

**CHAPTER 303. REGISTRATION PROCEDURE**

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**§ 303.011. Broker-dealer registration procedures.**

(a) An applicant for initial registration as a broker-dealer shall complete a Uniform Application for Broker-Dealer Registration (Form BD), or a successor form.

(b) An applicant which is not a member of FINRA or a member of a National securities exchange shall complete and file with the Department:

- (1) A copy of Form BD.
- (2) The filing fee required under section 602(d.1) of the act (70 P.S. § 1-602(d.1)).
- (3) The compliance assessment required under section 602.1(a)(3) of the act (70 P.S. § 1-602.1(a)(3)).
- (4) Financial statements in the form required under subsections (e), (f) and (g).

(c) An applicant which is not a member of FINRA but is a member of a National securities exchange shall complete and file with the Department:

- (1) A copy of Form BD.
- (2) The filing fee required under section 602(d.1) of the act.
- (3) The compliance assessment required under section 602.1(a)(3) of the act.

(d) An applicant which is a member of FINRA shall file with the Department:

- (1) Form BD in the manner set forth in § 603.011(f) (relating to filing requirements).
- (2) The filing fee required under section 602(d.1) of the act.
- (3) The compliance assessment required under section 602.1(a)(3) of the act.

(e) Except for applicants described in subsections (c) and (d), applicants shall file a statement of the financial condition of the applicant which meets all of the following conditions:

(1) The statement is prepared in accordance with generally accepted accounting principles.

(2) The statement is accompanied by an auditor's report containing an unqualified opinion of an independent certified public accountant, which is as of either of the following:

(i) The end of the applicant's most recent fiscal year.

(ii) The preceding fiscal year if:

(A) The statement of financial condition for the most recently ended fiscal year is unavailable.

(B) The application is filed within 14 months of the end of the preceding fiscal year.

(f) Except for applicants described in subsections (c) and (d), if the date of the most recent audited statement of financial condition is more than 45 days before the date of filing, the applicant also shall file an unaudited statement of financial condition as of a date within 45 days of the date of filing which the Department may require include the filing of separate schedules:

(1) Listing the securities owned by the applicant valued at the market.

(2) Stating material contractual commitments of the applicant not otherwise reflected in the statements.

(g) Except for applicants described in subsections (c) and (d), if an applicant has commenced to act as a broker-dealer, the audited statement of financial condition shall be accompanied by an audited statement of income which is as of either of the following:

(1) The end of the applicant's most recent fiscal year.

(2) The preceding fiscal year if:

(i) The statement of income for the most recently ended fiscal year is unavailable.

(ii) The application is filed within 14 months of the end of the preceding fiscal year.

(h) An applicant described in subsections (c) and (d) shall provide to the Department, within 5 days of receipt of a written or electronic request, a copy of any financial statement or financial information required under the Securities and Exchange Commission rules or the rules of a National securities association or National securities exchange of which the applicant is a member.

(i) A broker-dealer registered under the act shall take steps necessary to ensure that material information contained in its Form BD remains current and accurate. If a material statement made in Form BD becomes incorrect or inaccurate, the broker-dealer shall file with the Department an amendment on Form BD within 30 days of the occurrence of the event which required the filing of the amendment.

**Authority**

The provisions of this § 303.011 amended under sections 303(a), (c) and (d) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-303(a), (c) and (d) and 1-609(a)); section 202.C of the Department of Banking and Securities Code (71 P.S. § 733-202.C); and section 9(b) of the Take-over Disclosure Law (70 P.S. § 79(b)).

**Source**

The provisions of this § 303.011 adopted March 29, 1974, effective March 30, 1974, 4 Pa.B. 582; amended April 4, 1975, effective April 5, 1975, 5 Pa.B. 722; amended June 8, 1984, effective June 9, 1984, 14 Pa.B. 1941; amended January 17, 1992, effective January 18, 1992, 22 Pa.B. 278; amended December 28, 2001, effective December 29, 2001, 31 Pa.B. 7032; transferred and renumbered from 64 Pa. Code § 303.011, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533; amended January 12, 2018, effective January 13, 2018, 48 Pa.B. 389. Immediately preceding text appears at serial pages (364735) to (364736).

**Cross References**

This section cited in 10 Pa. Code § 603.031 (relating to public inspection of records).

**§ 303.012. Investment adviser registration procedure.**

(a) An applicant for initial registration as an investment adviser shall complete a Uniform Application for Investment Adviser Registration (Form ADV), or a successor form.

(b) The applicant shall complete and file with the Department or with IARD:

(1) Form ADV.

(2) The filing fee required under section 602(d.1) of the act (70 P.S. § 1-602(d.1)).

(3) The compliance assessment in section 602.1(a)(4) of the act (70 P.S. § 1-602.1(a)(4)).

(4) Any exhibits required under this section.

