CHAPTER 305. DENIAL, SUSPENSION, REVOCATION AND CONDITIONING OF REGISTRATION

Sec.

§ 305.011. Supervision of agents, investment adviser representatives and employees.

(a) Every broker-dealer and investment adviser registered under section 301 of the act (70 P.S. § 1-301) shall exercise diligent supervision over the securities activities and securities related activities of its agents, investment adviser representatives and employees by:

(1) Establishing and maintaining written procedures and a system for applying and enforcing those written procedures which are reasonably designed to:

(i) Achieve compliance with the act and this title.

(ii) Detect and prevent any violations of statutes, rules, regulations or orders described in any of the following:

(A) Section 305(a)(v) and (ix) of the act (70 P.S. § 1-305(a)(v) and (ix)).

(B) The Conduct Rules of FINRA.

(C) An applicable fair practice or ethical standard promulgated by the Securities and Exchange Commission or by a National securities exchange.

(2) Accepting final responsibility for proper supervision.

(b) Every issuer who employs agents registered under section 301 of the act shall be subject to the supervision requirements of subsection (a) with respect to those agents.

(c) As evidence of compliance with the supervisory obligations imposed by this section, a broker-dealer or investment adviser shall:

(1) Implement written procedures, a copy of which shall be kept in each location at which the broker-dealer or investment adviser conducts business.

(2) Establish, maintain and enforce those written procedures designed to achieve compliance with the act and this title and to detect and prevent violations described in subsection (a).

(d) The written procedures required under subsection (c), at a minimum, must address all of the following:

(1) The supervision of every agent, investment adviser representative, employee and supervisor by a designated qualified supervisor.

(2) The methods to be used to determine that all supervisory personnel are qualified by virtue of character, experience and training to carry out their assigned responsibilities.

(3) The methods to be used to determine the good character, business repute, qualifications and experience of any person before making application for registration of that person with the Department and hiring that person.

(4) The review and written approval by the designated supervisor of the opening of each new customer account.

(5) The frequent examination of customer accounts to detect and prevent violations, irregularities or abuses.

(6) The prompt review and written approval of the handling of customer complaints.

(7) The prompt review and written approval by the designated supervisor of all securities transactions and all correspondence pertaining to the solicitation or execution of all securities transactions.

(8) The review and written approval by the designated supervisor of the delegation by a customer of discretionary authority with respect to the customer's account and frequent examination of discretionary accounts to prevent violations, irregularities or abuses.

(9) The participation of each agent and investment adviser representative either individually or collectively, no less than annually, in an interview or meeting conducted by persons designated by the broker-dealer or investment adviser at which compliance matters relevant to the activities of the agents and investment adviser representatives are discussed. Written records shall be maintained reflecting the interview or meeting.

(10) The periodic inspection of each location in this Commonwealth from which business is conducted to ensure that the written procedures and systems are enforced.

(e) The periodic inspections referenced in subsection (d)(10) shall occur according to the following time frames:

(1) At least annually for an office of supervisory jurisdiction of a broker-dealer.

(2) In accordance with an inspection cycle established in the broker-dealer's written supervisory procedures for branch offices and nonbranch locations of a broker-dealer.

(i) In establishing an inspection cycle, the broker-dealer and investment adviser shall give consideration to the nature and complexity of the securities activities for which the location is responsible, the volume of business done and the number of agents or investment adviser representatives assigned to the location.

(ii) The obligation of diligent supervision required under this section may require that one or more locations of a broker-dealer or investment adviser in this Commonwealth receive more inspections or be on a periodic

inspection cycle different than other locations of the broker-dealer or investment adviser in this Commonwealth and that inspections be unannounced.

(f) It is the responsibility of the broker-dealer or investment adviser to ensure through inspections of each location in this Commonwealth that the written procedures and systems are enforced and the supervisory obligations imposed by this section are being honored.

(g) Written records shall be maintained reflecting each inspection conducted.

(h) In acquitting their obligations under this section, registrants are to consult FINRA Notice to Members 98-38 (May 1998) and Securities and Exchange Commission Release No. 34-38174 (January 15, 1997).

(i) In accordance with FINRA Notice to Members 98-38, unannounced visits may be appropriate if there are indicators of misconduct including any of the following:

(1) Significant customer complaints.

(2) Personnel with disciplinary records.

