on top of your requirements. The Division will advise you of important requirements, including rule/requirement changes, when they occur

x. Retention Period of Books and Records

Ohio Administrative Code 1301:6-3-15.1(E)(5)

All books and records required to be made 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 must be maintained in an appropriate office of the investment adviser.

xi. Electronic Storage

Ohio Administrative Code 1301:6-3-15.1(E)(7)

The records required to be maintained and preserved may be maintained and preserved electronically, however the investment adviser must arrange and index the records in a way that permits easy location, access and retrieval of the record and must be able to promptly provide legible true and complete copies when requested by the Division. The Division permits advisers to maintain records exclusively with third parties (e.g. cloud storage); however, it is the ultimate responsibility of the investment adviser to comply with all aspects of the record retention rules.

xii. Books and Records Should be kept Current

Each Investment Adviser licensed with the Division shall make and keep, true, accurate and **current** books and records relating to its advisory business. Records must be created at the time of or in proximity to the entry, action, or occurrence.

As part of the requirement to keep books and records current, all changes to the ADV must be made promptly. As a reminder:

- Solicitors should always have the most updated version of an adviser's Form ADV.
- All referenced links to the Form ADV (i.e. on a website or within a publication) should be to the most updated version.
- All links and information provided on an adviser's website and other social media must be kept current and all links must be tested for accuracy.

II. Financial Records required to be kept quarterly

Ohio Administrative Code 1301:6-3-15.1(E)(1)

Investment advisers are required to make and keep accurate and current financial records. All financial records must be prepared on a **quarterly basis**.

Please refer to the [Books and Records](#) section of this Guide for the specific types of records. **If an IA is a sole-proprietor, it is recommended that financial records for the investment adviser be kept separate from the sole proprietor's records. It is also recommended that financial software be used or that the investment adviser employ an accountant.**

III. The Brochure Rule - Form ADV (Parts 1 and 2)

Ohio Administrative Code 1301:6-3-15.1(G)

a. Form ADV Part 1

Part 1 of Form ADV is required to be updated within 90 days AFTER the end of your fiscal year. In addition to your *annual updating amendment*, you must amend your Form ADV Part 1, including corresponding sections of Schedules A, B, C, and D, by filing additional amendments promptly if:

- Information you provided in response to Items 1, 3, 9 (except 9.A.(2), 9.B.(2), 9.E., and 9.F.), or 11 of Part 1A or Items 1, 2.A. through 2.F., or 2.I. of Part 1B becomes inaccurate in any way; or
- Information you provided in response to Items 4, 8, or 10 of Part 1A or Item 2.G. of Part 1B becomes materially inaccurate.
- Form ADV Part 1, Item 5(D) and 5(K) were amended in October 2017, and require additional information to be disclosed. See [Appendix I](#) for more information on how to complete this section.

b. Form ADV Parts 2 A and B

(a/k/a “brochure” or “disclosure document” and “brochure supplement”)

Every investment adviser is required to deliver to each client and prospective client a written disclosure document, describing the investment adviser's business practices, education, and business background.

Unless otherwise provided in the Ohio Administrative Code, an investment adviser shall follow all current Instructions to the Form ADV issued by the Securities and Exchange Commission with regard to the completion, filing, delivery, and updating of the form ADV Part 2A (Brochure statement) and Form ADV Part 2B (Brochure Supplement). A general summary is as follows:

- **Give your Brochure:** You must give a Brochure to each client before or at the time you enter into an advisory agreement. Evidence of providing

the Brochure is required. This evidence can be in the form of a signed receipt, or language can be made as part of the client contract.

- **Update your Brochure** each year at the time you file your annual updating amendment on the IARD system. The amount of client assets under management and fee schedule should be updated at this time. Item 2, Material Changes, should also be updated by clearly indicating that you are including only material changes since the last annual update of your brochure. You must then provide the date of the last annual update of your brochure. If there are no material changes since your last update, you should state that there are no material changes. Please note that you must maintain each update in your files.
- **File your Brochure** through the IARD annually within 90 days of the end of your fiscal year. However, if information in your brochure becomes materially inaccurate, you must update it promptly. According to Ohio Administrative Code 1301:6-3-01, the word “promptly” requires licensees to amend or update any filings within 30 calendar days of learning of facts or circumstances giving rise to an amendment or update.
- **Annual Delivery:** Each year you must either deliver within 120 days of your fiscal year-end your Brochure to each client, that either includes or is accompanied by a summary of material changes (Item 2), OR you must provide a summary of material changes and offer your clients the Brochure if they are interested. **If you do not have any material changes:** You do not have to deliver or offer the Brochure to your clients annually.
- **Interim Delivery:** If any information in response to Item 9 of Part 2A (disciplinary information) changes, you are required to deliver an interim amended Brochure Statement to clients. An interim amendment can be in the form of a document describing the material facts relating to the amended disciplinary event.

c. Material changes

Depending on the facts and circumstances, examples of material changes may include, but are not limited to:

- Change of address/location or contact information (e.g., phone number, email),
- New Owners of Investment Adviser entity,
- Significant change in services offered,
- New potential conflict of interest,
- A new fee schedule,
- Changes in disciplinary history,
- Changes in the custodian or broker used, and/or
- Changes in licensing status with the SEC or state(s).

d. Wrap Fee Program Disclosures

For advisers offering a wrap fee program, they shall follow all current instructions to the Form ADV issued by the SEC with regards to the completion, filing, delivery, and updating of the Form ADV Part 2A, Appendix 1.

- **Preparing a Wrap Fee Program Brochure:** If you sponsor a wrap fee program, you must prepare a Wrap Fee Program Brochure. If you sponsor more than one wrap fee program, you may prepare a single Wrap Fee Program Brochure describing all of the programs or you may prepare separate brochures for each program. If you provide advisory services outside of a wrap fee program, you must prepare a separate brochure for those advisory services. If a wrap fee program that you sponsor has multiple sponsors, and another sponsor creates and delivers to your wrap fee program clients a brochure that includes all of the required information, you do not have to create or deliver a separate Wrap Fee Program Brochure.
- **Give your Wrap Fee Program Brochure:** You must give a Wrap Fee Program Brochure to each client of the wrap fee program before or at the time the client enters into a wrap fee program contract. Evidence of providing such is required. This evidence can be in the form of a signed receipt, or language can be made as part of the client contract.
- **Update your Wrap Fee Program Brochure** each year at the time you file your annual updating amendment on the IARD system and otherwise promptly whenever any information in the Wrap Fee Program Brochure becomes materially inaccurate.
- **File your Wrap Fee Program Brochure** through the IARD annually within 90 days of the end of your fiscal year. However, if information in your Wrap Fee Program Brochure becomes materially inaccurate, you must update it promptly. According to Ohio Administrative Code 1301:6-3-01, the word “promptly” requires licensees to amend or update any filings within 30 calendar days of learning of facts or circumstances giving rise to an amendment or update.
- **Annual Delivery:** Each year you must either deliver within 120 days of your fiscal year-end your wrap-fee program brochure to each client, that either includes or is accompanied by a summary of material changes (Item 2), OR you must provide a summary of material changes and offer your Wrap Fee Program Brochure.
- **Interim Delivery:** If any information in response to Item 9 of Part 2A (disciplinary information) changes, you are required to provide an interim update of your Wrap Fee Program Brochure to your wrap fee clients. *NOTE: Technically, an IA with both Wrap Fee and non-Wrap Fee clients will have to deliver updated Brochures to each type of client.

IV. Advertising

Ohio Administrative Code 1301:6-3-44(A)

Investment advisers and their investment adviser representatives are prohibited from using any advertisement that contains any untrue statement of

a material fact or that is otherwise misleading. The rule broadly defines "advertisement" to include any notice, circular, letter or other written communication addressed to more than one person, or any notice, circular, letter or other written communication or any communication by electronic means including but not limited to email, the Internet, any social media sites, CD-ROM or DVD which are disseminated to more than one person, or any notice or other announcement in any publication or by radio or television.

In addition, an advertisement may not:

- Use or refer to testimonials (which include any statement of a client's experience or endorsement),
- Refer to past, specific recommendations made by the adviser that were profitable, unless the advertisement sets out a list of all recommendations made by the adviser within the preceding period of not less than one year, and complies with other, specified conditions,
- Represent that any graph, chart, formula, or other device can, in and of itself, be used to determine which securities to buy or sell, or when to buy or sell such securities, or can assist persons in making those decisions, unless the advertisement prominently discloses the limitations thereof and the difficulties regarding its use, or
- Represent that any report, analysis, or other service will be provided without charge unless the report, analysis or other service will be provided without any obligation whatsoever.

V. Performance Advertising

Ohio Administrative Code 1301:6-3-44(A)(1)(b)

Consistent with the position taken by the Commission, the Division takes the position that an adviser may advertise its past performance (both actual performance and hypothetical or model results), only if the advertisement meets certain conditions and restrictions. An advertisement using performance data must disclose all material facts necessary to avoid any unwarranted inference.

Among other things, an adviser may not advertise its performance data if the adviser:

- Fails to disclose the effect of material market or economic conditions on the results portrayed (e.g., an advertisement stating that the accounts of the adviser's clients appreciated in value 25% without disclosing that the market generally appreciated 40% during the same period).
- Includes model or actual results that do not reflect the deduction of advisory fees, brokerage or other commissions, and any other expenses that a client paid or would have paid.
- Fails to disclose whether and to what extent the results portrayed reflect the reinvestment of dividends and other earnings.
- Suggests or makes claims about the potential for profit without also disclosing the possibility of loss.

- Compares model or actual results to an index without disclosing all material facts relevant to the comparison (e.g. an advertisement that compares model results to an index without disclosing that the volatility of the index is materially different from that of the model portfolio).
- Fails to disclose any material conditions, objectives, or investment strategies used to obtain the results portrayed (e.g. the model portfolio contains equity stocks that are managed with a view towards capital appreciation).
- Fails to prominently disclose the limitations inherent in model results, particularly the fact that such results do not represent actual trading and that they may not reflect the impact that material economic and market factors might have had on the adviser's decision-making if the adviser were actually managing clients' money.
- Fails to disclose, if applicable, that the conditions, objectives, or investment strategies of the model portfolio changed materially during the time period portrayed in the advertisement and, if so, the effect of any such change on the results portrayed.
- Fails to disclose, if applicable, that any of the securities contained in, or the investment strategies followed with respect to, the model portfolio do not relate, or only partially relate, to the type of advisory services currently offered by the adviser (e.g., the model includes some types of securities that the adviser no longer recommends for its clients).
- Fails to disclose, if applicable, that the adviser's clients had investment results materially different from the results portrayed in the model.
- Fails to prominently disclose, if applicable, that the results portrayed relate only to a select group of the adviser's clients, the basis on which the selection was made, and the effect of this practice on the results portrayed, if material.

An adviser must create and retain all documents necessary to substantiate any performance information contained in advertisements or communications.

VI. Client Contracts

Ohio Administrative Code 1301:6-3-15.1(H)

- All advisory contracts shall be in writing and signed and dated by the client and the adviser.
- The contract should clearly state that the contract may not be assigned without the client's consent. Ohio Administrative Code 1301:6-3-15.1(A)(2) defines "assignment" generally to include any direct or indirect transfer of an investment advisory contract by the investment adviser to another adviser, entity, or firm. A transaction that does not result in a change of actual control or management of the investment adviser (e.g. a reorganization for purposes of changing an adviser's

state of incorporation), would not be deemed to be an assignment for these purposes.

- Ohio Administrative Code 1301:6-3-15.1(H)(1)(c) provides that if an investment adviser is organized as a partnership, the advisory contract must provide that the adviser will notify the client of a change in its partnership makeup.

If client fees are pre-paid, the contract should contain a provision for the pro rata refund of fees if the contract is terminated.

If the adviser has trading authority but does not have discretionary authority, it is recommended that the adviser contract include language that the adviser cannot trade without prior approval of the customer.

