

CHAPTER 304. POSTREGISTRATION PROVISIONS

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§ 304.011. Broker-dealer required records.(a) *Books and records.*

(1) Every broker-dealer registered under section 301 of the act (70 P.S. § 1-301) shall make and keep the records required to be maintained as described in Rule 17a-3 (17 CFR 240.17a-3) (relating to records to be made by certain exchange members, brokers and dealers) adopted under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78qq).

(2) If a broker-dealer registered under the act and not registered as a broker or dealer with the Securities and Exchange Commission fails to make and keep current the books and records required under this section, the broker-dealer shall:

(i) Notify the Department immediately.

(ii) File a report with the Department, within 24 hours after filing the notice with the Department, stating what steps have been taken and are being taken to fully comply with this section.

(b) *Records of complaints.*

(1) Every broker-dealer registered under the act shall make, keep and preserve one of the following:

(i) A separate file of written complaints of customers and actions taken by the broker-dealer in response.

(ii) A separate record of the complaints and a clear reference to the files containing the correspondence connected with the complaint maintained by the broker-dealer.

(2) For purposes of this section, a complaint includes a written statement of a customer or a person acting on behalf of a customer or a written notation of verbal communication alleging a grievance involving the purchase or sale of securities, the solicitation or execution of a transaction, or the disposition of securities or funds of the customer.

(3) A registered broker-dealer that also is registered as a broker or dealer with the Securities and Exchange Commission is considered in compliance

with the requirements of this subsection if it maintains records of customer complaints as required under applicable Securities and Exchange Commission rules.

(c) *Retention.* The records required to be maintained under this section:

(1) Shall be retained and preserved for the period of time designated in Rule 17a-4 (17 CFR 240.17a-4) (relating to records to be preserved by certain exchange members, brokers and dealers) promulgated under the Securities Exchange Act of 1934.

(2) Shall be made easily accessible for inspection by the Department or its representatives.

(3) May be retained and preserved as:

(i) Microfilm, microfiche or any similar medium.

(ii) Electronic or digital storage medium.

(iii) Computer disks or tapes, or other similar recording process if adequate facilities are maintained for the examination of the facsimiles and if enlargements or paper copies of the facsimiles can be provided promptly on reasonable request of the Department or its representatives.

Authority

The provisions of this § 304.011 amended under sections 304(a), (d) and (e) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-304(a), (d) and (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 Take-over Disclosure Law (70 P.S. § 79(b)).

Source

The provisions of this § 304.011 adopted March 29, 1974, effective March 30, 1974, 4 Pa.B. 582; corrected at May 16, 1987, 17 Pa.B. 1921; amended January 17, 1992, effective January 18, 1992, 22 Pa.B. 288; amended January 28, 1994, effective January 29, 1994, 24 Pa.B. 654; amended December 28, 2001, effective December 29, 2001, 31 Pa.B. 7032; transferred and renumbered from 64 Pa. Code § 304.011, 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 (364753) to (364754).

§ 304.012. Investment adviser required records.

(a) Except as provided in subsection (j), every investment adviser registered under the act shall make and keep true, accurate and current all of the following books, ledgers and records:

(1) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

(2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

(3) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a

particular security, and of any modification or cancellation of the order or instruction. The memorandum must:

- (i) Show the terms and conditions of the order, instruction, modification or cancellation.
 - (ii) Identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order.
 - (iii) Show the account for which entered, the date of entry and the bank, broker-dealer by or through whom executed, if appropriate.
 - (iv) Designate orders entered under the exercise of discretionary power.
- (4) Check books, bank statements, canceled checks and cash reconciliations of the investment adviser.
 - (5) Bills or statements (or copies of), paid or unpaid, relating to the investment adviser's business as an investment adviser.
 - (6) Trial balances, financial statements, net worth computation and internal audit working papers relating to the investment adviser's business as an investment adviser.
 - (7) Originals of written communications received and copies of written communications sent by the investment adviser relating to one or more of the following:
 - (i) A recommendation made or proposed to be made and any advice given or proposed to be given.
 - (ii) A receipt, disbursement or delivery of funds or securities.
 - (iii) The placing or execution of an order to purchase or sell any security, except that an investment adviser:
 - (A) Is not required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser.
 - (B) With respect to a notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service sent by the investment adviser to more than ten persons (including transmission by electronic means), the following apply:
 - (I) The investment adviser is not required to keep a record of the names and addresses of the persons to whom it was sent.
 - (II) If the notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular or advertisement a memorandum describing the list and its source.
 - (8) A list or other record of all accounts which list identifies the accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.
 - (9) A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser.