(3) Excessive trade corrections, extensions, liquidations or variable contract replacements.

(j) Records required under this section:

(1) Shall be maintained for 5 years.

(2) Shall be maintained in an easily accessible place for the first 2 years.

(3) May be retained and preserved on microfilm, computer disks or tapes, or other electronic medium if adequate facilities are maintained for examination of facsimiles.

(k) To the extent that this section imposes any recordkeeping requirement on an investment adviser registered under section 301 of the act, the recordkeeping requirement does not apply if the investment adviser meets 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 § 305.011 amended under sections 305(a) and (f) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-305(a) and (f) 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 § 305.011 adopted March 29, 1974, effective March 30, 1974, 4 Pa.B. 582; amended September 1, 2000, effective September 2, 2000, 30 Pa.B. 4551; amended July 11, 2003, effective July 12, 2003, 33 Pa.B. 3365; transferred and renumbered from 64 Pa. Code § 305.011,

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 (364769) to (364771).

Notes of Decisions

Standard of Care

The required supervision under this section over agents and employees of broker dealers and of investment advisers does not create a new cause of action nor establish a standard of care for investment brokers; even if considered relevant to establish a standard of care, the duty to supervise would not extend to employee activities unknown to the employer and beyond the employee's scope of employment. *Cover v. Cushing Capital Corp.*, 497 A.2d 249 (Pa. Super. 1985).

§ 305.012. [Reserved].

Authority

The provisions of this § 305.012 amended under sections 305(a) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-305(a) and 1-609(a)); reserved 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 § 305.012 adopted February 4, 1977, effective February 5, 1977, 7 Pa.B. 391; amended January 17, 1992, effective January 18, 1992, 22 Pa.B. 292; transferred and renumbered from 64 Pa. Code § 305.012, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533; reserved January 12, 2018, effective January 13, 2018, 48 Pa.B. 389. Immediately preceding text appears at serial page (364772).

§ 305.019. Dishonest and unethical practices.

(a) Every person registered under section 301 of the act (70 P.S. § 1-301) is a fiduciary and shall:

(1) Act primarily for the benefit of its customers.

(2) Observe high standards of commercial honor and just and equitable principals of trade in the conduct of their business.

(b) Under section 305(a)(ix) of the act (70 P.S. § 1-305(a)(ix)), the Department may deny, suspend, condition or revoke a broker-dealer, agent, investment adviser or investment adviser representative registration or censure a broker-dealer, agent, investment adviser or investment adviser representative registrant if the registrant or applicant, or in the case of any broker-dealer or investment adviser, any affiliate, has engaged in dishonest or unethical practices in the securities business or has taken unfair advantage of a customer within the previous 10 years.

(c) The Department, for purposes of section 305(a)(ix) of the act, will consider actions such as those in paragraphs (1)—(3) to constitute dishonest or unethical practices in the securities business or taking unfair advantage of a customer.

(1) *Broker-dealers.* Includes the following actions:

(i) Engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers or in the payment on request of free credit balances reflecting completed transactions of any of its customers.

(ii) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account.

(iii) Recommending to a customer the purchase, sale or exchange of a security without reasonable grounds to believe that the transaction or recommendation is suitable for the customer based on reasonable inquiry concerning the customer's investment objectives, financial situation and needs and other relevant information known by the broker-dealer.

(iv) Executing a transaction on behalf of a customer without authorization to do so.

(v) Exercising discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price, or both, for the execution of orders.

(vi) Executing a transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account.

(vii) Failing to segregate customers' free securities or securities held in safekeeping.

(viii) Hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by rules of the Securities and Exchange Commission.

(ix) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.

(x) Failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include information set forth in the final prospectus.

(xi) Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of moneys due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping or custody of securities and other services related to its securities business.

(xii) Offering to buy from or sell to a person at a stated price unless the broker-dealer is prepared to purchase or sell at a price and under the conditions that are stated at the time of the offer to buy or sell.

(xiii) Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless the broker-dealer knows or has reasonable grounds to believe that a market for the security exists other than that made, created or controlled by the broker-dealer, or by a person for whom the broker-dealer is acting or with whom is associated in the distribution, or a person controlled by, controlling or under common control with the broker-dealer.

(xiv) Effecting a transaction in, or inducing the purchase or sale of, a security by means of a manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include:

(A) Effecting a transaction in a security which involves no change in the beneficial ownership.