Ohio Administrative Code 1301:6-3-44(E)(1)(e) makes it unlawful for any investment adviser to use any condition, stipulation, or provision binding upon any person to waive compliance within any provision of Chapter 1707 of the Ohio Revised Code or any rule promulgated thereunder. This includes the use of hedge clauses, or disclaimers absolving the IA from responsibility or accuracy of the information obtained, which would lead a client to believe that any rights have been waived.

VII. Supervision and Compliance Manual

Ohio Administrative Code 1301:6-3-15.1 (D)

Every investment adviser licensed by the Division shall reasonably supervise its investment adviser representatives and other persons employed or associated with the investment adviser.

Part of the supervision obligation requires the investment adviser to adopt and implement written policies and procedures reasonably designed to prevent violations by the adviser and its supervised person of the Ohio Securities Act and the administrative rules promulgated by the Division. These written policies and procedures are often referred to as the adviser's "compliance manual."

Compliance considerations must be relevant to the operations of the adviser, and not simply an "off the shelf" version adopted without modifications tailored to the activities of the adviser.

In connection with adopting and implementing the written compliance program, an adviser must designate a person, who is a supervised person, as the “Chief Compliance Officer” (“CCO”) responsible for administering the program.

The CCO should establish procedures for those they supervise to:

- prevent violations from occurring;
- detect violations that have occurred; and
- promptly correct any violations that have occurred.

VIII. Compliance Manual

The IA is required to review, no less frequently than **annually**, the adequacy of the policies and procedures and their effectiveness. In addition, you are required to document, in writing, evidence of the annual review, sign and confirm receipt of the policy by employees.

Advisers licensed with the Division have an obligation to establish, maintain, and enforce written policies and procedures reasonably designed to prevent and detect any violation by its investment adviser representatives or other persons, employed by or associated with, the investment adviser. The Division cannot provide a standard template for a compliance manual. The following is a sample list of the most common fiduciary and regulatory obligations of an adviser that should be addressed in the firm’s written compliance program, where applicable:

- Correspondence/Communications
 - Establish policies regarding if/when internal approvals will be required prior to use of any client correspondence or communications
 - Document how client correspondence and communications will be retained
 - Correspondence/communications includes all written and recordable formats (letters, emails, text messages, video messages, etc...)
- Conflicts of interest
 - Identify potential risks
 - Establish policies addressing how the adviser will address these risks
- Registration and Licensing
 - Keep the Form ADV Current – should be reviewed and updated no less than annually
 - IARD Entitlement and personnel responsible for all IARD duties

- IA Licensing – Maintain compliance with licensing requirements in Ohio and other states, when necessary
- IAR Licensing – Who is required to be licensed as an Investment Adviser Representative
- Books and Records
 - What are the firm’s required records?
 - Who maintains the records, how, and where – including off-site storage
 - Manner in which records are secured from unauthorized alteration or use
 - Retention and destruction of records
 - Maintaining and preserving electronic records and safeguarding them from loss
- Disclosure
 - Brochure Rule, Form ADV – how it’s offered originally and annually
 - Form U4 Disclosures
 - Client Referral Arrangements
 - The accuracy of disclosures made to investors, clients, and regulators, including account statements and advertisements
- Trading Practices
 - Best Execution
 - Policies on when the adviser can trade in stocks recommended to clients
 - Guidelines on whether IARs need to trade with a certain broker-dealer
 - Soft Dollar Arrangements
 - Batch Trading (Aggregation of Orders)
 - Proprietary trading of the adviser and personal trading activities of supervised persons
 - Trade Errors
- Privacy Policy
 - The sharing of client information with others
 - Office personnel having access to files/computer
 - Establish safeguards for confidential personal information
- Portfolio management processes
 - The allocation of investment opportunities among clients
 - The consistency of portfolios with clients’ investment objectives
 - Disclosures by the adviser, and applicable regulatory restrictions
- **Mandatory Reporting requirements – Senior Exploitation Legislation**

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¹ Senior Exploitation Legislation was part of the Amended Sub HB 49 (2018), went into effect October 1, 2018.

- ORC 5101.63, the Adult Protection Services law was amended to better protect seniors by requiring all **Investment Advisers and Financial Planners** who have “reasonable cause to believe” that an adult is being abused, neglected, or exploited to immediately report the suspicion to their county office of job and family services (See educational booklet for more information link [HERE](#))
- Policies and Procedures of your firm shall incorporate this requirement and must include a detailed process for how your firm will document compliance.
- **Expanded Mandatory Reporters** - In addition to the changes in the law from the Senior Exploitation Legislation above, the 132nd General Assembly passed Am. Sub. S.B. No. 158 that includes additional securities industry licensees as Mandatory Reporters to further protect seniors from exploitation. This additional legislation requires **“A dealer, investment adviser, sales person, or investment adviser representative** licensed under Chapter 1707 of the Revised Code” to immediately report that an adult is being abused, neglected, or exploited to the county department of job and family services.²
 - Policy and Procedures of your firm shall incorporate the Mandatory Reporting requirements and must include a detailed process for how your firm will document compliance.
- Marketing/Advertising
 - Required internal approval prior to use
 - Use of social media, website, blogs, posts (etc.)
 - The use of solicitors
 - Record retention
- Fees
 - Processes to value client holdings
 - Disclosure
 - Refunds
- Business Continuity and Disaster Recovery Plans
 - Recovery of Books and Records
 - Alternate means of communications with customers, employees, service providers (including third-party custodians), and regulators
 - Office relocation due to unavailability of office
 - Death or incapacity of principal(s)
- Custody
 - Prior authorization before deducting fees
 - Safekeeping requirements
 - Account statements to clients

² Amended Sub. SB 158 (2018), was signed by the Governor in December 2018. This expanded the list of mandatory reporters, added educational opportunities to combat elder fraud and exploitation, and will include monetary fines and sanctions for perpetrators.

- Audit requirement
- Standard Letter of Authorizations
- Proxy voting policy
- Complaints
 - How they are handled (procedures for reporting and addressing)?
 - How are related records maintained?
- Computer and Cybersecurity
 - Anti-virus – installation, updates
 - Preservation of the records from loss, alteration, destruction (use of back-ups)
 - Encryption
 - Secure Emails
 - Dissemination of client information
 - Inventory of hardware
 - Passwords
 - Procedures for lost or stolen data/information
 - Customer Access via web portals
- Cybersecurity and best practices
 - Ohio Data Protection Act (effective November 2, 2018), encouraging businesses to voluntarily adopt cybersecurity practices to protect consumer data see <http://codes.ohio.gov/orc/1354>
 - Cybersecurity Checklists for IAs (See [Appendix H](#) and [Appendix I](#))
- Insider Trading
 - Prevention of the misuse of material, nonpublic information

IX. Custody

Unless an investment adviser licensed or required to be licensed by the Division, and its investment adviser representatives, follow the Division's rule regarding custody of client funds and securities, such custody will be deemed a fraudulent, deceptive or manipulative practice in violation of the statutory anti-fraud provision.

An adviser has custody if it holds client funds or securities directly or indirectly or has authority to obtain possession of such assets. See OAC 1301:6-3-44(B)

For example, an adviser has custody any time it physically holds client stock certificates, bonds or cash – even if temporarily. It should be noted that inadvertent receipt will not result in custody as long as the check or securities are returned to the client within three business days. In addition, checks written to third parties and forwarded on to that third party will not result in custody.

A second example of custody is when an adviser is authorized to sign checks on a client's behalf to withdraw funds or securities from a client's account or to dispose

of client funds or securities for any purpose other than authorized trading. To illustrate this more clearly, custody occurs where advisers are authorized to deduct advisory fees or other expenses directly from a client's account, or, where the adviser has a general power of attorney.

Custody is triggered any time an adviser acts in a capacity that gives the adviser legal ownership of, or access to, client funds or securities. Illustrations of this include a general partner of a limited partnership; a managing member of a limited liability company; a comparable position for another type of pooled investment vehicle; or, a trustee of a trust.

Custody Continued:

The custody rule requires that all advisers maintain client funds and securities with only four types of qualified custodians, including:

- United States banks
- broker-dealers registered with, and regulated by the Commission
- futures commission merchants registered under the Commodity Exchange Act
- foreign financial institutions that customarily hold financial assets for their customers provide they hold them in segregated accounts

The client's funds and securities must be either placed in a separate account for each client under the client's name or placed in an account that contains only the adviser's clients' funds and securities under the adviser's name as agent or trustee for the clients.

An adviser that opens an account with a qualified custodian on the client's behalf, whether in the name of the client or in the name of the adviser, as agent, must notify the client in writing and provide the name and address of the qualified custodian; the manner in which the client funds or securities are being held; and **must promptly notify** the client upon the change of this information.

Clients must also receive quarterly account statements directly from the qualified custodian that identify the amount of funds and each security held in the adviser's custody at the end of the period; and, all transactions in the account occurring during the period. The adviser must have a reasonable basis for believing that the qualified custodian is delivering proper quarterly account statements to its clients. To form this reasonable basis for believing, the adviser is required to receive duplicate copies of the account statements from the qualified custodian of what was delivered to the adviser's clients. The adviser cannot receive the quarterly account statements and then forward copies on to its clients. **Failure to comply with these quarterly account statement delivery requirements will result in the adviser being required to have annual surprise audits conducted by an independent public accountant, at the adviser's cost.**

Limited partnerships, limited liability companies, other pooled investment vehicles, and trusts must have clients' funds and securities maintained with a qualified

custodian. The qualified custodian must deliver quarterly account statements regarding transactions and holdings in the limited partnerships, limited liability companies, other pooled investment vehicles, and trusts, not just transactions or holdings relating to the individual investors/limited partners.

The qualified custodian must deliver the quarterly account statements directly to the limited partners, members, or beneficial owners. Account statement delivery is not required if the limited partnership, limited liability company, or pooled investment vehicle is audited annually by an independent public accountant; the audited financials are prepared in accordance with GAAP accounting; and the audited financials are distributed to each limited partner or pooled investment vehicle member within 120 days of the limited partnership's or pooled investment vehicle's fiscal year end.

X. Fees

The Division takes the position that investment advisers and investment adviser representatives must disclose to clients all material information regarding compensation. This includes accurate fee schedules, when fees will be charged, and whether fees will be automatically deducted from clients' accounts or paid directly.

- Unreasonable or Unearned Fees

Depending on the facts and circumstances, the Division may consider advisory fees to be unreasonable or unearned, and a breach of the adviser's fiduciary duty. The Division may consider whether advisory fees are unreasonable in relation to: (1) the complexity and nature of the services charged; (2) the fees charged by other investment advisers or investment adviser representatives for similar services in the geographic area; and (3) the likelihood that the services provided by the investment adviser or investment adviser representative will result in returns in excess of the fees charged.

- Minimum Fees

If minimum fees are charged, the adviser has a fiduciary obligation to ensure that fees for small accounts are not abusive. Fixing a minimum fee for a small account may be unreasonable.

- Refunding Fees for Terminated Accounts

If fees are paid in advance the investment adviser should also disclose its refund policy. A non-refundable feature goes against an investment adviser's fiduciary responsibility. Any advisory contract which does not provide in substance for a pro rata refund of a prepaid advisory fee would violate the antifraud provisions of Section 206 of the Advisory Act.

- Performance Fees

Ohio Administrative Code 1301:6-3-15.1(H)

Investment advisers licensed or required to be licensed under the Act, are prohibited from receiving any type of advisory fee calculated as a percentage of capital gains or appreciation in the client's account. This prohibition extends to contingent fee arrangements, including contracts that provide for the fee to be waived or reduced if certain performance levels are not met. However, this prohibition does not apply to contracts with clients who have at least \$1 million under the management of the adviser, or if the client has a net worth of more than \$2.1 million. Either of these tests must be met at the time of entering into the advisory contract.