(c) Except as set forth in subsection (j), an applicant having custody of client funds or securities or requiring payment of advisory fees 6 months or more in advance and in excess of \$1,200 per client shall file all of the following:

(1) An audited balance sheet of the applicant prepared in accordance with generally accepted accounting principles which is as of the end of the applicant's most recent fiscal year.

(2) An audit report containing an unqualified opinion of an independent certified public accountant within which the accountant shall submit, as a supplementary opinion, comments based on the audit as to the:

(i) Material inadequacies found to exist in the accounting system.

(ii) Internal accounting controls.

(iii) Procedures for safeguarding securities and funds with an indication of corrective action taken or proposed.

(3) A subsequent balance sheet, if the balance sheet required under paragraph (1) is of a date more than 45 days before the filing date of the application:

- (i) The subsequent balance sheet must be:
  - (A) Prepared in accordance with generally accepted accounting principles.
  - (B) Dated as of a date within 45 days of the filing date of the application.
- (ii) The subsequent balance sheet may be unaudited and prepared by management of the applicant.
- (d) The balance sheet required under subsection (c) does not need to be filed if the investment adviser has custody of client funds or securities solely as a result of either of the following:
  - (1) The investment adviser receives fees directly deducted from clients' funds or securities in compliance with § 303.042(a)(3)(i) (relating to investment adviser capital requirements).
  - (2) The investment adviser serves as a general partner, manager of a limited liability company or occupies a similar status or performs a similar function which gives the investment adviser or its supervised person legal ownership or access to client funds or securities, if the investment adviser is in compliance with § 303.042(a)(3)(ii).
- (e) Except as set forth in subsection (j), an applicant that has discretionary authority over client funds or securities, but not custody, shall file all of the following:
  - (1) A balance sheet prepared in accordance with generally accepted accounting principles which is as of the end of the applicant's most recent fiscal year.
  - (2) A subsequent balance sheet prepared in accordance with generally accepted accounting principles and dated within 45 days of the filing date if the balance sheet required under paragraph (1) is dated more than 45 days before the filing date of the application.
- (f) The balance sheets required under subsection (e)(1) and (2):
  - (1) May be unaudited and prepared by management of the applicant.
  - (2) Must contain a representation by the applicant that the balance sheet is true and accurate.
- (g) Except as set forth in subsection (j), an applicant whose proposed activities do not come within subsection (c) or (e) does not need to file a statement of financial condition.
- (h) As part of the requirements relating to the statements of financial condition set forth in subsections (c) and (e), the Department may require the following:
  - (1) A list of the securities reflected in the statement of financial condition of the applicant valued at the market.
  - (2) A description of material contractual commitments of the applicant not otherwise reflected in the statement of financial condition.

(3) An affirmative statement by the applicant that its liabilities which have not been incurred in the course of business as an investment adviser are not greater than the applicant's assets not used in its investment adviser business if the applicant is a sole proprietor, whose statement of financial condition includes only those assets and liabilities used in the applicant's investment adviser business.

(i) An investment adviser registered under the act shall take steps necessary to ensure that material information contained in its Form ADV and exhibits remains current and accurate. If a material statement made in Form ADV and exhibits becomes incorrect or inaccurate the investment adviser shall file with the Department an amendment on Form ADV within 30 days of the occurrence of the event which requires the filing of the amendment.

(j) An applicant that maintains its principal place of business in a state other than this Commonwealth does not need to comply with subsections (c) and (e) if the applicant:

(1) Is registered as an investment adviser in the state in which it maintains its principal place of business.

(2) Is in compliance with the financial reporting requirements of the state in which it maintains its principal place of business.

(3) Has not taken custody of the assets of any client residing in this Commonwealth at any time during the preceding 12-month period.

#### Authority

The provisions of this § 303.012 amended under sections 303(a)—(e), 304(b) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-303(a)—(e), 1-304(b) and 1-609(a)); section 202.C of the Department of Banking and Securities Code (71 P.S. § 733-202.C); and section 9(b) of the Takeover Disclosure Law (70 P.S. § 79(b)).

#### Source

The provisions of this § 303.012 adopted March 29, 1974, effective March 30, 1974, 4 Pa.B. 582; amended December 27, 1985, effective December 28, 1985, 15 Pa.B. 4585; amended January 17, 1992, effective January 18, 1992, 22 Pa.B. 278; amended January 28, 1994, effective January 29, 1994, 24 Pa.B. 653; amended September 8, 1995, effective September 9, 1995, 25 Pa. B. 3722; amended September 1, 2000, effective September 2, 2000, 30 Pa.B. 4551; amended April 15, 2005, effective April 16, 2005, 35 Pa.B. 2307; transferred and renumbered from 64 Pa. Code § 303.012, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533; amended January 12, 2018, effective January 13, 2018, 48 Pa.B. 389. Immediately preceding text appears at serial pages (364737) to (364739).

#### Cross References

This section cited in 10 Pa. Code § 304.022 (relating to investment adviser required financial reports); and 10 Pa. Code § 603.031 (relating to public inspection of records).