(B) Entering an order for the purchase or sale of a security with the knowledge that an order of substantially the same size, at substantially the same time and substantially the same price, for the sale of the security, has been or will be entered by or for the same or different parties to create a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security. This subsection does not prohibit a broker-dealer from entering bona fide agency cross transactions for its customers.

(C) Effecting, along or with one or more other persons, a series of transactions in a security creating actual or apparent active trading in the security or raising or depressing the price of the security, to induce the purchase or sale of the security by others.

(xv) Guaranteeing a customer against loss in a securities account of the customer carried by the broker-dealer or in a securities transaction effected by the broker-dealer with or for the customer.

(xvi) Publishing or circulating, or causing to be published or circulated, a notice, circular, advertisement, newspaper article, investment service or communication of any kind which purports to report a transaction as a purchase or sale of a security unless the broker-dealer believes that the transaction was a bona fide purchase or sale of the security; or which purports to quote the bid price or asked price for a security, unless the broker-dealer believes that the quotation represents a bona fide bid for, or offer of, the security.

(xvii) Using advertising or sales presentation in a fashion as to be deceptive or misleading. An example of this practice would be a distribution of nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in a brochure, flyer or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of a prospectus or disclosure.

(xviii) Failing to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of a security before entering into a contract with or for a customer for the purchase or sale

of the security, the existence of the control to the customer, and if the disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction.

(xix) Failing to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member or from a member participating in the distribution as an underwriter or selling group member.

(xx) Failing or refusing to furnish a customer, on reasonable request, information to which he is entitled, or to respond to a formal written request or complaint.

(xxi) Failing to comply with an applicable fair practice or ethical standard promulgated by the Securities and Exchange Commission or by a self-regulatory organization approved by the Securities and Exchange Commission.

(xxii) Failing to comply with investor suitability standards imposed as a condition of the registration of securities under section 205 or 206 of the act (70 P.S. §§ 1-205 and 1-206) in connection with the offer, sale or purchase of a security in this Commonwealth.

(2) *Agents.* Includes the following actions:

(i) Engaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer.

(ii) Effecting securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by the broker-dealer before execution of the transaction.

(iii) Establishing or maintaining an account containing fictitious information to execute transactions which would otherwise be prohibited.

(iv) Sharing directly or indirectly in profits or losses in the account of a customer without the written authorization of the customer and the broker-dealer which the agent represents.

(v) Dividing or otherwise splitting the agent's commissions, profits or other compensation from the purchase or sale of securities with a person not also registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control.

(vi) Engaging in conduct specified in paragraph (1)(ii)—(vi), (ix), (x), (xiv)—(xvii), (xxi) and (xxii).

(3) *Investment advisers and investment adviser representatives.* Includes the following actions:

(i) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of a security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client

after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser or investment adviser representative.

(ii) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed under oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

(iii) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.

(iv) Placing an order to purchase or sell a security for the account of a client without authority to do so.

(v) Placing an order to purchase or sell a security for the account of a client on instruction of a third party without first having obtained a written third-party trading authorization from the client.

(vi) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser or a financial institution engaged in the business of loaning funds.

(vii) Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser.

(viii) Misrepresenting to an advisory client, or prospective advisory client, the qualifications of the investment adviser, investment adviser representative or an employee of the investment adviser or misrepresenting the nature of the advisory services being offered or fees to be charged for the service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

(ix) Providing a report or recommendation to an advisory client prepared by someone other than the investment adviser or investment adviser representative without disclosing that fact. This prohibition does not apply to a situation when the investment adviser or investment adviser representative uses published research reports or statistical analyses to give advice or when an investment adviser or investment adviser representative orders the report in the normal course of providing advice.

(x) Charging a client an unreasonable advisory fee.

(xi) Failing to disclose to a client in writing, before advice is given, a material conflict of interest relating to the investment adviser, the investment adviser representative or an employee of the investment adviser which could reasonably be expected to impair the giving of unbiased and objective advice including:

(A) A compensation arrangement connected with advisory services to a client which is in addition to compensation from the client for the services.

(B) An advisory fee charged to a client for giving advice when a commission for executing securities transactions under the advice will be received by the investment adviser, the investment adviser representative or an employee or affiliated person of the investment adviser.