XI. Wrap Fee Program

Definition

In a wrap fee program, a client pays a single fee (usually measured as a percentage of assets under management) for a group of services that are bundled, or "wrapped" together. Typically, the services include investment advice, brokerage, custody and other administrative functions. Ohio law defines a wrap fee program as an arrangement in which a client is charged a specified fee or fees, not based directly on transactions in the client's account, for investment advisory services and execution of transactions.

Sponsor

A wrap fee program is offered by a program “sponsor,” which may be broker-dealer, an investment adviser, bank, or other financial institution. A wrap fee sponsor typically is subject to regulation as an investment adviser. Normally a client enters into a contract directly with the sponsor, and a sponsor has specific disclosure obligations.

Portfolio Manager

After contracting with the sponsor, the typical wrap fee program permits the client to choose a portfolio manager from a list provided by the sponsor. This permits a client with a smaller account that might not warrant separate management by an investment adviser to obtain individualized treatment. Typically, the portfolio manager will have investment discretion in accordance with pre-determined investment objectives. As a result, clients with the same investment objectives receive the same investment advice and may hold the same, or substantially the same, securities in their accounts. In light of this similarity of management, a wrap fee program can effectively function like a mutual fund.

An investment adviser, licensed or required to be licensed by the Division, 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, must furnish each client and prospective client of the wrap fee program with a written disclosure statement ADV Part 2A, Appendix 1.

Wrap Fee Statement

An investment adviser that is required to furnish a wrap fee statement must furnish the wrap fee statement to each client at the time they enter into the agreement with the investment adviser. An investment adviser’s fiduciary duty extends to wrap fee program recommendations. In particular, an investment adviser sponsor of a wrap fee program should consider at least the following issues:

- Whether the portfolio manager is suitable for the client
- Whether the program is suitable for the client
- Whether the chosen strategy is suitable for the client

XII. Fiduciary Standard

Ohio Administrative Code 1301:6-3-44(E)(1)(f)

Investment advisers and IARs stand in a fiduciary relationship with their clients. This duty is a long-standing doctrine of both federal and state common law, and is reiterated in the Ohio Administrative Code. As fiduciaries, advisers have “an affirmative duty of utmost good faith and full and fair disclosure of all material facts.” (See *Transamerica Mortg. Adv. Inc. v. Lewis*, 444 U.S. 11, 17 (1979)). In addition, an adviser has the duty to act in the best interest of their clients and to disclose all material information about actual or potential conflicts of interest. Specifically, an adviser or IAR has a duty to:

- employ reasonable care to avoid misleading clients,
- have a reasonable independent basis for investment advice,
- ensure that investment advice is suitable, and
- obtain “best execution” of client transactions.

With regard to suitability in particular, the Division will expect to see current documentation demonstrating how the investment advice is suitable for the client, taking into consideration the client's financial situation, investment experience, and investment objectives.

XIII. Solicitors and Referral Fees

Ohio Administrative Code 1301:6-3-44(C)

A solicitor is any person who, directly or indirectly, solicits any client for, or refers any client to, an investment adviser or investment adviser representative. Solicitors are not required to be licensed by the Division – there is no “solicitor’s license”. Rather, solicitors need to be licensed by the Division only if their activities meet the definition of investment adviser or investment adviser representative. (See [Appendix C](#) and [Appendix D](#)).

The Ohio Administrative Code establishes a “safe harbor” for solicitors, providing that a person who acts solely as a solicitor and is in compliance with the rule regarding cash payments for client solicitations is not deemed to be an investment adviser.

Ohio law generally prohibits investment advisers and their investment adviser representatives from paying a cash fee to a solicitor unless all three of the following exist:

- There is a written agreement between the investment adviser or investment adviser representative and the solicitor (a copy of which the investment adviser must retain), detailing the referral arrangement.
- At the time of any solicitation activities, the solicitor provides the prospective client with a copy of the investment adviser's brochure, Form ADV Part 2. The prospective client must also receive a separate, written disclosure document that discloses, among other things, that the solicitor is being compensated for referring or recommending the investment adviser or investment adviser representative, and the terms of the compensation (including any additional amounts the client will be charged by the adviser as a result of the referral arrangement).
- The investment adviser or investment adviser representative receives from the client, prior to or at the time of entering into any written or oral investment advisory agreement with the client, a signed and dated acknowledgment that the client received the investment adviser's brochure and the solicitor's written disclosure document.

Certain persons are **prohibited** from serving as a solicitor under the Ohio Securities Act. Specifically, prior to engaging a solicitor, an investment adviser is required to verify that the individual does not have a history of any securities or commodities violations and has not committed various other kinds of illegal conduct. The specific types of past administrative, civil, and criminal findings that disqualify a person from serving as a solicitor are listed in Ohio Administrative Code 1301:6-3-44(C)(1)(c).

XIV. Best Execution and Soft Dollars

As a fiduciary, an adviser has an obligation to obtain "best execution" of clients' transactions. In meeting this obligation, an adviser must execute securities transactions for clients in such a manner that the client's total cost or proceeds in each transaction are the most favorable under the circumstances.

In assessing whether this standard is met, an adviser should consider the full range and quality of a broker's services when placing brokerage orders, including, among other things, execution capability, commission rate, financial responsibility, responsiveness to the adviser, and the value of any research services provided.

An investment adviser must keep in mind the fiduciary obligation of best price and best execution when considering these factors.

When an investment adviser causes an account to pay more than the lowest available commission to a broker-dealer in return for research products and services, these payments are commonly referred to as "soft dollars." Federal law contains a "safe harbor" for certain soft dollar payments in section 28(e) of the Securities Exchange Act of 1934 and is available for all investment advisers operating in Ohio. This safe harbor protects an adviser from claims for breach of fiduciary duty based solely on the fact that the adviser paid more than the lowest available commission rate if the adviser, in good faith, determined that the higher commission was reasonable in relation to the value of the brokerage and research services provided. Section 28(e)(3) provides that brokerage and research services within the safe harbor include:

- Furnishing advice, either directly or through publications or writings, as to the value of the securities, the advisability of investing in, purchasing, or selling securities and the availability of securities or purchasers or sellers of securities;
- Furnishing analyses and reports concerning issuers, industries, securities, economic factors and trends, portfolio strategy, and the performance of accounts; or
- Effecting securities transactions and performing functions incidental thereto (such as clearance, settlement, and custody) or required in connection therewith by rules of the Commission or a self-regulatory organization of which such person is a member or person associated with a member or in which such person is a participant.

The Commission has issued extensive guidance under section 28(e). See Securities Exchange Act Release No. 34-23170 (April 23, 1986). The Division takes the position that this guidance, along with section 28(e), sets out the appropriate standards to follow regarding soft dollar arrangements for all investment advisers operating in Ohio.

XV. Aggregation of Client Orders ("Batch Orders")

In directing orders for the purchase or sale of securities to a broker-dealer for execution, an adviser may aggregate or "bunch" those orders on behalf of two or more of its accounts, so long as the bunching is done for purposes of achieving best execution, and no client is systematically advantaged or disadvantaged by

the bunching. An investment adviser may include accounts in which it or its officers or employees have an interest in a bunched order. Investment advisers must have procedures in place that are designed to ensure that the trades are allocated in such a manner that all clients are treated fairly and equitably.

XVI. Principal Transactions; Agency Cross Transactions; Cross Trades

Ohio Revised Code 1707.44(M)(1)(c) & Ohio Administrative Code 1301:6-3-44(G)

Ohio law prohibits an investment adviser or an investment adviser representative, acting as principal for their own account, from knowingly selling any security to or purchasing any security from a client ("principal transaction"), without notifying the client in writing, and obtaining the client's consent before the completion of the transaction. The Division shares the view of the Commission that a transaction is "completed" upon its settlement. Thus, consent must be obtained prior to execution or prior to settlement.

Notification and consent for principal transactions must be obtained separately for each transaction. However, this requirement does not apply to any investment adviser registered with the Commission, or to any transaction with a customer of a licensed dealer or salesperson who is not acting as an investment adviser or investment adviser representative in relation to the transaction.

For investment advisers licensed or required to be licensed by the Division and their investment adviser representatives, Ohio Administrative Code 1301:6-3-44(G) permits an adviser to act as broker for both its advisory client and the party on the other side of the brokerage transaction ("agency cross transaction"), without obtaining the client's prior consent to each transaction, provided that the adviser obtains a prior consent for these types of transactions from the client, and complies with other, enumerated conditions.

The rule does not relieve advisers of their duties to obtain best execution and best price for any transaction. A principal or agency cross transaction executed by an affiliate of an adviser is deemed to have been executed by the adviser for purposes of Revised Code 1707.44(M)(1) and Ohio Administrative Code 1301:6-3-44(G).

While an agency cross transaction involves an advisory client and a non-advisory client, a “cross trade” describes the circumstance where an adviser executes a transaction between advisory clients. The Division shares the view of the Commission that, in executing a cross trade, if an adviser receives no compensation (other than its advisory fee), directly or indirectly, for effecting a particular cross trade between advisory clients, the adviser will not be “acting as a salesperson” within the meaning of Revised Code 1707.44(M)(1)(c). However, full disclosure of such cross trade is required, and the adviser must ensure that the cross trade achieves best execution and does not disfavor any client.

XVII. Other Disclosure Requirements

Ohio Administrative Code 1301:6-3-44(D)

Ohio law requires investment advisers and investment adviser representatives that: (1) have custody or discretionary authority over client funds or securities; or (2) require prepayment six months or more in advance of more than \$500 of advisory fees, to disclose promptly to clients any financial condition of the investment adviser or investment adviser representative(s) that is reasonably likely to impair the ability of the investment adviser and investment adviser representative to meet contractual commitments to clients. This disclosure requirement can be satisfied by giving disclosure at the time of entering into a contract with a prospective client, if the contract permits the client to terminate the contract without penalty within five business days after entering into it.

All investment advisers and investment adviser representatives are required to disclose promptly to clients legal or disciplinary events that are material to an evaluation of the adviser’s integrity or ability to meet their commitments to clients. The rule lists a number of legal and disciplinary events for which there is a rebuttable presumption of materiality for these purposes. Keep in mind that although an event may not be on the list in the rule, it may still be material, particularly in light of an adviser’s fiduciary duty to its clients.

XVIII. Overview of Anti-Fraud and Conduct Standards

Investment advisers and investment adviser representatives are fiduciaries who have an affirmative obligation of utmost good faith and full and fair disclosure, and

who owe their clients undivided loyalty. Further, advisers have a duty to avoid misleading their clients, and may not engage in activity that may conflict with a client's interest without the client's consent.

Consequently, advisers are subject to a set of conduct and anti-fraud standards. The conduct standards include a series of business responsibilities, set out in Ohio Administrative Code 1301:6-3-15.1, that are based on analogous federal responsibilities. Statutory anti-fraud standards are set out in Revised Code 1707.44(M) and generally prohibit misstatements or misleading omissions of material facts and other fraudulent acts and practices in connection with the conduct of an advisory business. Revised Code 1707.44(M) applies to all investment advisers and investment adviser representatives operating in Ohio.

The statutory anti-fraud standards are amplified by a series of administrative rules set out in Ohio Administrative Code 1301:6-3-44 and based on analogous federal regulations. The administrative rules are prophylactic in nature and are generally aimed at prohibiting activities that are fraudulent, deceptive, or manipulative.

The following are some examples of conduct that may be deemed dishonest or unethical practices or are otherwise contrary to an adviser's fiduciary duty:

- Failing to disclose to their client in writing that a material conflict of interest exists
- Misrepresenting the qualifications of the adviser or IAR
- Borrowing or lending money or securities from or to a client
- Making guarantees
- Placing an order without authority to do so
- Making a recommendation without reasonable grounds to believe the recommendation is suitable
- Providing a report or recommendation to a client prepared by someone else without disclosing that fact
- Charging an excessive fee
- Failing to disclose a legal or disciplinary event that is material
- Disclosing the identity, affairs, or investments of any client to a third party unless required by law or consented to by the client

PART 3 – The Division's Onsite Exam Program

I. The Division's Onsite Examination Program

Ohio Revised Code 1707.23(B)

The Division may conduct periodic, special, or for-cause examinations of any investment adviser or investment adviser representative, and their books, records, documents, accounts, and work papers as it deems material or relevant to the protection of investors or in the public interest. While most examinations are scheduled in advance, the Division has authority to conduct unannounced for-cause examinations of its licensees at any time it is necessary for the protection of investors or in the public interest.