**§ 303.013. Agent registration procedures.**

(a) An applicant for initial registration as an agent of a broker-dealer or issuer shall complete a Uniform Application for Securities Industry Registration or Transfer (Form U-4) or a successor form.

(b) Except as provided in subsection (c), the agent and the broker-dealer or issuer shall complete and file with the Department:

(1) Form U-4 and exhibits.

(2) The filing fee required under section 602(d.1) of the act (70 P.S. § 1-602(d.1)).

(3) The compliance assessment required under section 602.1(a)(1) of the act (70 P.S. § 1-602.1(a)(1)).

(4) Evidence of passage of the examinations required under § 303.031 (relating to examination requirement for agents).

(c) An applicant for registration as an agent of a broker-dealer which is a member firm of FINRA shall file the following items in the manner set forth in § 603.011(f) (relating to filing requirements):

(1) A completed and executed Form U-4 and exhibits.

(2) The filing fee required under section 602(d.1) of the act.

(3) The compliance assessment required under section 602.1(a)(1) of the act.

(4) Evidence of passage of the examinations required under § 303.031.

(d) An agent and broker-dealer or issuer shall take necessary steps to ensure that material information contained in Form U-4 remains current and accurate. If a material statement made in the Form U-4 becomes incorrect or inaccurate, the agent and broker-dealer or issuer shall file with the Department an amendment to Form U-4 within 30 days of the occurrence of the event which requires the filing of the amendment.

**Authority**

The provisions of this § 303.013 amended under sections 303(a), (c) and (d) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-303(a), (c) and (d) and 1-609(a)); section 202.C of the Department of Banking and Securities Code (71 P.S. § 733-202.C); and section 9(b) of the Take-over Disclosure Law (70 P.S. § 79(b)).

**Source**

The provisions of this § 303.013 adopted March 29, 1974, effective March 30, 1974, 4 Pa. B. 582; amended April 4, 1975, effective April 5, 1975, 5 Pa. B. 722; amended June 28, 1985, effective June 29, 1985, 15 Pa.B. 2392; amended January 17, 1992, effective January 18, 1992, 22 Pa.B. 280; amended December 28, 2001, effective December 29, 2001, 31 Pa.B. 7032; transferred and renumbered from 64 Pa. Code § 303.013, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533; amended January 12, 2018, effective January 13, 2018, 48 Pa.B. 389. Immediately preceding text appears at serial pages (364739) to (364740).

**Cross References**

This section cited in 10 Pa. Code § 603.031 (relating to public inspection of records).

**§ 303.014. Investment adviser representative registration procedures.**

(a) An applicant for initial registration as an investment adviser representative of an investment adviser or Federally covered adviser shall complete a Uniform Application for Securities Industry Registration or Transfer Form (Form U-4), or a successor form.

(b) The investment adviser representative and the investment adviser or Federally covered adviser shall complete and file with the Department or with IARD:

(1) Form U-4 and exhibits.

(2) The filing fee required under section 602(d.1) of the act (70 P.S. § 1-602(d.1)).

(3) The compliance assessment required under section 602.1(a)(1) of the act (70 P.S. § 1-602.1(a)(1)).

(4) The results evidencing passage of the examinations required under § 303.032 (relating to examination requirements for investment advisers and investment adviser representatives).

(c) An investment adviser representative and an investment adviser or Federally covered adviser shall take necessary steps to ensure that material information contained in Form U-4 remains current and accurate. If a material statement made in the Form U-4 becomes incorrect or incomplete, the investment adviser representative and the investment adviser or Federally covered adviser shall file with the Department an amendment to Form U-4 within 30 days of the occurrence of the event which requires the filing of the amendment.

**Authority**

The provisions of this § 303.014 issued under section 303(a)(i) of the Pennsylvania Securities Act of 1972 (70 P.S. § 1-303(a)(i)); amended under sections 303(a)—(e) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-303(a)—(e) and 1-609(a)); section 202.C of the Department of Banking and Securities Code (71 P.S. § 733-202.C); and section 9(b) of the Takeover Disclosure Law (70 P.S. § 79(b)).

**Source**

The provisions of this § 303.014 adopted January 17, 1992, effective January 18, 1992, 22 Pa.B. 281; amended September 1, 2000, effective September 2, 2000, 30 Pa.B. 4551; transferred and renumbered from 64 Pa. Code § 303.014, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533; amended January 12, 2018, effective January 13, 2018, 48 Pa.B. 389. Immediately preceding text appears at serial page (364740).

**Cross References**

This section cited in 10 Pa. Code § 603.031 (relating to public inspection of records).

**§ 303.015. Notice filing for Federally covered advisers.**

(a) *Format.* Federally covered advisers required to file notice under section 303(a)(iii) of the act (70 P.S. § 1-303(a)(iii)) shall file the uniform application for investment adviser registration, Form ADV or successor form as filed with the Securities and Exchange Commission.