(xii) Guaranteeing a client that a specific result will be achieved, either a gain or no loss, with advice which will be given.

(xiii) Publishing, circulating or distributing an advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940 (15 U.S.C.A. §§ 80b-1—80b-21).

(xiv) Disclosing the identity, investments or other financial information of a client unless required under law to do so, or unless consented to by the client.

(xv) Taking an action, directly or indirectly, with respect to those securities or funds in which a client has a beneficial interest, when the investment adviser has custody or possession of the securities or funds when the adviser's action is subject to, and does not comply with, the requirements of § 404.014 (relating to custody requirements for investment advisers).

(xvi) Entering into, extending or renewing an investment advisory contract unless the contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of a prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the adviser and that no assignment of the contract shall be made by the investment adviser without the consent of the other party to the contract.

(xvii) Failing to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of section 204A of the Investment Advisers Act of 1940 (15 U.S.C.A. § 80b-4a) and the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

(xviii) Entering into, extending, or renewing any advisory contract contrary to the provisions of section 205 of the Investment Advisers Act of 1940 (15 U.S.C.A. § 80b-5) and the rules and regulations of the Securities and Exchange Commission promulgated thereunder. This applies to all investment advisers and investment adviser representatives registered under section 301 of the act notwithstanding whether the investment adviser is exempt from registration with the Securities and Exchange Commission under section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C.A. § 80b-3(b)).

(xix) Indicating, in an advisory contract, any condition, stipulation or provision binding any person to waive compliance with any provision of the act.

(xx) Engaging in any act, practice or course of business which is fraudulent, deceptive or manipulative or contrary to the provisions of section 206(4) of the Investment Advisers Act of 1940 (15 U.S.C.A. § 80b-6(4)) and the rules and regulations of the Securities and Exchange Commission promulgated thereunder. This applies to all investment advisers and investment adviser representatives registered under section 301 of the act notwithstanding whether the investment adviser is exempt from registration with the Securities and Exchange Commission under section 203(b) of the Investment Advisers Act of 1940.

(xxi) Engaging in conduct or committing any act, directly, indirectly or through or by another person, which would be unlawful for the person to do directly under the act or any rule, regulation or order issued thereunder.

(d) In addition to the conduct described in paragraphs (1)—(3), the Department may deny, suspend, condition or revoke a registration or application for registration of a broker-dealer, agent, investment adviser or investment adviser representative for conduct inconsistent with the standards in subsection (a), including any of the following:

(1) Forgery.

(2) Embezzlement.

(3) Nondisclosure, incomplete disclosure or misstatement of material facts.

(4) Manipulative or deceptive practices.

(5) Taking unfair advantage of a customer or former customer in any aspect of a tender offer.

(e) This section does not apply to Federally covered advisers unless the conduct otherwise is actionable under section 401(a) or (c) or 404 of the act (70 P.S. §§ 1-401(a) and (c) and 1-404).

Authority

The provisions of this § 305.019 issued under sections 305(a) and (f) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-305(a) and (f) 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 § 305.019 adopted March 9, 1990, effective March 10, 1990, 20 Pa.B. 1408; amended January 17, 1992, effective January 18, 1992, 22 Pa.B. 292; amended September 1, 2000, effective September 2, 2000, 30 Pa.B. 4551; transferred and renumbered from 64 Pa. Code § 305.019, 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 (364772) to (364778).

Notes of Decisions

Construction with Federal Law

A statutory fiduciary under state law and this regulation is only considered a fiduciary for purposes of the bankruptcy code, 11 U.S.C.A. § 523, if the statute: (1) defines the trust res; (2) identifies the trustee's fund management duties and authority; and (3) imposes obligations on the fiduciary prior to the alleged wrongdoing. In this case, the debtor was clearly not a statutory fiduciary for purposes of section 523. The Pennsylvania statutes and regulations did not define the trust res, and in fact precluded registered agents such as the debtor from "acting as a custodian for money. . . ." Thus, the Bankruptcy Court correctly concluded that although the debtor was a statutory fiduciary under Pennsylvania law, the same was not true with respect to section 523(a)(4). *In re Librandi*, 183 Bankr. 379 (M. D. Pa. 1975).

Cross References

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

§ 305.020. Use of senior specific certifications and professional designations.

