

660:11-7-42. Standards of ethical practices [AMENDED]

(a) **Purpose.** This rule is intended to set forth the standards of ethical practices for investment advisers and investment adviser representatives. Any noncompliance with the standards set forth in this section will constitute unethical practices in the securities business as the same is set forth in Section 1-411.D.13 of the Securities Act; however, the following is not intended to be a comprehensive listing of all specific events or conditions that may constitute such unethical practices. The standards shall be interpreted in such manner as will aid in effectuating the policy and provisions of the Securities Act, and so as to require that all practices of investment advisers and investment adviser representatives in connection with their activities in this state shall be just, reasonable and not unfairly discriminatory. The standards set forth in this section and the disclosure delivery requirement set forth in 660:11-7-43 shall apply to all investment advisers and investment adviser representatives.

(b) **Standards.** An investment adviser or investment adviser representative shall not engage in dishonest or unethical practices including, although not limited to, the following:

(1) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any 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 profile.

(A) A client's investment profile includes, but is not limited to, the client's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information disclosed by the client or known by to the investment adviser or investment adviser representative.

(B) Institutional clients.

(i) An investment adviser or an investment adviser representative fulfills the customer-specific suitability obligation for an institutional account, as defined in 660:11-1-3, if

(I) the investment adviser or investment adviser representative has a reasonable basis to believe that the institutional client is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving a security or securities and

(II) the institutional client affirmatively indicates that it is exercising independent judgment in evaluating the investment adviser or investment adviser representative's recommendations.

(ii) Where an institutional client has delegated decision-making authority to an agent, such as an investment adviser or a bank trust department, these factors shall be applied to the agent.

(2) 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 ten (10) business days after the date of the first transaction placed pursuant to 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.

(3) 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.

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

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

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

(7) 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 or investment adviser representative.

(8) Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser or an investment adviser representative or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omitting 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.

(9) Charging a client an unreasonable advisory fee.

(10) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

(A) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

(B) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the investment adviser or its employees.

(11) Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered.

(12) Publishing, circulating and distributing any advertisement which does not comply with Reg. § 275.206(4)-1, under the ~~Investment~~ Advisers Act ~~of 1940~~.

(13) Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client.

(14) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the investment adviser's action is subject to and does not comply with the requirements of Reg. § 275.206(4)-2 under the ~~Investment~~ Advisers Act ~~of 1940~~.

(15) Entering into, extending or renewing any investment advisory contract unless such 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 prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment adviser or investment adviser representative and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract.

(16) Entering into, extending or renewing any investment advisory contract, if such contract contains any provision that limits or purports to limit any of the following:

(A) the liability of the investment adviser for conduct or omission arising from the advisory relationship that does not conform to the Securities Act, applicable federal statutes, or common law fiduciary standard of care;

(B) remedies available to the client at law or equity or the jurisdiction where any action shall be filed or heard; or

(C) applicability of the laws of Oklahoma with respect to the construction or interpretation of the provisions of the investment advisory contract.

(17) Failing to adopt, implement, and follow written supervisory procedures that are tailored specifically to their business and that:

(A) address the activities of all its investment adviser representatives and associated persons;

(B) identify who has supervisory responsibilities, including a record of each associated person who has supervisory responsibilities and the date assigned, and procedures for each business line and applicable securities laws for which each supervisor is responsible; and

(C) specifically identify the individual to perform a supervisory function; what specifically the supervisor will review; when or how often the review will take place and how the supervisor's review will be documented.