Before the Exam

As an investment adviser licensed in Ohio, you can expect an examination of your firm's books and records routinely once you are licensed. Generally, prior to the examination date you will receive a call from the office notifying you that an examination is to be scheduled. That conversation will be followed with a letter confirming the date and time and providing you with a list of your records that should be readily available. Additional records may be requested by the examiner during or after the exam. It is important that you promptly notify the Division if the address is incorrect or if you cannot adhere to the scheduled date.

The Exam

During the examination, the examiner will spend time interviewing key personnel. The examiner will then review all or some of the documents and information you were asked to make available. Copies of some documents may be requested by the examiner in order for further reading or review. If records are maintained in electronic form, electronic copies may be provided to the examiner in lieu of hard copies. However, it may be necessary and will be requested for you to print or provide access for the examiner to view such records. The examiner will also be available to answer questions but cannot provide legal advice. The length of the examination varies depending on the focus of the examiner. **Key personnel must be available for the duration of the examination.**

After the Exam

Once the examination is complete, the examiner may explain what you can expect, including a deficiency letter if certain deficiencies were noted. A deficiency letter may be sent from the Division requiring you to correct deficiencies and otherwise

may make recommendations that the Division believes are good business practices. You will be given adequate time to reply and submit corrected documents if required. Once you have addressed all items in the deficiency letter, you will then receive a closing letter.

Non-compliance

Failure to be prepared for or co-operate with the Division's on-site examination program, as well as a failure to timely and satisfactorily respond to the Division deficiency (see common deficiencies below) may result in administrative action against the investment adviser and investment adviser representative's licenses, including license suspension or revocation.

II. Common Deficiencies

The Division suggests getting ahead of some of the most common deficiencies found during examinations:

- a. **ADV Consistency.** The description of your advisory business and services in Part 1 should match the description of your advisory business and services in Part 2.
- b. **Annual ADV Updates.** The most recent rule requires annual updating of the adviser's Form ADV within 90 days of the firm's fiscal year end. You are required to make this annual filing on the IARD system, even if nothing about your business has changed. Remember, the ADV should reflect you actual, not anticipated, business.
- c. **Make sure you SUBMIT your IARD changes.** Many advisers make amendments to their ADV on the IARD system, save the changes, but then fail to SUBMIT the filing changes. Be sure to select the SUBMIT button once you have completed making all of your amendments – or the changes will never post to the Division or the investing public.
- d. **Form ADV, Part I, Item 9F.** This item is commonly answered incorrectly or is misunderstood. It is important that IA's understand that if fees are directly deducted from client accounts, for the purposes of this question, they are considered to have custody limited to the direct deduction of fees from client accounts. Please refer to the ADV Instructions found at: www.sec.gov/about/forms/formadv.pdf.

- e. **Quarterly Financial Statements.** A Balance Sheet and Income Statement – prepared quarterly - are required. The Balance Sheet is a statement showing the assets, liabilities, and equity of the firm (Assets = Liabilities + Equity). The Income Statement is a statement showing the revenues, expenses, and net income of the firm.
- f. **Bank Reconciliation.** This is a reconciliation between the cash balance shown on the Balance Sheet with the balance shown on the bank statement. The reconciliation will account for outstanding checks, deposits in transit, and other items that cause the bank balance to differ from the amounts shown on your records.
- g. **Compliance Manual.** The Division has no template for a compliance manual, but does expect the compliance manual to reflect all the policies and procedures that apply to **your firm’s business**. The purchase of “off the shelf” compliance manuals is acceptable so long as the manual is reviewed and amended to reflect only the items that apply to your firm.
- h. **Cybersecurity.** The Division expects compliance manuals to address your firm’s policy with respect to cybersecurity. How is client information safeguarded? How do you keep your systems secure? How is the identity of your clients verified? How are records retained and then destroyed after the retention period?
- i. **Suitability.** IA’s are generally good about obtaining customer suitability information. They need to keep this information current and updated regularly so that they are preserving their fiduciary duty to their clients.
- j. **Refunds.** IA’s may not retain unearned fees. Any fees paid in advance must be refunded. If you collect fees in advance, your contract must contain a provision to refund unearned fees if the client terminates.
- k. **Discretion.** If your firm is not granted discretion in the written contract, you are required to obtain client approval for **all trades prior** to the trade being made. Your firm must establish a means of documenting this client contact and approval of securities actions.
- l. **Brochure Rule.** The ADV Part 2 requires that the IA give a Brochure Statement to each client or potential client before or at the time they enter into an advisory agreement. Evidence of providing such is required and may be accomplished by including this obligation in the advisory contract.
- m. **Deficiency letters.** The importance of responding to Division communications cannot be over-stressed. The Division is very receptive to reasonable requests for

extensions of time to respond. We will work with you. Failure to respond to our requests serves only to require additional follow-up on our part and additional effort on your part to comply. Non-compliance will lead to a Notice of Intent to suspend or revoke of your license.

Appendix A: Frequently Asked Questions

- Q. *Does the state of Ohio regulate investment clubs?*
- A. *Since each investment club is unique, each club will need to decide if it has any registration requirements. If the investment club is a corporation or LLC, the club may issue shares or membership interests, up to 10 Ohio investors in a 12-month period without having to register the securities being offered. There can be no general solicitation or advertising, and each investor (in the investment club) must be purchasing for investment. (See ORC 1707.03(O)). If the investment club's manager were to receive compensation for their investment advice from the other members of the group, then they may be considered an Investment Adviser and licensure may be required. Investment Club members are encouraged to speak with an attorney about any registration or licensing requirements. See the flow chart in [Appendix C](#).*
- Q. *What do I need to sell variable annuity products in Ohio?*
- A. *In order to sell V.A. products in Ohio, agents must be Ohio licensed insurance agents with a variable products qualification. Ohio's agent licensing laws do not make a distinction between group and individual variable products. Any applicant applying through the Ohio Department of Insurance for variable life/variable annuity line of authority must be registered with FINRA as a registered representative after having passed at the one of the following examinations: Series 6, 7, 63 or 66. Individuals who sell variable products may need to be dually licensed to sell securities products and licensed to sell insurance products. Individuals should contact the appropriate regulator to inquire about these requirements.*
- Q. *Does Ohio have an Exempt Reporting Advisers (ERA) licensure or notice filing?*
- A. *No, Ohio does not. This is an SEC licensing requirement for firms that advise solely to private funds, and Ohio does not have an equivalent*

licensing requirement. If a firm files to be registered as an ERA firm with SEC, then no filing is required in Ohio.

- Q. *Do I register as an investment adviser with the U.S. Securities and Exchange Commission or with the state of Ohio?*
- A. Investment advisers that have Regulatory Assets Under Management of less than \$100 million register with the state, unless the adviser is required to be registered in 15 or more states (then it registers with the U.S. Securities and Exchange Commission). Investment advisers that have Regulatory Assets Under Management of more than \$110 million are required to register with the U.S. Securities and Exchange Commission.
- Q. *How long does it take to get approved as an investment adviser in Ohio?*
- A. The Division reviews all applications and pre-licensing examination materials as quickly as possible. Given that the process is back-and-forth between the applicant and the Division, the amount of time an application remains pending largely depends on how quickly the applicant is able to submit the required documents to the Division and otherwise meet all of the licensing requirements. Applicants who are diligent in providing the required information to the Division, and are not subject to a denial action, will find that their application may be approved a just a few weeks.
- Q: *How long is an investment adviser or investment adviser representative license valid?*
- A. The licenses of investment advisers and investment adviser representatives expire on December 31st of each year unless the renewal fees for the next calendar year have been paid in advance. If the renewal fees are not paid in time and the licenses lapse, there is no grace period and no method for reinstating the licenses. Firms and individuals must re-apply. Further, if the investment adviser firm fails to renew its license, all licenses of affiliated investment adviser representatives are automatically terminated.

Q: How do I renew my investment adviser and investment adviser representative licenses?

A: Renewal fees are paid through the IARD system and must be paid in accordance with the IARD system deadlines. The Division undertakes many steps to remind advisers of their renewal filing obligations. There are no renewal documents required to be filed with the Division.

Q: How do I update information concerning the investment adviser?

A: The best way to keep the Division informed of any changes to the investment adviser (e.g., phone number, mailing address, e-mail address) is to amend the firm's Form ADV through the IARD system. It is the first place the Division will look for the most current information.

Q: My firm has started obtaining potential clients outside of Ohio. When do I need to become licensed with other state(s)?

A: Each state has different rules regarding when licensing is required. Some states have a "de minimus rule" which allows you to have up to 5 clients in their state and not become licensed, so long as you do not maintain a place of business there. However, this is not the case in all states, you must contact the appropriate state securities regulator to verify their licensing requirements before working with out-of-state clients.

Q: Is there a net capital requirement for investment advisers in Ohio?

A: There are no net capital or surety bond requirements for investment advisers in Ohio.

Q: Are investment adviser representatives required to file fingerprints with the Division?

A: Yes, please see the IAR Fingerprinting section of this Guide.

Q: Is there a de-minimis exclusion from registering as an investment adviser in Ohio?

A: Yes, the investment adviser must in the proceeding twelve months, have had no place of business in Ohio and had five or fewer clients.

Q: Does the Division allow advisers to send documents to their clients electronically?

A: Yes, so long as the adviser has previously obtained consent from the client to send documents to them electronically, the adviser takes reasonable steps to ensure the e-mail address on file for the client is still valid, and the adviser takes precautions to protect the transmission of any confidential personal information contained in the documents.

Q: How do I withdraw my license as an investment adviser or investment adviser representative?

A: The investment adviser is required to file a Form ADV-W through the IARD system. The investment adviser representative is required to file a Form U5 with the CRD system.

Appendix B: Common Definitions

All definitions in the Ohio Securities Act can be found in either the Ohio Revised Code <http://codes.ohio.gov/orc/> or the Ohio Administrative Code <http://codes.ohio.gov/oac/>. The Division has added a few definitions below, as these are commonly asked questions.

“Clients” – Ohio Administrative Code 1301:6-3-01(H) and (I);

For the purpose of determining the number of clients for meeting the *de-minimis* exception from licensing as an investment adviser, the following are deemed a “single client”:

- A natural person, and
- Any minor child of the natural persons;
- Any relative, spouse, or relative of the spouse of the natural person who has the same principal residence; and
- All accounts and trusts, the only primary beneficiaries of which are the natural person and/or the children, spouses and relatives described above.
- Legal organizations, including
- A corporation, general partnership, limited partnership, limited liability company, trust (other than a family trust described above), or other legal organization that receives investment advice based on its investment objectives rather than the individual investment objectives of its owners; and
- Two or more legal organizations described above that have identical owners.

“Held Out” to the Public - SEC Release IA-1633m [1997 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 85,940 (May 15, 1997)

A location is considered “held out” to the public by, for example, publishing information in a professional directory or a telephone listing, or distributing advertisements, business cards, stationery, or similar communications that identify the location as one at which the investment adviser or investment adviser representative is or will be able to meet or communicate with clients. However, an investment adviser representative who sends a letter to certain existing clients

indicating, for example, that he or she will be in their area and available for a meeting would not have held out the location of the proposed meeting to the general public for purposes of the definition. Similarly, an investment adviser representative that communicates to a defined group under the terms of an advisory contract the location at which he or she will be available would not be holding himself or herself out to the general public. Further, in the case of a national organization that engages an adviser to provide advisory services to its members, an adviser representative who communicates its availability at a certain location to the members (even though those individuals may not be clients) would not be holding himself or herself out to the general public. The definition encompasses permanent and temporary offices as well as other locations at which advisory services are provided, such as a hotel or auditorium. Whether an investment adviser representative will be subject to the qualification requirements of a state in which the hotel or auditorium is located will turn on whether, for example, an investment adviser representative conducts advisory business there.