(a) *General rule*. The use of a senior specific certification or designation by a person in connection with the offer, sale or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in a way as to mislead any person is a dishonest and unethical practice in the securities business within the meaning of section 305(a)(ix) of the act (70 P.S. § 1-305(a)(ix)).

(b) *Prohibitions*. The prohibited use of senior specific certification or professional designation includes the use of:

(1) A certification or professional designation by a person who has not actually earned or is otherwise ineligible to use the certification or designation.

(2) A nonexistent or self-conferred certification or professional designation.

(3) A certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training or experience that the person using the certification or professional designation does not have.

(4) A certification or professional designation that was obtained from a designating or certifying organization to which any of the following applies:

(i) Is primarily engaged in the business of instruction in sales or marketing, or both.

(ii) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants.

(iii) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct.

(iv) Does not have reasonable continuing education requirements for its designees or certificants to maintain the designation or certificate.

(c) *Rebuttable presumption*. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subsection (b)(4) when the organization has been accredited by any of the following:

(1) The American National Standards Institute.

(2) The National Commission for Certifying Agencies.

(3) An organization that is on the United States Department of Education's "Accrediting Agencies Recognized for Title IV Purposes" list and the designation or credential issued therefrom does not primarily apply to sales or marketing, or both.

(d) *Factors to be considered*. In determining whether a combination of words, or an acronym standing for a combination of words, constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, the Department will consider the following factors:

(1) Use of one or more words such as "senior," "retirement," "elder" or like words, combined with one or more words such as "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner" or like words, in the name of the certification or professional designation.

(2) How those words are combined.

(e) *Exception*. For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or Federal financial services regulatory agency, including an agency that regulates broker-dealers, investment advisers or investment companies as defined under the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64), when that job title does either of the following:

(1) Indicates seniority or standing within the organization.

(2) Specifies an individual's area of specialization within the organization.

(f) *No limitation on Department enforcement*. This section does not limit the Department's authority to enforce existing provisions of law.

Authority

The provisions of this § 305.020 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 § 305.020 adopted January 12, 2018, effective January 13, 2018, 48 Pa.B. 389.

§ 305.061. Withdrawal of registration or notice filing.

(a) *Investment adviser*. To withdraw from registration as an investment adviser registered under section 301 of the act (70 P.S. § 1-301) because the investment adviser has:

(1) Become a Federally covered adviser subject to exclusive registration with the Securities and Exchange Commission, the investment adviser shall file an amendment to the uniform application for investment adviser registration (Form ADV) or successor form thereto with the Department or with IARD.

(2) Stopped transacting business in this Commonwealth as an investment adviser, the investment adviser shall file a notice of withdrawal from registration as an investment adviser form (Form ADV-W) or a successor form with the Department or with IARD.

(b) *Broker-dealer*. To withdraw from registration as a broker-dealer, the broker-dealer shall file a completed Uniform Request for Withdrawal from Registration as a Broker-Dealer Form (Form BDW) or a successor form with the Department.

(c) *Investment adviser representative*. To withdraw from registration as investment adviser representative, the investment adviser or Federally covered adviser for whom the investment adviser representative was employed shall file the Uniform Termination Notice for Securities/Futures Industry Registration (Form U-5) or a successor form with the Department or with IARD within 30 days from the date of termination.

(d) *Agent of a broker-dealer or an issuer*. To withdraw from registration as an agent of a broker-dealer or an issuer, the broker-dealer or issuer shall file Form U-5 or successor form with the Department within 30 days from the date of termination.

(e) *Federally covered adviser*. To withdraw a notice filing, a Federally covered adviser shall file a notice with the Department or with IARD.

Authority

The provisions of this § 305.061 issued under the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-101—1-704); amended under sections 305(a) and (f) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-305(a) and (f) 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 § 305.061 adopted July 26, 1974, effective July 27, 1974, 4 Pa.B. 1533; amended April 4, 1975, effective April 5, 1975, 5 Pa.B. 722; amended May 27, 1977, effective May 28, 1977, 7 Pa.B. 1438; amended through June 28, 1985, effective June 29, 1985, 15 Pa.B. 2394; amended January 17, 1992, effective January 18, 1992, 22 Pa.B. 293; amended September 1, 2000, effective September 2, 2000, 30 Pa.B. 4551; transferred and renumbered from 64 Pa. Code § 305.061, 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 pages (364778) to (364779).

[Next page is 401-1.]