(b) *Initial filing.* Before the Federally covered adviser conducts advisory business in this Commonwealth, the Federally covered adviser shall file a completed Form ADV accompanied by the notice filing fee required under section 602(d.1) of the act (70 P.S. § 1-602(d.1)) with the Department or with IARD.

(c) *Renewals.* Every Federally covered adviser conducting advisory business in this Commonwealth annually shall pay a notice filing fee set forth in section 602(d.1) of the act to the Department or to IARD.

#### Authority

The provisions of this § 303.015 issued under sections 303(a)—(e) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-303(a)—(e) and 1-609(a)); amended under section 202.C of the Department of Banking and Securities Code (71 P.S. § 733-202.C); section 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. § 1-609(a)); and section 9(b) of the Takeover Disclosure Law (70 P.S. § 79(b)).

#### Source

The provisions of this § 303.015 adopted September 1, 2000, effective September 2, 2000, 30 Pa.B. 4551; transferred and renumbered from 64 Pa. Code § 303.015, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533; amended January 12, 2018, effective January 13, 2018, 48 Pa.B. 389. Immediately preceding text appears at serial pages (364740) to (364741).

#### Cross References

This section cited in 10 Pa. Code § 603.031 (relating to public inspection of records).

### § 303.016. Considered as abandoned.

(a) *General rule.* The Department may consider as abandoned an application for registration as a broker-dealer, agent, investment adviser or investment adviser representative which has been on file with the Department for a minimum of 6 consecutive months if the applicant failed to do any of the following:

- (1) Respond within 60 days after written notice sent by first class mail to the applicant's last known address in the Department's files warning the applicant that the application will be considered abandoned.
- (2) Respond to any request for additional information required under the act.
- (3) Complete the showing required for action on the application.

(b) *Voluntary withdrawal.* An applicant may, with the consent of the Department, withdraw an application at any time.

(c) *No refund of fee.* On abandonment or voluntary withdrawal, there will not be a refund for any filing fee paid before the date of the abandonment or withdrawal.

#### Authority

The provisions of this § 303.016 issued under section 202.C of the Department of Banking and Securities Code (71 P.S. § 733-202.C); section 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. § 1-609(a)); and section 9(b) of the Takeover Disclosure Law (70 P.S. § 79(b)).



**Source**

The provisions of this § 303.016 adopted January 12, 2018, effective January 13, 2018, 48 Pa.B. 389.

**§ 303.021. Registration and notice filing procedures for successors to a broker-dealer, investment adviser or Federally covered adviser.**

(a) If a broker-dealer is formed or proposed to be formed to succeed to, and continue the business of, a broker-dealer registered under section 301 of the act (70 P.S. § 1-301) and as a broker or dealer under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C.A. § 77o(b)) (successor broker-dealer), and the decision is for either of the following reasons:

(1) Based solely on a change in the predecessor's date or state of incorporation, form of organization or composition of a partnership, the successor broker-dealer shall comply with the requirements of Rule 15b1-3(a) promulgated under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78qq), except that the successor broker-dealer shall file the amendments to Form BD with the Department.

(2) For reasons other than a change in the predecessor's date or state of incorporation, form of organization or composition of a partnership, the successor broker-dealer shall comply with the requirements of Rule 15b1-3(b) promulgated under the Securities Exchange Act of 1934, except that the successor shall file Form BD with the Department.

(b) If an investment adviser is formed or proposed to be formed to succeed to, and continue the business of, an investment adviser registered under section 301 of the act (successor investment adviser), and the decision is for either of the following reasons:

(1) Based solely on a change in the predecessor's date or state of incorporation, form of organization or composition of a partnership, the successor investment adviser shall:

(i) File an initial application for registration by amending Form ADV of the predecessor.

(ii) Succeed to the unexpired part of the predecessor's term of registration under section 303(b) of the act (70 P.S. § 1-303(b)).

(2) For reasons other than a change in the predecessor's date or state of incorporation, form of organization or composition of a partnership, the successor investment adviser shall:

(i) File Form ADV with the Department.

(ii) Succeed to the unexpired part of the predecessor's term of registration, after registration under section 303(b) of the act.

(c) If a Federally covered adviser is formed or proposed to be formed to succeed to, and continue the business of, a registered investment adviser or of another Federally covered adviser, the successor Federally covered adviser shall:

- (1) File with the Department either Form ADV or an amendment to Form ADV as required under Securities and Exchange Commission Release No. IA-1357 (December 28, 1992) and under section 303(b) of the act.
- (2) Succeed to the unexpired part of the predecessor's notice period.

#### Authority

The provisions of this § 303.021 issued under sections 303(b) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-303(b) and 1-609(a)); amended under sections 303(a)—(e) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-303(a)—(e) and 1-609(a)); section 202.C of the Department of Banking and Securities Code (71 P.S. § 733-202.C); and section 9(b) of the Takeover Disclosure Law (70 P.S. § 79(b)).