(10) A copy in writing of each agreement entered into by the investment adviser with a client, and all other written agreements otherwise relating to the investment adviser's business as an investment adviser.

(11) A file containing:

(i) A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication including by electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons, other than persons connected with the investment adviser.

(ii) A memorandum of the investment adviser indicating the reasons for the recommendation if the notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication including by electronic media recommends the purchase or sale of a specific security and does not state the reasons for the recommendation.

(12) Records of transactions as follows:

(i) A record of every transaction in a security in which the investment adviser or investment adviser representative of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership except:

(A) Transactions effected in any account over which the investment adviser or an investment adviser representative of the investment adviser does not have direct or indirect influence or control.

(B) Transactions in securities which are direct obligations of the United States. The record must state:

(I) The title and amount of the security involved, and the date and nature of the transaction (that is, purchase, sale or other acquisition or disposition).

(II) The price at which it was effected.

(III) The name of the broker-dealer or bank with or through whom the transaction was effected.

(ii) The record may also contain a statement declaring that the reporting or recording of any transaction will not be construed as an admission that the investment adviser or investment adviser representative has any direct or indirect beneficial ownership in the security.

(iii) A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(iv) An investment adviser shall implement adequate procedures and use reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(13) Records of transactions by investment advisers primarily engaged in a business other than advising clients as follows:

(i) Notwithstanding paragraph (12), if the investment adviser is primarily engaged in a business or businesses other than advising investment advi-

sory clients, a record shall be maintained of every transaction in a security in which the investment adviser or any investment adviser representative of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except transactions:

(A) Effected in an account over which the investment adviser or an investment adviser representative of the investment adviser does not have direct or indirect influence or control.

(B) In securities which are direct obligations of the United States. The record must state:

(I) The title and amount of the security involved.

(II) The date and nature of the transaction (that is, purchase, sale, or other acquisition or disposition).

(III) The price at which it was effected, and the name of the broker-dealer or bank with or through whom the transaction was effected.

(ii) The record may also contain a statement declaring that the reporting or recording of any transaction will not be construed as an admission that the investment adviser or investment adviser representative has any direct or indirect beneficial ownership in the security.

(iii) An investment adviser shall implement adequate procedures and use reasonable diligence to promptly obtain reports of all transactions required to be recorded.

(14) A copy of the written statement and the amendment or revision, given or sent to a client or prospective client of the investment adviser under § 404.011 (relating to investment adviser brochure disclosure), and a record of the dates that the written statement, and the amendment or revision, was given, or offered to be given, to a client or prospective client who subsequently becomes a client.

(15) If the adviser obtained a client by means of a solicitor to whom the adviser paid a cash fee:

(i) Evidence of a written agreement to which the adviser is a party related to the payment of the fee.

(ii) A signed and dated acknowledgment of receipt from the client evidencing the client's receipt of the investment adviser's disclosure statement and a written disclosure statement of the solicitor.

(iii) A copy of the solicitor's written disclosure statement if required under § 404.012 (relating to cash payment for client solicitation).

(16) Accounts, books, internal working papers, and any other records or documents to form the basis for, or demonstrate the calculation of, the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication:

(i) Includes electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons, other than persons connected with the investment adviser.

(ii) Except that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts will be considered to satisfy the requirements of this paragraph.

(17) A file containing a copy of the written communications received or sent regarding any litigation involving the investment adviser or an investment adviser representative or employee, and regarding the written customer or client complaint.

(18) Written information about an investment advisory client that is the basis for making a recommendation or providing investment advice to the client.

(19) Written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

(20) A file containing a copy of the documents, other than notices of general dissemination, that were filed with or received from a state or Federal agency or self-regulatory organization and that pertains to the registrant or its investment adviser representatives as that term is defined in § 102.021(a) (relating to definitions), which file may include all applications, amendments, renewal filings and correspondence.