“Place of Business” – Ohio Administrative Code 1301:6-3-01(G)

Ohio law defines “place of business” to include two categories of locations. First is an office at which an investment adviser or investment adviser representative regularly provides investment advisory services, solicits, meets with, or otherwise communicates with clients. Second is any other location that is held out to the general public as a location at which an investment adviser or investment adviser representative provides investment advisory services, solicits, meets with, or otherwise communicates with clients.

“Promptly” – Ohio Administrative Code 1301:6-3-01(N)

Promptly is defined to mean not later than 30 calendar days after learning of the facts or circumstances giving rise to the amendment or update.

“Regulatory Assets Under Management” – Form ADV, Part 1A, Instruction 5.b

For purposes of completing the Form ADV, the amount of your firm’s Regulatory Assets Under Management is determined by including the securities portfolios for which you provide **continuous and regular supervisory or management**

services as of the date you are filing or amending your Form ADV. As to the types of securities portfolios you must include in your calculation, in addition to traditional advisory accounts, you must include family or proprietary accounts, pro bono accounts, accounts of non-U.S. persons, and assets of a private fund. For additional explanation on how to calculate your Regulatory Assets Under Management, see Form ADV, Part 1A, Instruction 5.b.

“Solicitor” – Ohio Administrative Code 1301:6-3-44(C)

A solicitor is any person who, directly or indirectly, solicits any client for, or refers any client to, an investment adviser or investment adviser representative. Solicitors *per se* are not required to be licensed by the Division—there is no “solicitor’s license.” Rather, solicitors need to be licensed by the Division only if their activities meet the definition of investment adviser or investment adviser representative. As under federal law, Ohio law requires a solicitor who receives cash payments to provide a written solicitation disclosure document to clients.

Ohio Administrative Code 1301:6-3-01(K)(2) establishes a “safe harbor” for solicitors, providing that a person who acts solely as a solicitor and is in compliance with the rule regarding cash payments for client solicitations is not deemed to be an investment adviser. However, certain persons are legally prohibited from acting as solicitors, namely those who have been the subject of certain federal and state securities actions.

“Supervised Person” – Ohio Revised Code 1707.01(DD)

In order to be an investment adviser representative, a natural person first must be a “supervised person.” A supervised person is a natural person who is any of the following:

- A partner, officer, or director of an investment adviser, or other person occupying a similar status or performing similar functions with respect to an investment adviser;
- An employee of an investment adviser; or

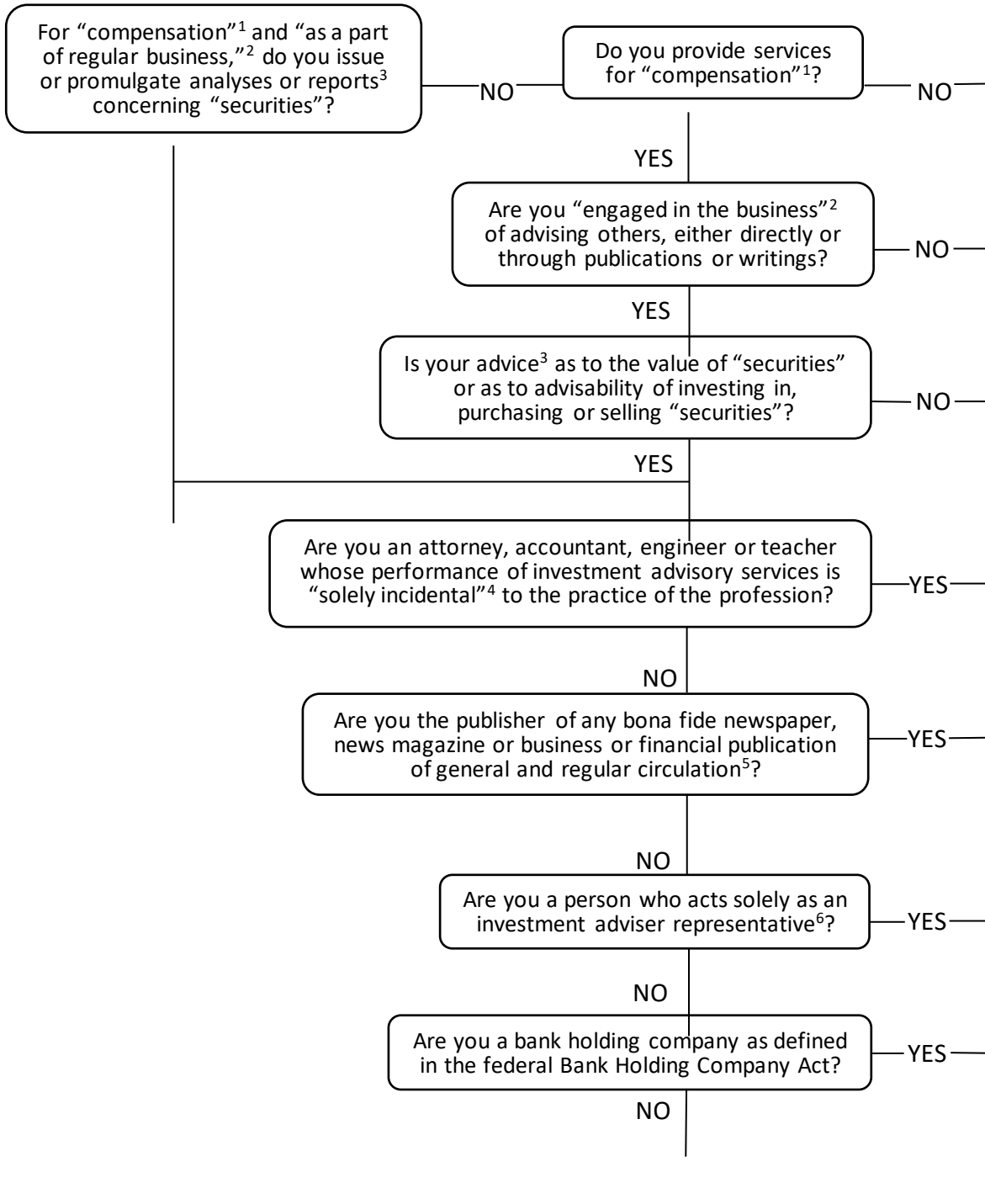
- A person who provides investment advisory services on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.

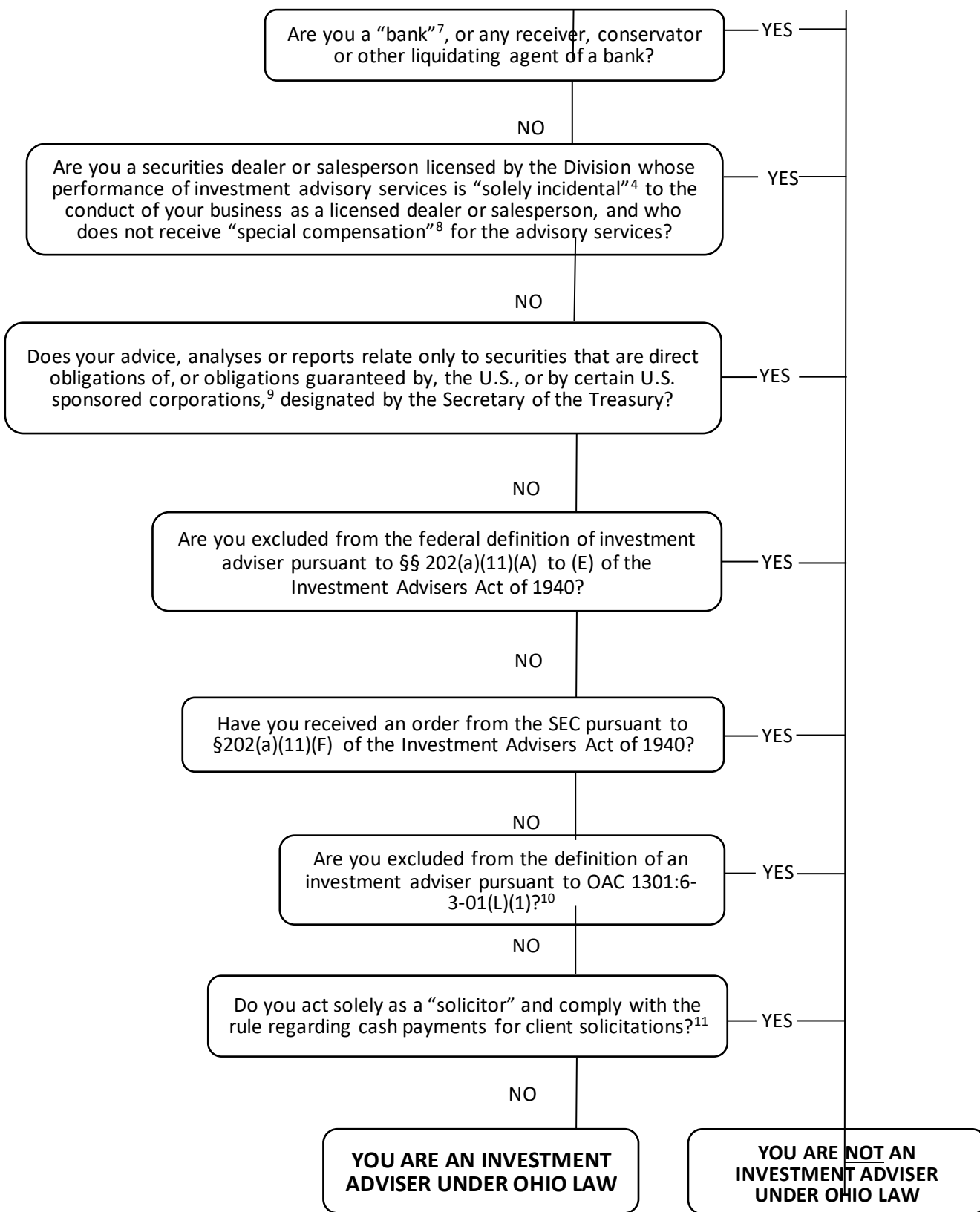
Appendix C: Investment Adviser Flowchart

ARE YOU AN INVESTMENT ADVISER UNDER OHIO LAW?

(R.C. 1707.01(X))

(The accompanying notes are an integral part of this flowchart.)





NOTES TO “ARE YOU AN INVESTMENT ADVISER UNDER OHIO LAW?”