#### Source

The provisions of this § 303.021 adopted January 17, 1992, effective January 18, 1992, 22 Pa.B. 283; amended September 25, 1992, effective September 26, 1992, 22 Pa.B. 4782; amended September 1, 2000, effective September 2, 2000, 30 Pa.B. 4551; transferred and renumbered from 64 Pa. Code § 303.021, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533; amended January 12, 2018, effective January 13, 2018, 48 Pa.B. 389. Immediately preceding text appears at serial pages (364741) to (364742).

### § 303.031. Examination requirement for agents.

- (a) An individual may not be registered as an agent under the act unless the individual meets the requirements of subsections (b) and (c).
- (b) The applicant receives a passing grade on the securities examination for principals or registered representatives administered by FINRA or the Securities and Exchange Commission within 2 years before the date of filing an application for registration. The Department considers the requirements of this subsection met if any of the following apply:
  - (1) The applicant previously has passed the examination and has not had a lapse in employment with a broker-dealer for a period exceeding 2 years.
  - (2) The applicant has received a waiver of the examination requirement by FINRA.
  - (3) The applicant has received notice from the Department waiving the examination requirement.
- (c) The applicant receives a passing grade on the Uniform Securities Agent State Law Examination (Series 63) or the Uniform Combined State Law Examination (Series 66) and the General Securities Representative Examination (Series 7) or successor examination administered by FINRA within 2 years before the date of filing an application for registration. The Department considers the requirements of this subsection met if any of the following apply:
  - (1) The applicant previously has passed the Series 63 or the Series 66 and Series 7, and has not had a lapse in employment with a broker-dealer for a period exceeding 2 years.
  - (2) The applicant has received notice from the Department waiving the requirement to take the Series 63 or the Series 66 and Series 7.

**Authority**

The provisions of this § 303.031 amended under sections 303(a), (c) and (d) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-303(a), (c) and (d) and 1-609(a)); section 202.C of the Department of Banking and Securities Code (71 P.S. § 733-202.C); and section 9(b) of the Take-over Disclosure Law (70 P.S. § 79(b)).

**Source**

The provisions of this § 303.031 adopted March 29, 1974, effective March 30, 1974, 4 Pa. B. 582; amended January 17, 1992, effective January 18, 1992, 22 Pa.B. 281; amended September 8, 1995, effective September 9, 1995, 25 Pa.B. 3722; amended December 28, 2001, effective December 29, 2001, 31 Pa.B. 7032; transferred and renumbered from 64 Pa. Code § 303.031, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533; amended January 12, 2018, effective January 13, 2018, 48 Pa.B. 389. Immediately preceding text appears at serial pages (364742) to (364743).

**Cross References**

This section cited in 10 Pa. Code § 303.013 (relating to agent registration procedures).

**§ 303.032. Examination requirements for investment advisers and investment adviser representatives.**

(a) *Examination requirements.* To be registered as an investment adviser or investment adviser representative under the act, an individual shall meet one of the following examination requirements:

(1) The individual, on or after January 1, 2000, and within 2 years immediately before the date of filing an application with the Department, received a passing grade on The Uniform Investment Adviser Law Examination (Series 65), or successor examination.

(2) The individual, on or after January 1, 2000, and within 2 years immediately before the date of filing an application with the Department, received a passing grade on the:

(i) General Securities Representative Examination (Series 7) administered by FINRA.

(ii) Uniform Combined State Law Examination (Series 66) or successor examinations.

(3) The individual, on or after January 1, 2000:

(i) Received a passing grade on either the Series 65 examination or passing grades on both the Series 7 and Series 66 examinations.

(ii) Has not had a lapse in registration as an investment adviser or investment adviser representative in any state other than this Commonwealth for a period exceeding 2 years immediately before the date of filing an application with the Department.

(b) *Grandfathering.*

(1) Compliance with subsection (a) is waived if the individual meets the following conditions:

(i) The individual, before January 1, 2000, received a passing grade on the Series 2, 7, 8 or 24 examination for registered representatives or supervisors administered by FINRA and the Series 65 or Series 66 examinations.

(ii) The individual has not had a lapse in employment as an investment adviser, investment adviser representative, or principal or agent of a broker-dealer for any consecutive period exceeding 2 years immediately preceding the date of filing an application with the Department.

(2) Compliance with subsection (a) is waived if the individual meets the following conditions:

(i) The individual, before January 1, 2000, was registered as an investment adviser or investment adviser representative in any state requiring the licensing, registration or qualification of investment advisers or investment adviser representatives.

(ii) The individual has not had a lapse in registration as an investment adviser or investment adviser representative in another state for any consecutive period exceeding 2 years immediately preceding the date of filing an application with the Department.