(21) A copy, with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of the initial Form U-4 and the amendment to Disclosure Reporting Pages (DRPs U-4) shall be retained by the investment adviser filing on behalf of the investment adviser representative and made available for inspection on regulatory request.

(22) A ledger or other listing of all securities or funds held or obtained in this manner if the adviser has inadvertently held or obtained a client's securities or funds and returned them to the client within 3 business days or has forwarded third-party checks within 24 hours under the definition of "custody" in § 102.021(a), which ledger or other listing includes all of the following information:

- (i) The issuer.
- (ii) The type of security and series.
- (iii) The date of issue.
- (iv) The denomination, interest rate and maturity date for debt instruments.
- (v) The certificate number, including alphabetical prefix or suffix.
- (vi) The name in which the security is registered.

- (vii) The date given to the adviser.
 - (viii) The date sent to client or sender.
 - (ix) The form of delivery to client or sender, or copy of the form of delivery to client or sender.
 - (x) The mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.
- (23) Written acknowledgements of receipts obtained from clients under § 404.012(b)(5) and copies of the disclosure documents provided to clients by solicitors under § 404.012(b)(4).
- (24) Written procedures relating to the business and continuity plan required under § 304.071 (relating to business continuity and succession planning).
- (b) For purposes of subsection (a)(12) and (13):
- (1) A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.
 - (2) An investment adviser is "primarily engaged in a business or businesses other than advising investment advisory clients" when, for each of its most recent 3 fiscal years or for the time since organization, whichever is less, the investment adviser derived, on an unconsolidated basis, more than 50% of the following from other business or businesses:
 - (i) Total sales and revenues.
 - (ii) Income, or loss, before income taxes and extraordinary items.
 - (3) An investment adviser shall implement adequate procedures and use reasonable diligence to promptly obtain reports of all transactions required to be recorded.
- (c) If an investment adviser subject to subsection (a) has custody, the records required to be made and kept under subsection (a) also include all of the following:
- (1) A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for all accounts and all other debits and credits to the accounts.
 - (2) A separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits.
 - (3) A copy of confirmations of all transactions effected by or for the account of any client.
 - (4) A record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount or interest of each client, and the location of each security.
 - (5) A copy of documents executed by the client, including a limited power of attorney, under which the adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian on the adviser's instruction to the qualified custodian.

(6) A copy of each of the client's quarterly account statements, as generated and delivered by the qualified custodian. If the adviser also generates a statement that is delivered to the client, the adviser shall also maintain copies of the statements along with the date the statements were sent to the clients.

(7) If an investment adviser has custody because it advises a pooled investment vehicle and is relying on the exception from the minimum net worth requirement in § 303.042(a)(3)(ii) (relating to investment adviser capital requirements), the adviser shall also keep:

- (i) True, accurate and current account statements.
- (ii) Documentation of the date of the audit.
- (iii) A copy of the audited financial statements.
- (iv) Evidence of the mailing of the audited financial to all limited partners, members or other beneficial owners within 120 days of the end of its fiscal year.

(8) Records relating to the adviser's appointment as trustee and the identities of the beneficial owners of the trust if an investment adviser acts as trustee for a beneficial trust under § 102.021(a).

(d) An investment adviser subject to subsection (a) that gives investment supervisory or management service to a client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:

(1) A separate record for each client showing the securities purchased and sold, and the date, amount and price of each purchase and sale.

(2) For each security in which any client has a current position, information from which the investment adviser can promptly furnish the name of each client, and the current amount or interest of the client.

(e) Books or records required under this section may be maintained by the investment adviser so that the identity of a client to whom the investment adviser gives investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

(f) An investment adviser subject to subsection (a) shall maintain all of the following:

(1) Books and records required to be made under subsections (a), (b) and (c)(1) (except for books and records required to be made under subsection (a)(11) and (16)) in an easily accessible place for at least 5 years from the end of the fiscal year during which the last entry was made on record, the first 2 years being in the principal office of the investment adviser.

(2) Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor, in the principal office of the investment adviser for at least 3 years after termination of the enterprise.

(3) Books and records required to be made under subsection (a)(11) and (16) in an easily accessible place for at least 5 years, the first 2 years being in the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication including by electronic media.