1. “Compensation” is construed broadly and means the receipt of any economic benefit, whether in the form of an advisory fee or some other fee relating to the total services rendered, commissions, or some combination of the foregoing. It is not necessary that an adviser’s compensation be paid directly by the person receiving investment advisory services, but only that the investment adviser receive compensation from some source for the services. See SEC Release No. IA-1092, § II.A.3. (October 8, 1987).
2. “As a part of regular business” and “engages in the business” both require a “business” element and are to be construed in the same manner. The determination to be made is whether the degree of the person’s advisory activities constitutes being “in the business.” Whether a person giving advice about securities for compensation would be “in the business” depends upon all relevant facts and circumstances. In general, a person is considered to be “in the business” if the person (i) holds himself or herself out as an investment adviser or as one who provided investment advice; or (ii) receives any separate or additional compensation that represents a clearly definable charge for providing advice about securities; or (iii) on anything other than rare, isolated and non-periodic instances, provides specific investment advice. See SEC Release No. IA-1092, § II.A.2. (October 8, 1987).
3. The advice, report or analyses need not be with respect to particular securities. Rather, for example, advice concerning the relative advantages and disadvantages of investing in securities in general as compared to other investments would be “advice” for purposes of this prong of the definition. See SEC Release No. 1A-1092, § II.A.1. (October 8, 1987)
4. Whether an exclusion from the definition of investment adviser is applicable depends on the relevant facts and circumstances. For example, an attorney or accountant who holds himself or herself out to the public as providing financial planning or advisory services would not appear to fall within this “solely incidental” exclusion. See SEC Release No. IA-1092, § II.B. (October 8, 1987). In general, three factors are relevant to the determination of whether the “solely incidental” exclusion is available: (i) whether the person holds himself or herself out to the public as an investment adviser, financial planner or other provider of advisory services; (ii) whether the advisory services are rendered in connection with and reasonably related to the professional services; (iii) whether the fee charged for advisory services is based on the same factors as those used to determine the fee for the professional services. See, e.g., *Hauk, Soule & Fasani, P.C.*, SEC No-Action Letter (April 2, 1986); *Milton O. Brown, P.C.*, SEC No-Action Letter (August 28, 1983).
5. This exclusion does not include bulletins that are issued from time to time in response to episodic market activity, advertisements that “tout” particular issues, advertised lists of stocks “that are sure to go up” that are sold to individual purchasers or publications distributed as an incident to personalized investment services. *Lowe v. SEC*, 472 U.S. 181 (1985). The *Lowe* court did hold that this exclusion was applicable to a newsletter that

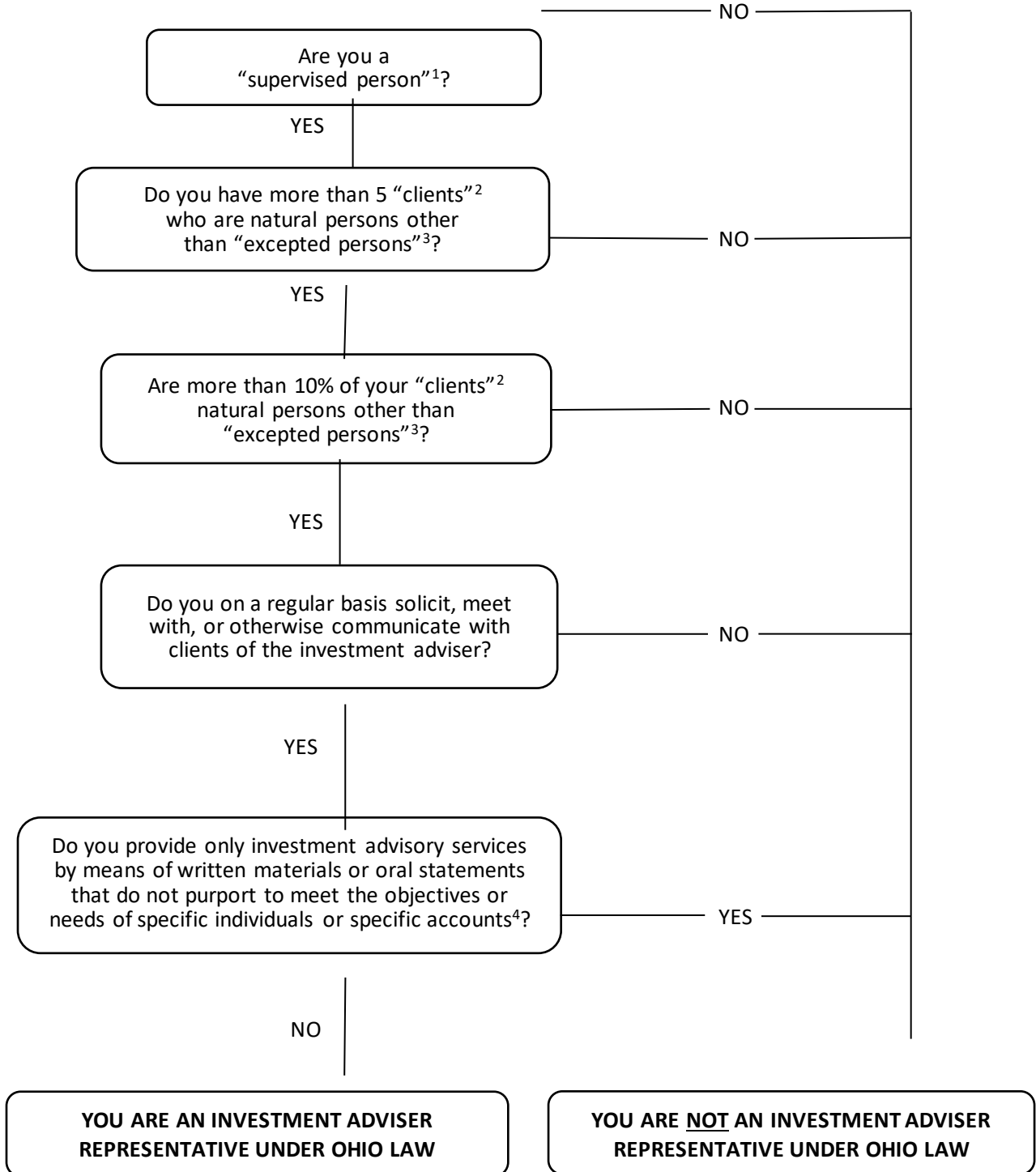
- was “completely disinterested” and “offered to the general public on a regular schedule.” *Id.* at 206. The definition of “investment adviser” encompasses publishers as well as authors. See SEC Release No. IA-563 (January 10, 1997). This exclusion, if it is available, would extend to authors.
6. A person may act as both an investment adviser and an investment adviser representative. See R.C. 1707.161(B)(2). However, a person who acts solely as an investment adviser representative is excluded from the definition of investment adviser. “Investment adviser representative” is defined in R.C. 1707.01(CC).
 7. “Bank” is defined in R.C. 1707.01(O). This exclusion extends to an employee of a bank to the extent that the employee is acting in his or her capacity as an employee. See, e.g., Harbor Springs State Bank, SEC No-Action Letter (March 3, 1986). This exclusion does not extend to a bank employee acting in his or her individual capacity. *Id.*
 8. “Special compensation” for investment advice is compensation to the dealer or salesperson in excess of that which he or she would be paid for providing a brokerage or dealer service alone. Consequently, “special compensation” exists where there is a clearly definable charge for investment advice. See SEC Release No. IA-626, § V. (April 27, 1978).
 9. For example, the Government National Mortgage Association (“GNMA”).
 10. O.A.C. 1301:6-3-01(L)(1). To qualify for this limited exclusion to Investment Adviser licensure, the Division suggests a complete review of this rule in its entirety. See; <http://codes.ohio.gov/oac/1301:6-3-01v1>
 11. See O.A.C. 1301:6-3-01(L)(2). A solicitor is any person who, directly or indirectly, solicits any client for, or refers any client to, an investment adviser or investment adviser representative. The rule regarding cash payments for client solicitations is contained in O.A.C. 1301:6-3-44(C)(1) and requires, among other things, a solicitor who received cash payments to provide a written solicitation disclosure document to clients.

Appendix D: Investment Adviser Representative Flowchart

ARE YOU AN INVESTMENT ADVISER REPRESENTATIVE UNDER OHIO LAW?

(R.C. 1707.01(CC))

(The accompanying notes are an integral part of this flowchart.)



**NOTES TO “ARE YOU AN INVESTMENT ADVISER REPRESENTATIVE
UNDER OHIO LAW”?**

1. “Supervised person” is defined in R.C. 1707.01(DD) to mean a natural person who is any of the following:
 - (1) a partner, officer, or director of an investment adviser, or other person occupying a similar status or performing similar functions with respect to an investment adviser; or
 - (2) an employee of an investment adviser; or
 - (3) a person who provides investment advisory services on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.

This definition of “supervised person” matches the federal definition of “supervised person” contained in section 202(a)(25) of the Investment Adviser Act of 1940. The definition of “investment adviser representative” contained in R.C. 1707.01(CC) tracks the definition of that term set out in SEC Rule 203A-3(a) promulgated under the Investment Advisers Act of 1940.

2. R.C. 1707.01(CC)(2) lists certain persons who are deemed to be a single client for purposes of this definition. R.C. 1707.01(CC)(2) tracks SEC Rule 203(b)(3)-1 promulgated under the Investment Advisers Act of 1940.
3. “Excepted person” is defined in R.C. 1707.01(EE), and generally means a person who has: (i) at least \$750,000 under the management of the adviser; or (ii) has a net worth (jointly with spouse) of more than \$1,500,000; or (iii) is a “qualified purchaser” as defined in R.C. 1707.01(FF); or (iv) is an executive officer, director, trustee, general partner, or person serving in a similar capacity of the investment adviser; or (v) is a non-clerical employee of the investment adviser who participates in the investment activities of the adviser, and has so participated for at least 12 months. This definition of “excepted person” tracks the SEC’s definition of “excepted person” contained in SEC Rule 203A-3(a)(3)(i) promulgated under the Investment Advisers Act of 1940, which in turn is based on SEC Rule 205-3(d)(1) promulgated under the Investment Advisers Act of 1940.

“Qualified purchaser” is defined in R.C. 1707.01(FF), and generally means a natural person who owns not less than \$5,000,000 in “investments” or who owns and invests on a discretionary basis not less than \$25,000,000 in “investments.” This definition of “qualified purchaser” is based on the SEC’s definition of “qualified purchaser” set out in SEC Rule 205-3(d)(1)(ii)(B) promulgated under the Investment Advisers Act of 1940. For

purposes of this definition of “qualified purchaser,” the Division defines “investments” to mean “investments” as defined in section 2(a)(51)(A) of the Investment Company Act of 1940.

4. This is defined as “impersonal investment advice” by the SEC. See SEC Rule 203A-3(a)(3)(ii) promulgated under the Investment Advisers Act of 1940.

Appendix E: Pre-Licensing Examination

APPLICATION FILED THROUGH THE IARD:

Once the Ohio Division of Securities receives your application for an Investment Adviser License in Ohio, by way of the Form ADV submitted through the IARD system, applicants will receive notification of the Pre-Licensing Examination.

Please familiarize yourself with Ohio's investment adviser rules, found in the Ohio Administrative Code 1301:6-3-15.1, 1301:6-3-16.1, and 1301:6-3-44. The Ohio Administrative Code can be accessed using our website at www.com.ohio.gov/secu. In addition to the Ohio Administrative Code, information for investment advisers can be found in the "Industry Professionals" section of our [web site](#).

The Ohio Division of Securities requires all applicants to file ADV Part 2 electronically via IARD prior to being licensed.

COMPLETION OF THE LICENSING PROCESS:

Once we have reviewed your application through the IARD and determined it to be complete, the licensing process can be completed. The following tasks must be completed prior to approval.

In accordance with the provisions of the Ohio Revised Code 1707-15.1(B)(1), all IA Applicants are required to provide to the Division with the documents on the attached list. Due to how your business is formed, some of the requested documents may not be applicable, if this occurs, the Division requires a written explanation.

These documents should be submitted to the Division electronically to the e-mail address provided upon application.