(c) *Waivers of exam requirements.* Compliance with subsection (a) is waived if:

(1) The individual meets the following conditions:

(i) The individual does not have a disciplinary history which requires an affirmative response to Items 23A—E or Item 23H of The Uniform Application for Securities Industry Registration or Transfer (Form U-4) or successor items thereto.

(ii) The individual has been awarded any of the following designations which, at the time of filing of the application with the Department, is current and in good standing:

(A) Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.

(B) Chartered Financial Consultant (ChFC) or Master of Science and Financial Services (MSFS) awarded by the American College, Bryn Mawr, Pennsylvania.

(C) Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts.

(D) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants.

(E) Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.

(2) The individual is licensed as a certified public accountant, is currently in good standing and does not have a disciplinary history that requires an affirmative response to Items 14A—E or Item 14H of Form U-4 or successor items thereto, and has notified the Department that the individual is eligible for a waiver of the examination requirement imposed by subsection (a).

(3) The individual is licensed as an attorney, is currently in good standing and does not have a disciplinary history that requires an affirmative response to Items 14A—E or Item 14H of Form U-4 or successor items thereto, and has notified the Department that the individual is eligible for a waiver of the examination requirement imposed by subsection (a).

(4) The individual has received a waiver from the Department regarding compliance with subsection (a).

#### Authority

The provisions of this § 303.032 amended under sections 303(a)—(e), 304(b) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-303(a)—(e), 1-304(b) and 1-609(a)); section 202.C of the Department of Banking and Securities Code (71 P.S. § 733-202.C); and section 9(b) of the Takeover Disclosure Law (70 P.S. § 79(b)).

#### Source

The provisions of this § 303.032 adopted March 29, 1974, effective March 30, 1974, 4 Pa. B. 582; corrected July 3, 1987, 17 Pa.B. 2822; amended January 17, 1992, effective January 18, 1992, 22 Pa.B. 285; amended September 8, 1995, effective September 9, 1995, 25 Pa. B. 3722; amended September 1, 2000, effective September 2, 2000, 30 Pa.B. 4551; amended April 15, 2005, effective April 16, 2005, 35 Pa.B. 2307; transferred and renumbered from 64 Pa. Code § 303.032, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533; amended January 12, 2018, effective January 13, 2018, 48 Pa.B. 389. Immediately preceding text appears at serial pages (364744) to (364746).

#### Cross References

This section cited in 10 Pa. Code § 303.014 (relating to associated person registration procedures); 10 Pa. Code § 604.013 (relating to interim guidelines for the registration of associated persons—statement of policy); and 10 Pa. Code § 604.014 (relating to interim guidelines for the qualification and examination of associated persons—statement of policy).

### § 303.041. Broker-dealer capital requirements.

(a) Except as set forth in subsection (e), every broker-dealer registered under section 301 of the act (70 P.S. § 1-301) shall maintain net capital of \$25,000 with an aggregate indebtedness not exceeding 1500% of its net capital.

(b) As a condition of the right to continue to transact business, every broker-dealer registered under the act that is not registered as a broker-dealer with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78qq) immediately shall notify the Department if the broker-dealer's aggregate indebtedness exceeds 1500% of its net capital or if its total net capital is less than the minimum required.

(c) Within 24 hours after transmitting the notice required under subsection (b), the broker-dealer shall file a report of its financial condition with the Department including the following:

(1) A proof of money balances of ledger accounts in the form of a trial balance.

- (2) A computation of net capital and aggregate indebtedness as those terms are used in this section and a computation of the ratio of aggregate indebtedness to net capital.
  - (3) An analysis of the aggregate market value of fully paid securities in customers' security accounts which are not segregated.
  - (4) A proof of ledger net credit balances of moneys borrowed from banks, trust companies and from other financial institutions, and from others, which are fully or partially secured by securities carried for the account of a customer.
  - (5) A computation of the aggregate amount of customers' ledger debit balances.
  - (6) A computation of the aggregate amount of customers' ledger credit balances.
  - (7) A statement as to the approximate number of customer accounts.
- (d) The Department may permit an applicant for registration as a broker-dealer under section 301 of the act which is not registered or has not applied for registration as a broker or dealer with the Securities and Exchange Commission to file, execute and maintain a surety bond in compliance with § 303.051 (relating to surety bonds).
- (e) A broker-dealer registered under section 301 of the act that is registered as a broker or dealer with the Securities and Exchange Commission shall maintain minimum net capital and comply with the aggregate indebtedness requirements as set forth in Rule 15c3-1 (17 CFR 240.15c3-1) (relating to net capital requirements for brokers or dealers) promulgated under the Securities Exchange Act of 1934.

#### Authority

The provisions of this § 303.041 amended under sections 303(a), (c) and (d) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-303(a), (c) and (d) and 1-609(a)); section 202.C of the Department of Banking and Securities Code (71 P.S. § 733-202.C); and section 9(b) of the Take-over Disclosure Law (70 P.S. § 79(b)).