(4) Notwithstanding other record preservation requirements of this section, the following records or copies at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:

(i) Records required to be preserved under subsections (a)(3), (7)—(10), (14), (15), (17)—(19) and (22)—(24), (b) and (c).

(ii) Records or copies required under subsection (a)(11) and (16) which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business location's physical address, mailing address, e-mail address or telephone number.

(g) An investment adviser subject to subsection (a), before ceasing to do business as an investment adviser, shall:

(1) Arrange and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section.

(2) Notify the Department in writing of the exact address where the books and records will be maintained during the period.

(h) Record storage requirements are as follows:

(1) Records required to be maintained and preserved for the required time by this section shall:

(i) Be able to be immediately produced or reproduced.

(ii) Be maintained and preserved in at least one of the following manners:

(A) Paper or hard copy form, as those records are kept in their original form.

(B) Micrographic media, including microfilm, microfiche or any similar medium.

(C) Electronic storage media, including any digital storage medium or system that meets the terms of this section.

(2) The investment adviser shall:

(i) Arrange and index the records in a way that permits easy location, access and retrieval of any particular record.

(ii) Provide promptly any of the following which the Department by its examiners or other representatives may request:

- (A) A legible, true and complete copy of the record in the medium and format in which it is stored.
 - (B) A legible, true and complete printout of the record.
 - (C) A means to access, view and print the records.
- (iii) Store separately from the original a copy of the record for the time required for preservation of the original record.
- (3) For records created or maintained on electronic storage media, the investment advisor shall establish and maintain procedures to:
- (i) Maintain and preserve the records to reasonably safeguard them from loss, alteration or destruction.
 - (ii) Limit access to the records to properly authorized personnel and the Department, including its examiners and other representatives.
 - (iii) Reasonably ensure that any reproduction of a nonelectronic original record on electronic storage media is complete, true and legible when retrieved.
- (i) A book or other record made, kept, maintained and preserved in compliance with Rules 17a-3 (17 CFR 240.17a-3) (relating to records to be made by certain exchange members, brokers and dealers) and 17a-4 (17 CFR 240.17a-4) (relating to records to be preserved by certain exchange members, brokers and dealers) under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78qq), which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this section, is considered to be made, kept, maintained and preserved in compliance with this section.
- (j) The requirements of this section do not apply to an investment adviser registered under section 301 of the act (70 P.S. § 1-301) that meets all of the following conditions:
- (1) Has its principal place of business in a state other than this Commonwealth.
 - (2) Is licensed as an investment adviser in the state where it has its principal place of business.
 - (3) Is in compliance with the recordkeeping requirements of the state in which it has its principal place of business.

Authority

The provisions of this § 304.012 amended under sections 304(a), (b) and (e) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-304(a), (b) and (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 Take-over Disclosure Law (70 P.S. § 79(b)).

Source

The provisions of this § 304.012 adopted March 29, 1974, effective March 30, 1974, 4 Pa. B. 582; amended January 17, 1992, effective January 18, 1992, 22 Pa.B. 289; amended September 1, 2000, effective September 2, 2000, 30 Pa.B. 4551; transferred and renumbered from 64 Pa. Code § 304.012,

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 (364754) to (364763).

Notes of Decisions

Sufficiency

Although the investigator testified that she believed the licensee had not kept required monthly trial balances, she failed to provide the requisite specific, factual basis for her testimony. Therefore, the evidence did not support the Commission's finding of a violation. *Kalin v. Securities Commission*, 805 A.2d 1258 (Pa. Cmwlth. 2002).

Where the investigator testified that the licensee failed to maintain required records, and the licensee so admitted, but that he was unaware of his duty to do so, the Commission's finding of violation was supported by substantial evidence. *Kalin v. Securities Commission*, 805 A.2d 1258 (Pa. Cmwlth. 2002).

Cross References

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

§ 304.021. Broker-dealer required financial reports.

(a) A broker-dealer registered under the act but not registered as a broker or dealer with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78qq) shall file annually with the Department a report which includes a statement of financial condition as of the end of its fiscal year and an income statement for the year then ended.

(b) The annual report of financial condition filed under this section shall be prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing an unqualified opinion of an independent certified public accountant. The accountant shall submit as a supplementary opinion comments, based on the audit, as to material inadequacies found to exist in the accounting system, the internal accounting controls and procedures taken for safeguarding securities and shall indicate corrective action taken or proposed.