DOCUMENTS REQUIRED TO BE SUBMITTED BEFORE INVESTMENT ADVISER LICENSING CAN BE COMPLETED

1. Copies of all investment advisory contracts your firm intends to use. All contracts must comply with the requirements of the Ohio Administrative code 1301:6-3-15.1(H)

2. A list of all branch offices your firm intends to have upon starting business. The list should include the address, telephone number, the number of investment adviser representatives, and the name of the manager of the branch office.
3. A list of all employees and their duties.
4. A copy of your firm's compliance manual, including a business continuity plan, disaster recovery plan and the designation of a chief compliance officer. Please indicate how you intend to document the required annual review of your compliance manual.
5. Copies of business cards for each investment adviser representative of your firm.
6. Copies of any solicitor agreements.
7. A statement of how your firm will comply with the requirements to maintain financial records and produce financial statements. The financial statement requirements are found in the Ohio Administrative Code 1301:6-3-15.1(E) (1).
8. A statement of how your firm intends to comply with the five-year record retention requirements

Appendix F: Standing Letter of Authority Guidance

The Ohio Division of Securities (the “Division”) has received numerous inquiries regarding its position on Standing Letters of Authorization (“SLOA”) arrangements established by a client with a qualified custodian. The Division follows the position adopted by the United States Securities Exchange Commission (SEC) in its [February 21, 2017 No Action Letter](#) to the Investment Adviser Association in that the Division will require state-licensed investment advisers to disclose custody, for purposes of Form ADV Part 1A, Item 9 and Part 2A, Item 15, if the adviser acts pursuant to a standing letter of instruction or other similar asset transfer authorization arrangement established with a client and a qualified custodian. Under the Ohio Securities Act, custody is defined in [Ohio Administrative Code 1301:6-3-44\(B\)\(3\)\(a\)](#). “Custody” means “holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them.” Custody includes “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.” See [OAC 1301:6-3-44\(B\)\(3\)\(a\)\(ii\)](#). Consistent with the SEC’s position stated in the [February 21, 2017 No Action Letter](#) at Footnote [1], the Division also takes the position that a SLOA arrangement where “the investment adviser does not have discretion as to the amount, payee, and timing of transfers under a SLOA would not implicate the custody rule.”

All advisers with custody under Ohio law are required to meet the safeguarding requirements of the custody rule, set forth in [OAC 1301:6-3-44\(B\)\(1\) and \(2\)](#).

Ohio state-licensed investment advisers are encouraged to meet the seven SLOA conditions set forth in the [February 21, 2017 No Action Letter](#), as the Division believes doing so is a best practice. The Division further acknowledges that some advisers may be required to follow these conditions as a requirement to do business with their custodian.

The seven SLOA conditions are as follows:

1. The client provides an instruction to the qualified custodian, in writing, that includes the client's signature, the third party's name, and either the third party's address or the third party's account number at a custodian to which the transfer should be directed.
2. The client authorizes the investment adviser, in writing, either on the qualified custodian's form or separately, to direct transfers to the third party either on a specified schedule or from time to time.
3. The client's qualified custodian performs appropriate verification of the instruction, such as a signature review or other method to verify the client's authorization and provides a transfer of funds notice to the client promptly after each transfer.
4. The client has the ability to terminate or change the instruction to the client's qualified custodian.
5. The investment adviser has no authority or ability to designate or change the identity of the third party, the address, or any other information about the third party contained in the client's instruction.
6. The investment adviser maintains records showing that the third party is not a related party of the investment adviser or located at the same address as the investment adviser.
7. The client's qualified custodian sends the client, in writing, an initial notice confirming the instruction and an annual notice reconfirming the instruction.

Appendix G: ANNUAL COMPLIANCE CHECKLIST

*Disclaimer: This list is compiled as a summary of key compliance obligations occurring annually. This checklist does not replace a robust compliance program as required by the Ohio Securities Act.

- **Annual Obligation to FINRA CRD/IARD certification for system entitlement.** Firms are typically notified within a 30-day period from mid-January to mid-February. Alerted by email from FINRA.
- **Annual Renewal obligation for licensure of firm and representatives.** November and December of each year. Alerted by emails from FINRA, and Division by mail.
- **UPDATES DUE 90 DAYS AFTER THE END OF YOUR FISCAL YEAR:**

BROCHURE RULE: Form ADV Parts 1 and 2:

Annual updated amendment MUST be filed with IARD within 90 days of end of your fiscal year even if you believe no changes occurred,

Form ADV Part 1: including corresponding sections of Schedules A, B, C and D.

Form ADV Part 1, Item 5: This section went through a redesign in 2017 to gather more detailed information about clients and business development in an effort to assist in more meaningful examinations and guide future policies.

UPDATE BROCHURE (Parts 2 A and B); Suggested areas to review;

Amount of client assets (Item 4 of 2A);

Fee schedules;

Item 2 Material Changes should also be updated, or noted that there were NO material changes in the last year;

Provide the date of the last annual update of your brochure in Item 1, 2A and 2B, and;

All annual amendment updates must be maintained in your files.

- **FILE YOUR BROCHURE:** This is required to be filed annually, within 90 days of the end of your fiscal year.

All material changes must be made “promptly” (within 30 days) if the information in the brochure becomes materially inaccurate, you must update promptly.

Annual Brochure Delivery – is this required of your firm?

Interim Brochure Delivery – is this required by your firm?

- **WRAP FEE BROCHURE ANNUAL AMENDMENTS AND DELIVERY**
- **FIRMS COMPLIANCE MANUAL UPDATES, ANNUAL MEETING TO REVIEW ACCURACY**

Confirm all IAR’s receive and review the compliance manual when changes are made.

Appendix H: State Investment Adviser Cybersecurity Checklist

Disclaimer: the information provided herein is for your convenience only, is illustrative, and is not intended as legal advice.

In response to the growing number of cybersecurity deficiencies found through a NASAA coordinated examination of Investment Advisers throughout North America, the Division is providing the following Cybersecurity Checklist for Investment Advisers (Issued: 2017). This checklist is only a tool to help Investment Advisers;

- (1) identify risks,
- (2) protect electronic mail,
- (3) protect devices for backups and retention,
- (4) protect the use of Cloud Services,
- (5) protect the firm websites,
- (6) protect custodian and other third-party vendors,
- (7) protect encryption,
- (8) detect anti-virus protection and firewalls,
- (9) respond to a cyber event,
- (10) recover with cyber insurance, and
- (11) disaster recovery.

(attached are 7 pages from NASAA revealing a **Cybersecurity Checklist for Investment Advisers**).

Appendix I: NASAA Cybersecurity Checklist

Identify: Risk Assessments & Management	YES	NO	N/A
1. Risk assessments are conducted frequently (e.g. annually, quarterly).			
2. Cybersecurity is included in the risk assessment.			
3. The risk assessment includes a review of the data collected or created, where the data is stored, and if the data is encrypted.			
4. Internal “insider” risk (e.g. disgruntled employees) and external risks are included in the risk assessment.			
5. The risk assessment includes relationships with third parties.			
6. Adequate policies and procedures demonstrate expectations of employees regarding cybersecurity practices (e.g. frequent password changes, locking of devices, reporting of lost or stolen devices, etc.).			
7. Primary and secondary person(s) are assigned as the central point of contact in the event of a cybersecurity incident.			
8. Specific roles and responsibilities are tasked to the primary and secondary person(s) regarding a cybersecurity incident.			
9. The firm has an inventory of all hardware and software.			
Protect: Use of Electronic Mail	YES	NO	N/A
1. Identifiable information of a client is transmitted via email.			
2. Authentication practices for access to email on all devices (computer and mobile devices) is required.			
3. Passwords for access to email are changed frequently (e.g. monthly, quarterly).			
4. Policies and procedures detail how to authenticate client instructions received via email.			

5. Email communications are secured. (If the response is no, proceed to the next question.)			
6. Employees and clients are aware that email communication is not secured.			
Protect: Devices	YES	NO	N/A
1. Device access (physical and digital) is permitted for authorized users, including personnel and clients.			
2. Device access is routinely audited and updated appropriately.			
3. Devices are routinely backed up and underlying data is stored in a separate location (i.e. on an external drive, in the cloud, etc.)			
4. Backups are routinely tested.			
5. The investment adviser has written policies and procedures regarding destruction of electronic data and physical documents.			
6. Destruction of electronic data and physical documents are destroyed in accordance with written policies and procedures.			
Protect: Use of Cloud Services	YES	NO	N/A
1. Due diligence has been conducted on the cloud service provider prior to signing an agreement or contract.			
2. As part of the due diligence, the investment adviser has evaluated whether the cloud service provider has safeguards against breaches and a documented process in the event of breaches.			
3. The investment adviser has a business relationship with the cloud service provider and has the contact information for that entity.			
4. The investment adviser is aware of the assignability terms of the contract.			
5. The investment adviser understands how the firm's data is segregated from other entities' data within the cloud service.			
6. The investment adviser is familiar with the restoration procedures in the event of a breach or loss of data stored through the cloud service.			
7. The investment adviser has written policies and procedures in the event that the cloud service provider is purchased, closed, or otherwise unable to be accessed.			

8. The investment adviser solely relies on free cloud storage.			
9. The investment adviser has a back-up of all records off-site.			
10. Data containing sensitive or personally identifiable information is stored through a cloud service.			
11. Data containing sensitive or personally identifiable information, which is stored through a cloud service, is encrypted.			
12. The investment adviser has written policies and procedures related to the use of mobile devices by staff who access data in the cloud.			
13. The cloud service provider (or its staff) may access and/or view the investment adviser's data stored in the cloud.			
14. The investment adviser allows remote access to its network (e.g. through use of VPN).			
15. The VPN access of employees is monitored.			
16. The investment adviser has written policies and procedures related to the termination of VPN access when an employee resigns or is terminated.			
Protect: Use of Firm Websites	YES	NO	N/A
1. The investment adviser relies on a parent or affiliated company for the construction and maintenance of the website.			
2. The investment adviser relies on internal personnel for the construction and maintenance of the website.			
3. The investment adviser relies on a third-party vendor for the construction and maintenance of the website.			
4. If the investment adviser relies on a third party for website maintenance, there is an agreement with the third party regarding the services and the confidentiality of information.			
5. The investment adviser can directly make changes to the website.			
6. The investment adviser can directly access the domain renewal information and the security certificate information.			
7. The firm's website is used to access client information.			

8. SSL or other encryption is used when accessing client information on the firm's website.			
9. The firm's website includes a client portal.			
10. SSL or other encryption is used when accessing a client portal.			
11. When accessing the client portal, user authentication credentials (i.e., user name and password) are encrypted.			
12. Additional authentication credentials (i.e., challenge questions, etc.) are required when accessing the client portal from an unfamiliar network or computer.			
13. The investment adviser has written policies and procedures related to a denial of service issue.			
Protect: Custodians & Other Third-Party Vendors	YES	NO	N/A
1. The investment adviser's due diligence on third parties includes cybersecurity as a component.			
2. The investment adviser has requested vendors to complete a cybersecurity questionnaire, with a focus on issues of liability sharing and whether vendors have policies and procedures based on industry standards.			
3. The investment adviser understands that the vendor has IT staff or outsources some of its functions.			
4. The investment adviser has obtained a written attestation from the vendor that it uses software to ensure customer data is protected.			
5. The investment adviser has inquired whether a vendor performs a cybersecurity risk assessment or audit on a regular basis.			
6. The cyber-security terms of the agreement with an outside vendor is <u>not</u> voided because of the actions of an employee of the investment adviser.			
7. Confidentiality agreements are signed by the investment adviser and third-party vendors.			
8. The investment adviser has been provided enough information to assess the cybersecurity practices of any third-party vendors.			
9. [Relevant to custodians only] The investment adviser has discussed with the custodian matters regarding impersonation of clients and authentication of client orders.			