#### Source

The provisions of this § 303.041 adopted March 29, 1974, effective March 30, 1974, 4 Pa. B. 582; amended January 17, 1992, effective January 18, 1992, 22 Pa.B. 287; amended December 28, 2001, effective December 29, 2001, 31 Pa.B. 7032; transferred and renumbered from 64 Pa. Code § 303.041, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533; amended January 12, 2018, effective January 13, 2018, 48 Pa.B. 389. Immediately preceding text appears at serial pages (364746) to (364747).

#### Cross References

This section cited in 10 Pa. Code § 102.021 (relating to definitions).

### § 303.042. Investment adviser capital requirements.

(a) *Net worth requirements.*

(1) An investment adviser registered under section 301 of the act (70 P.S. § 1-301) with its principal place of business in a state other than this Commonwealth shall meet all of the following net worth requirements:

- (i) The same as imposed by that state if the investment adviser is:

(A) Currently licensed as an investment adviser in the state in which it maintains its principal place of business.

(B) In compliance with that state's net worth requirements.

(ii) If the investment adviser currently is not licensed as an investment adviser in the state in which it maintains its principal place of business, the net worth required under this section is the same as if the investment adviser had its principal place of business in this Commonwealth.

(2) Except as provided in subsection (d), an investment adviser registered as a broker-dealer under section 301 of the act that has its principal place of business in this Commonwealth shall maintain a minimum net capital required under Rule 15c3-1 (17 CFR 240.15c3-1) (relating to net capital requirements for brokers or dealers).

(3) An investment adviser registered under section 301 of the act that has its principal place of business in this Commonwealth and has custody of client funds or securities shall maintain a minimum net worth of \$35,000 unless the investment adviser has custody solely as the result of one of the following:

(i) Has the authority to make withdrawals from client accounts maintained by a qualified custodian to pay its advisory fee and the investment adviser:

(A) Possesses written authorization from the client to deduct advisory fees from an account held by a qualified custodian.

(B) Sends the qualified custodian written notice of the amount of the fee to be deducted from the client's account.

(C) Sends the client a written invoice itemizing the fee, including any formulae used to calculate the fee, the time period covered by the fee and the amount of assets under management on which the fee was based.

(D) Notifies the Department in writing on Form ADV that the investment adviser intends to use the safeguards provided in clauses (A)—(C).

(ii) Serves as a general partner, manager of a limited liability company or a person occupying a similar status or performing a similar function which gives the investment adviser or its supervised person legal ownership or access to client funds or securities and the following conditions are met:

(A) The pooled investment vehicle is subject to audit at least annually and distributes its audited financial statements which have been prepared by an independent certified public accountant in accordance with generally accepted accounting principles to all limited partners, members or beneficial owners within 120 days of the end of its fiscal year.

(B) The investment adviser:

(I) Hires an independent party to review all fees, expenses and capital withdrawals from the accounts included in the pooled investment vehicle before forwarding them to the qualified custodian with the independent party's approval for payment.

(II) Sends written invoices or receipts to the independent party describing:

(-a-) The amount of the fees, including any formulae used to calculate the fees, the time period covered by the fees and the amount of assets under management on which the fees were based.

(-b-) The expenses or capital withdrawals for the independent party to verify that payment of the fees, expenses or capital withdrawals is in accordance with the documents governing the operation of the pooled investment vehicle and any statutory requirements applicable thereto.

(III) Notifies the Department in writing on Form ADV that the investment adviser intends to employ the use of the audit safeguards in subclauses (I) and (II).

(4) An investment adviser that has its principal place of business in this Commonwealth and has discretionary authority over client funds or securities but does not have custody of client funds or securities shall maintain a minimum net worth of \$10,000, unless the investment adviser places trade orders with a broker-dealer under a third-party trading agreement and the following conditions are met:

(i) The investment adviser executes a separate investment adviser contract exclusively with its clients that acknowledges that a third-party agreement will be executed to allow the investment adviser to effect securities transactions for the client in the client's broker-dealer account.

(ii) The investment adviser contract specifically states that the client does not grant discretionary authority to the investment adviser and the investment adviser, in fact, does not exercise discretion with respect to the account.

(iii) The investment adviser, the client and the broker-dealer execute a third-party trading agreement which specifically limits the investment adviser's authority in the client's broker-dealer account to the placement of trade orders and deduction of investment adviser fees.

(5) An investment adviser that has its principal place of business in this Commonwealth and accepts prepayment of advisory fees of more than 6 months in advance and more than \$1,200 per client shall maintain a positive net worth.

(b) *Notice to the Department.*

(1) As a condition of the right to continue to transact business in this Commonwealth, an investment adviser registered under the act shall notify the Department by the close of business on the next business day if the investment adviser's total net worth is less than the minimum required net worth.