(c) A broker-dealer registered under the act and registered as a broker or dealer with the Securities and Exchange Commission shall provide the Department, within 5 days of receipt of a written or electronic request, a copy of any financial statement, financial report or other financial information required under Securities and Exchange Commission rules or the rules of a National securities association or National securities exchange of which the applicant is a member.

(d) The report required under subsection (a) shall be filed within 120 days following the end of the broker-dealer's fiscal year.

Authority

The provisions of this § 304.021 amended under sections 304(a), (d) and (e) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-303(a), (d) and (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 Take-over Disclosure Law (70 P.S. § 79(b)).

Source

The provisions of this § 304.021 amended January 17, 1992, effective January 18, 1992, 22 Pa.B. 289; amended December 28, 2001, effective December 29, 2001, 31 Pa.B. 7032; transferred and renumbered from 64 Pa. Code § 304.021, 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 page (364763).

Cross References

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

§ 304.022. Investment adviser required financial reports.

(a) An investment adviser registered under section 301 of the act (70 P.S. § 1-301) that has custody of client funds or securities or requires prepayment of advisory fees 6 months or more in advance and in excess of \$1,200 per client shall file with the Department an audited balance sheet as of the end of its fiscal year with the following conditions:

(1) The balance sheet shall be prepared in accordance with generally accepted accounting principles and contain an unqualified opinion of an independent certified public accountant.

(2) The accountant shall submit, as a supplementary opinion, comments based on the audit as to material inadequacies found to exist in the accounting system, the internal accounting controls and procedures for safeguarding securities and funds, and shall indicate corrective action taken or proposed.

(b) An investment adviser registered under section 301 of the act that has discretionary authority over client funds or securities, but not custody, shall file with the Department a balance sheet as of the end of its fiscal year with the following conditions:

(1) The balance sheet is not required to be audited but shall be prepared in accordance with generally accepted accounting principles.

(2) The balance sheet must contain a representation by the investment adviser that it is true and accurate.

(c) A sole proprietor registered under section 301 of the act required to file an affirmative statement under § 303.012(c)(3) (relating to investment adviser registration procedure) shall file with the Department an affirmative statement as of the end of its fiscal year.

(d) Except as provided in subsections (e) and (f), investment advisers required to file the reports of financial condition set forth in subsections (a)—(c) shall file the reports with the Department within 120 days of the investment adviser's fiscal year end.

(e) The requirements of subsection (d) do not apply to an investment adviser registered under section 301 of the act whose principal place of business is in a state other than this Commonwealth if the investment adviser:

(1) Is registered 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 assets of any client residing in this Commonwealth at any time during the preceding 12-month period.
- (f) The requirements of subsection (d) do not apply to an investment adviser registered under section 301 of the act who:
 - (1) Has custody of client funds or securities solely as a result of activities set forth in § 303.042(a)(3) (relating to investment adviser capital requirements).
 - (2) Is in compliance with the requirements set forth in § 303.042(a)(3).

Authority

The provisions of this § 304.022 amended under sections 303(a) and (c), 304(b) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-303(a) and (c), 1-304(a), (b) and (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 § 304.022 amended June 26, 1987, effective June 27, 1987, 17 Pa.B. 2606; amended January 17, 1992, effective January 18, 1992, 22 Pa.B. 291; 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 § 304.022, 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 (364764) to (364765).

Cross References

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

§ 304.041. Examinations of broker-dealers and investment advisers.

- (a) In the conduct of an examination authorized under section 304(d) of the act (70 P.S. § 1-304(d)), every broker-dealer and investment adviser registered under the act:
 - (1) Shall honor all requests by representatives of the Department to have physical access to all areas of the office which is the subject of the examination.
 - (2) Shall permit the Department to review and examine the files in the physical place where the files routinely are maintained on request.
 - (3) May accompany the representatives of the Department themselves or through a representative of the broker-dealer or investment adviser.
- (b) Files referred to in subsection (a) include books, ledgers, accounts, records and electronic files required to be kept by broker-dealers and investment advisers in accordance with this chapter, rules of the Securities and Exchange Commission and rules of a National securities exchange or National securities association, and any document reasonably related to these required records.