Protect: Encryption	YES	NO	N/A
1. The investment adviser routinely consults with an IT professional knowledgeable in cybersecurity			
2. The investment adviser has written policies and procedures in place to categorize data as either confidential or non-confidential			
3. The investment adviser has written policies and procedures in place to address data security and/or encryption requirements			
4. The investment adviser has written policies and procedures in place to address the physical security of confidential data and systems containing confidential data (i.e., servers, laptops, tablets, removable media, etc.).			
5. The investment adviser utilizes encryption on all data systems that contain (or access) confidential information.			
6. The identities and credentials for authorized users are monitored.			
Detect: Anti-Virus Protection and Firewalls	YES	NO	N/A
1. The investment adviser firm regularly use anti-virus software on all devices accessing the firm's network, including mobile phones.			
2. The investment adviser firm regularly use anti-virus software on all devices accessing the firm's network, including mobile phones.			
3. The investment adviser understands how the anti-virus software deploys and how to handle alerts.			
4. The investment adviser understands how the anti-virus software deploys and how to handle alerts.			
5. Anti-virus updates are run on a regular and continuous basis.			
6. All software is scheduled to update.			
7. Employees are trained and educated on the basic function of anti-virus programs and how to report potential malicious events.			
8. If the alerts are set up by an outside vendor, there is an ongoing relationship between the vendor and the investment adviser to ensure continuity and updates			

9. A firewall is employed and configured appropriate to the firm's needs.			
10. The firm has policies and procedures to address flagged network events.			
Respond: Responding to a Cyber Event	YES	NO	N/A
1. The investment adviser has a plan and procedure for immediately notifying authorities in the case of a disaster or security incident.			
2. The plans and procedures identify which authorities should be contacted based on the type of incident and who should be responsible for initiating those contacts.			
3. The investment adviser has a communications plan, which identifies who will speak to the public/press in the case of an incident and how internal communications will be managed.			
4. The communications plan identifies the process for notifying clients.			
Recover: Cyber-insurance	YES	NO	N/A
1. The investment adviser has considered whether cyber-insurance is necessary or appropriate for the firm.			
2. The firm has evaluated the coverage in a cybersecurity insurance policy to determine whether it covers breaches, including; breaches by foreign cyber intruders; insider breaches (e.g. an employee who steals sensitive data); and breaches as a result of third-party relationships.			
3. The cybersecurity insurance policy covers notification (clients and regulators) costs.			
4. The investment adviser has evaluated whether the policy includes first-party coverage (e.g. damages associated with theft, data loss, hacking and denial of service attacks) or third-party coverage (e.g. legal expenses, notification expenses, third- party remediation expenses).			
5. The exclusions of the cybersecurity insurance policy are appropriate for the investment adviser's business model.			
6. The investment adviser has put into place all safeguards necessary to ensure that the cyber-security policy is not voided through investment adviser employee actions, such as negligent computer security where software patches and updates are not installed in a timely manner.			

Recover: Disaster Recovery	YES	NO	N/A
1. The investment adviser has a business continuity plan to implement in the event of a cybersecurity event.			
2. The investment adviser has a process for retrieving backed up data and archival copies of information.			
3. The investment adviser has written policies and procedures for employees regarding the storage and archival of information.			
4. The investment adviser provides training on the recovery process.			

Appendix J: ADV Changes to Part 1, Item 5

All Investment Advisers are required to complete an Annual Updating Amendment within 90 days after the end of the firm's fiscal year. The Annual requirement cannot be completed before the end of the fiscal year, and there may be penalties if filed after the allotted 90 days.

Although there were several changes and amendments to the ADV over the last year, the one area that has caused much confusion and incorrect reporting is ADV Part 1, Item 5.

ADV PART 1 – ITEM 5.D; The item has been redesigned to gather more detailed information about types of clients. How 5.D is answered will affect how 5.K is completed.

D. For purposes of this Item 5.D., the category "individuals" includes trusts, estates, and 401(k) plans and IRAs of individuals and their family members, but does not include businesses organized as sole proprietorships.
The category "business development companies" consists of companies that have made an election pursuant to section 54 of the Investment Company Act of 1940. Unless you provide advisory services pursuant to an investment advisory contract to an investment company registered under the Investment Company Act of 1940, do not answer (d)(1) or (d)(3) below.

Indicate the approximate number of your clients and amount of your total regulatory assets under management (reported in Item 5.F. below) attributable to each of the following type of client. If you have fewer than 5 clients in a particular category (other than (d), (e), and (f)) you may check Item 5.D.(2) rather than respond to Item 5.D.(1).

The aggregate amount of regulatory assets under management reported in Item 5.D.(3) should equal the total amount of regulatory assets under management reported in Item 5.F.(2)(c) below.

If a client fits into more than one category, select one category that most accurately represents the client to avoid double counting clients and assets. If you advise a registered investment company, business development company, or pooled investment vehicle, report those assets in categories (d), (e), and (f) as applicable.

Type of Client	(1) Number of Client (s)	(2) Fewer than 5 Clients	(3) Amount of Regulatory Assets under Management
(a) Individuals (other than high net worth individuals)		<input checked="" type="checkbox"/>	\$ 1,200,000
(b) High net worth individuals	11	<input type="checkbox"/>	\$ 10,500,000
(c) Banking or thrift institutions		<input type="checkbox"/>	\$
(d) Investment companies			\$
(e) Business development companies			\$
(f) Pooled investment vehicles (other than investment companies and business development companies)			\$
(g) Pension and profit sharing plans (but not the plan participants or government pension plans)		<input type="checkbox"/>	\$
(h) Charitable organizations		<input type="checkbox"/>	\$
(i) State or municipal government entities (including government pension plans)		<input type="checkbox"/>	\$
(j) Other investment advisers		<input type="checkbox"/>	\$
(k) Insurance companies		<input type="checkbox"/>	\$
(l) Sovereign wealth funds and foreign official institutions		<input type="checkbox"/>	\$
(m) Corporations or other businesses not listed above		<input type="checkbox"/>	\$
(n) Other:		<input type="checkbox"/>	\$

If an IA has clients that fit into the following categories (a), (b), (c), (g), (h), (i), (j), (k), (l), (m) and/or (n), a "YES" must be answered to Item 5.K(1). Typically, these "types of clients" are separately managed accounts. The IARD system will not allow an IA to answer with anything but a "YES" to 5.K(1) when certain "types of clients" are chosen.

Item 5.K(1) is new to many advisers.

The answer YES to Item 5.K(1), triggers the required completion of a Schedule D.

Item 5.K(1) states “(1) Do you have regulatory assets under management attributable to *clients* other than those listed in Item 5.D(3)(d)-(f)?”

K. Separately Managed Account *Clients*

(1) Do you have regulatory assets under management attributable to *clients* other than those listed in Item 5.D.(3)(d)-(f) (separately managed account *clients*)?

Yes No

If yes, complete Section 5.K.(1) of Schedule D.

(2) Do you engage in borrowing transactions on behalf of any of the separately managed account *clients* that you advise?

If yes, complete Section 5.K.(2) of Schedule D.

(3) Do you engage in derivative transactions on behalf of any of the separately managed account *clients* that you advise?

If yes, complete Section 5.K.(2) of Schedule D.

(4) After subtracting the amounts in Item 5.D.(3)(d)-(f) above from your total regulatory assets under management, does any custodian hold ten percent or more of this remaining amount of regulatory assets under management?

If yes, complete Section 5.K.(3) of Schedule D for each custodian.

The terms “regulatory assets” and “separately managed account clients” have been misunderstood in the context of the ADV by advisers. The answer to Item 5.K(1) is YES when your client types **are separately managed accounts**, typically these do not include Investment Companies, Business development companies and pooled investment vehicles.

Section 5.K(1) of SCHEDULE D: Separately Managed Accounts;

SECTION 5.K.(1) Separately Managed Accounts

After subtracting the amounts reported in Item 5.D.(3)(d)-(f) from your total regulatory assets under management, indicate the approximate percentage of this remaining amount attributable to each of the following categories of assets. If the remaining amount is at least \$10 billion in regulatory assets under management, complete Question (a). If the remaining amount is less than \$10 billion in regulatory assets under management, complete Question (b).

Any regulatory assets under management reported in Item 5.D.(3)(d), (e), and (f) should not be reported below.

If you are a subadviser to a separately managed account, you should only provide information with respect to the portion of the account that you subadvise.

End of year refers to the date used to calculate your regulatory assets under management for purposes of your *annual updating amendment*. Mid-year is the date six months before the end of year date. Each column should add up to 100% and numbers should be rounded to the nearest percent.

Investments in derivatives, registered investment companies, business development companies, and pooled investment vehicles should be reported in those categories. Do not report those investments based on related or underlying portfolio assets. Cash equivalents include bank deposits, certificates of deposit, bankers' acceptances and similar bank instruments.

Some assets could be classified into more than one category or require discretion about which category applies. You may use your own internal methodologies and the conventions of your service providers in determining how to categorize assets, so long as the methodologies or conventions are consistently applied and consistent with information you report internally and to current and prospective clients. However, you should not double count assets, and your responses must be consistent with any instructions or other guidance relating to this Section.

(a) Asset Type	Mid-year	End of year
(i) Exchange-Traded Equity Securities	%	%
(ii) Non Exchange-Traded Equity Securities	%	%
(iii) U.S. Government/Agency Bonds	%	%
(iv) U.S. State and Local Bonds	%	%
(v) Sovereign Bonds	%	%
(vi) Investment Grade Corporate Bonds	%	%
(vii) Non-Investment Grade Corporate Bonds	%	%
(viii) Derivatives	%	%
(ix) Securities Issued by Registered Investment Companies or Business Development Companies	%	%
(x) Securities Issued by Pooled Investment Vehicles (other than Registered Investment Companies or Business Development Companies)	%	%
(xi) Cash and Cash Equivalents	%	%
(xii) Other	%	%

Generally describe any assets included in "Other"

5.K(1) of Schedule D (a) is completed IF the assets under management are less than \$10 million.

(b)

Asset Type	End of year
(i) Exchange-Traded Equity Securities	85 %
(ii) Non Exchange-Traded Equity Securities	0 %
(iii) U.S. Government/Agency Bonds	0 %
(iv) U.S. State and Local Bonds	0 %
(v) <i>Sovereign Bonds</i>	0 %
(vi) Investment Grade Corporate Bonds	15 %
(vii) Non-Investment Grade Corporate Bonds	0 %
(viii) Derivatives	0 %
(ix) Securities Issued by Registered Investment Companies or Business Development Companies	0 %
(x) Securities Issued by Pooled Investment Vehicles (other than Registered Investment Companies or Business Development Companies)	0 %
(xi) Cash and Cash Equivalents	0 %
(xii) Other	0 %

Generally describe any assets included in "Other"

5.K(1) of Schedule D (b) is completed IF the assets under management are more than \$10 million.

Schedule D, Section 5.K(1) Asset Types:

- Mutual Funds and ETFs are securities issued by Registered Investment Companies or Business development companies, NOT “other” or “exchanged traded equity securities”.
- Options should be listed under “derivatives”.

Schedule D, Section 5.K(3) Custodians for Separately Managed Accounts:

- This section must be completed for each custodian that holds up to 10% or more of your aggregate separately managed account regulatory assets under management.

Appendix K: Summary of 2020 Amendments

The following pages reflecting changes from the March 2019 handbook:

- Page 13: How do I apply to be an IAR in Ohio? Licensing Fee has changed due to increase in FINRA fee;
- Page 16: IA Dual Registration clarified;
- Page 20: Compliance Obligations: Correspondence updated to include all written communications;
- Page 21: Compliance Obligations: Fiduciary Duty Records – clarification and best practices;
- Page 24: Compliance Obligations: Books and Records should be kept current;
- Page 31: Compliance Manual: Correspondence and communications added to content;
- Page 36: Fees: Unreasonable fees or unearned fees;

Appendix L: Trusted Contact Template

Source: FINRA New Account Application Template, available at:

<https://www.finra.org/compliance-tools/new-account-application-template>

2 Please Tell Us About Yourself—CONTINUED

Trusted Contact Person Information (optional)

This voluntary template reflects FINRA Rule 2165 (Financial Exploitation of Specified Adults) and amendments to FINRA Rule 4512 (Customer Account Information) relating to financial exploitation of seniors. Please note that Rule 2165 and the amendments to Rule 4512 went into effect on February 5, 2018.

By choosing to provide information about a trusted contact person, you authorize us to contact the trusted contact person listed below and disclose information about your account to that person in the following circumstances: to address possible financial exploitation, to confirm the specifics of your current contact information, health status, or the identity of any legal guardian, executor, trustee or holder of a power of attorney, or as otherwise permitted by FINRA Rule 2165 (Financial Exploitation of Specified Adults).

Mr.
 Mrs.
 Ms.
 Dr.
 Suffix
 Sr.
 Jr.

First Name	Middle Name	Last Name
Address		Apt/Suite No.
City	State	ZIP Code
Country		
Work Phone	Home Phone	Mobile Phone
		Email Address

Relationship to Primary Applicant/Co-Applicant: _____