(2) Within 24 hours after transmitting the notice, the investment adviser shall file a report of its financial condition including all of the following:



- (i) A proof of money balances of ledger accounts in the form of a trial balance.
  - (ii) A computation of net worth.
  - (iii) An analysis of clients' securities and funds which are not segregated.
  - (iv) A computation of the aggregate amount of clients' ledger debit balances.
  - (v) A computation of the aggregate amount of clients' ledger credit balances.
  - (vi) A statement as to the number of client accounts.
- (c) *Appraisals.* For investment advisers registered or required to be registered under the act, the Department may require that a current appraisal be submitted to establish the worth of an asset being calculated under the net worth formulation.
- (d) *Exception.* The requirements of subsection (a)(2) do not apply to an investment adviser that has its principal place of business in this Commonwealth and is registered as a broker-dealer under section 15 of the Securities Exchange Act of 1934 (15 U.S.C.A. § 77o) if the broker-dealer is one of the following:
- (1) Subject to, and in compliance with, Rule 15c3-1.
  - (2) A member of a National securities exchange whose members are exempt from Rule 15c3-1 under subsection (b)(2) and the broker-dealer is in compliance with all rules and practices of the exchange imposing requirements with respect to financial responsibility and the segregation of funds or securities carried for the account of customers.

#### Authority

The provisions of this § 303.042 issued under the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-101—1-704); amended under sections 303(a)—(e) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-303(a)—(e) and 1-609(a)); section 202.C of the Department of Banking and Securities Code (71 P.S. § 733-202.C); and section 9(b) of the Takeover Disclosure Law (70 P.S. § 79(b)).

#### Source

The provisions of this § 303.042 adopted March 29, 1974, effective March 30, 1974, 4 Pa. B. 582; amended June 18, 1982, effective June 19, 1982, 12 Pa.B. 1873; amended June 26, 1987, effective June 27, 1987, 17 Pa.B. 2604; amended September 1, 2000, effective September 2, 2000, 30 Pa.B. 4551; amended April 15, 2005, effective April 16, 2005, 35 Pa.B. 2307; transferred and renumbered from 64 Pa. Code § 303.042, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533; amended January 12, 2018, effective January 13, 2018, 48 Pa.B. 389. Immediately preceding text appears at serial pages (364747) to (364751).

#### Cross References

This section cited in 10 Pa. Code § 303.012 (relating to investment adviser registration procedures); 10 Pa. Code § 303.051 (relating to surety bonds); 10 Pa. Code § 304.012 (relating to investment adviser required records); 10 Pa. Code § 304.022 (relating to investment adviser required financial reports); and 10 Pa. Code § 404.014 (relating to custody requirements for investment advisers).

**§ 303.051. Surety bonds.**

- (a) A surety bond shall be:
- (1) Filed with the Department on Uniform Surety Bond Form (Form U-SB) or successor form.
  - (2) Subject to the claims of all clients regardless of the client's state of residence.
  - (3) Issued by a person licensed to issue surety bonds in this Commonwealth.
- (b) An investment adviser that has its principal place of business in a state other than this Commonwealth shall comply with subsection (a) unless the investment adviser is:
- (1) Registered as an investment adviser in that state.
  - (2) In compliance with the applicable net worth and bonding requirements of the state in which it maintains its principal place of business.
- (c) An investment adviser that has its principal place of business in this Commonwealth and does not meet the minimum net worth requirements of § 303.042 (relating to investment adviser capital requirements) shall, if required by the Department, have and maintain a surety bond in the amount of the net worth deficiency rounded up to the nearest \$5,000.
- (d) A broker-dealer registered under the act but not registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78qq) shall, as required by the Department, be permitted to have and maintain for the registration period a surety bond in the amount of the net capital deficiency rounded up to the nearest \$5,000.
- (e) On request of the Department, a broker-dealer or investment adviser shall provide evidence of the existence of a surety bond.

**Authority**

The provisions of this § 303.051 issued under act of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-101—1-704); amended under sections 203(d), (o) and (p), 205, 206, 301, 303, 504, 603(a) and 609 of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-203(d), (o) and (p), 1-205, 1-206, 1-303, 1-504, 1-603(a) and 1-609); sections 4 and 9(b) of the Takeover Disclosure Law (70 P.S. §§ 74 and 79(b)); and section 202.C of the Department of Banking and Securities Code (71 P.S. § 733-202.C).

**Source**

The provisions of this § 303.051 amended December 17, 1982, effective December 18, 1982, 12 Pa.B. 4288; amended April 28, 1989, effective April 29, 1989, 19 Pa.B. 1945; amended September 1, 2000, effective September 2, 2000, 30 Pa.B. 4551; amended December 8, 2006, effective December 9, 2006, 36 Pa.B. 7456; transferred and renumbered from 64 Pa. Code § 303.051, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533; amended January 12, 2018, effective January 13, 2018, 48 Pa.B. 389. Immediately preceding text appears at serial pages (364751) to (364752).

**Cross References**

This section cited in 10 Pa. Code § 303.041 (relating to broker-dealer capital requirements).

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