Authority

The provisions of this § 304.041 issued under section 304(a), (d) and (e) of the Pennsylvania Securities Act of 1972 (70 P.S. § 1-304(a), (d) and (e)); 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 § 304.041 adopted December 28, 2001, effective December 29, 2001, 31 Pa.B. 7032; transferred and renumbered from 64 Pa. Code § 304.041, 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 (364765) to (364766).

§ 304.051. Broker-dealer compensation.

(a) A broker-dealer registered under the act may not charge or receive commissions or other compensation in connection with the purchase or sale of securities.

(b) The prohibition contained in subsection (a) does not apply if the compensation is:

- (1) Fair and reasonable.
- (2) Determined on an equitable basis.
- (3) Adequately disclosed to each customer in writing at or before final confirmation.

(c) Compensation which complies with the Conduct Rules of FINRA will be considered fair and reasonable and, unless otherwise required to be disclosed in writing by the Conduct Rules, does not need to be disclosed in writing.

Authority

The provisions of this § 304.051 amended under section 304(a), (d) and (e) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-304(a), (d) and (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 § 304.051 adopted May 31, 1974, effective June 1, 1974, 4 Pa. B. 1085; amended December 28, 2001, effective December 29, 2001, 31 Pa.B. 7032; transferred and renumbered from 64 Pa. Code § 304.051, 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 page (364766).

§ 304.052. Investment adviser compensation.

No investment adviser registered under the act may charge or receive commissions or other compensation in connection with the giving of investment advice unless the compensation is fair and reasonable and is determined on an equitable basis.

Authority

The provisions of this § 304.052 amended under sections 304(a), (b) and (e) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-304(a), (b) and (e) and 1-609(a)).

Source

The provisions of this § 304.052 adopted March 29, 1974, effective March 30, 1974, 4 Pa.B. 582; amended September 1, 2000, effective September 2, 2000, 30 Pa.B. 4551; transferred and renumbered from 64 Pa. Code § 304.052, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533. Immediately preceding text appears at serial pages (315092) to (315093).

§ 304.061. Free credit balances.

(a) A broker-dealer registered or required to register under the act may not use funds arising out of a free credit balance carried for the account of a customer in connection with the operation of the business of the broker-dealer.

(b) The prohibition contained in subsection (a) does not apply if the broker-dealer has established adequate procedures under which each customer for whom a free credit balance is carried will be given or sent a written statement which:

- (1) Informs the customer of the amount due to the customer by the broker-dealer on the date of the statement.
- (2) Contains a written notice that:
 - (i) Funds are not segregated and may be used in the business of the broker-dealer.
 - (ii) Funds are payable on the demand of the customer.
 - (iii) Is sent no less than once every 3 months together with or as a part of the customer's statement of account.

Authority

The provisions of this § 304.061 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 § 304.061 adopted March 29, 1974, effective March 30, 1974, 4 Pa.B. 582; transferred and renumbered from 64 Pa. Code § 304.061, 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 (364767).

Cross References

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

§ 304.071. Business continuity and succession planning.

(a) An investment adviser registered or required to be registered with the Department shall establish, implement and maintain written procedures relating to a business continuity and succession plan.

(b) The investment adviser shall base the business continuity and succession plan on the facts and circumstances of the investment adviser's business model

including the size of the firm, type of services provided and the number of locations of the investment adviser.

(c) The business continuity and succession plan must provide for at least the following:

- (1) Protection, backup and recovery of books and records.
- (2) Alternate means of communicating notice to customers, key personnel, employees, vendors, regulators and service providers, including third-party custodians, about issues such as:
 - (i) A significant business interruption.
 - (ii) The death or unavailability of key personnel.
 - (iii) Other disruptions or cessation of business activities.
- (3) Office relocation if a temporary or permanent loss of a principal place of business occurs.
- (4) Assignment of duties to a qualified responsible person if the death or unavailability of key personnel occurs.
- (5) Otherwise minimizing service disruptions and client harm that could result from a sudden significant business interruption.

Authority

The provisions of this § 304.071 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 § 304.071 adopted January 12, 2018, effective January 13, 2018, 48 Pa.B. 389.

Cross References

This section cited in 10 Pa. Code § 304.012 (relating to investment adviser required records).

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