

**TITLE 660. DEPARTMENT OF SECURITIES
CHAPTER 11. OKLAHOMA UNIFORM SECURITIES ACT OF 2004**

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Broker-Dealers and Agents
Part 3. Licensing Procedures
660:11-5-16. Qualification examination requirements [AMENDED]
660:11-5-21. Supplemental disclosures [NEW]
660:11-5-22. Private offering issuer agent exemption [NEW]
660:11-5-23. Coordinated limited offering issuer agent exemption [NEW]
660:11-5-24. Oklahoma Accredited Investor issuer agent exemption [NEW]
660:11-5-25. Registration relief for military service members and their spouses [NEW]
Part 7. Record Keeping and Ethical Standards
660:11-5-41. Books and records requirements for broker-dealers [AMENDED]
Subchapter 7. Investment Advisers and Investment Adviser Representatives
Part 1. General Provisions
660:11-7-2. Definitions [AMENDED]
Part 3. Licensing Procedures
660:11-7-11. Initial registration [AMENDED]
660:11-7-13. Qualification examination requirements [AMENDED]
660:11-7-18. Oil and gas professional exclusion [NEW]
660:11-7-19. Registration relief for military service members and their spouses [NEW]
660:11-7-20 Supplemental disclosures [NEW]
Part 5. Reporting Requirements
660: 11-7-31. Post-registration reporting requirements [AMENDED]
Part 7. Record Keeping and Ethical Standards
660:11-7-41. Record keeping requirements [AMENDED]
660:11-7-42. Standards of ethical practices [AMENDED]
660:11-7-43. Disclosure requirements [AMENDED]
660:11-7-48. Custody requirements for investment advisers [AMENDED]
Subchapter 11. Exemptions from Securities Registration
Part 5. Exempt Transactions
660:11-11-40. Manual exemption [AMENDED]
660:11-11-43. Coordinated limited offering exemption [AMENDED]

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n/a

ANALYSIS:

The rule amendments conform requirements for similar registrant categories, conform broker-dealer regulations to a model rule and to federal law, conform investment adviser regulations relating to custody and disclosure to model rules, conform investment adviser regulations to federal law, define terms, correct statutory cites, clarify changing regulatory procedure, designate an additional securities manual for exemption purposes, and clarify exemption notice filing requirements in light of changes in federal law. The new rules establish assistance for military persons and their spouses pursuant to SB1863, conform broker-dealer regulations to federal law, conform investment adviser regulations to federal law, provide exemptions from issuer agent registration, and provide exclusions from the definition of investment adviser.

CONTACT PERSON:

Faye Morton, General Counsel, Oklahoma Department of Securities, (405) 280-7727

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF NOVEMBER 1, 2018:

SUBCHAPTER 5. BROKER-DEALERS AND AGENTS

PART 3. LICENSING PROCEDURES

660:11-5-16. Qualification examination requirements

(a) **Examination requirement.** Proof of compliance with the examination requirements of this ~~rule~~ Section is prerequisite to a complete filing for registration under the Securities Act.

(b) **Examination.** Each applicant for registration as a broker-dealer agent, broker-dealer principal or issuer agent must pass the applicable examinations for the desired category of registration. The examinations shall consist of a qualification examination(s) applicable to the category of registration applied for and a uniform state law examination. The Administrator adopts the examinations administered by FINRA as applicable to each individual registrant by category of registration as the required examinations.

(c) **Limitations on licenses.**

Without regard to the category of registration of one's broker-dealer, if any, the activities of each person registered as a principal or agent are limited to the corresponding category for which they are qualified by examination, unless waived, and for which they are registered under the Securities Act.

(d) **Examination categories.** Examination categories are as follows:

(1) General securities or government securities - FINRA members:

(A) Principals--Series 7, 24 or such other examination(s) determined by the Administrator to be acceptable in lieu thereof and Series 63 or 66.

(B) Agents--Series 7 and 63 or 66

(2) General securities - Non-FINRA Members/Issuers

(A) Principals--Series 7, 24 or such other examination(s) determined by the Administrator to be acceptable in lieu thereof and Series 63 or 66

(B) Agents--Series 7 and 63 or 66

(3) Investment company and variable contract products:

(A) Principals--Series 6, 26 and 63 or 66

(B) Agents--Series 6 and 63 or 66

(4) Direct participation programs:

- (A) Principals--Series 22, 39 and 63 or 66
 - (B) Agents--Series 22 and 63 or 66
 - (5) Options:
 - (A) Principals--Series 4, 7 and 63 or Series 4, 62 and 63 or 66
 - (B) Agents--Series 7 or 42 and 63 or 66
 - (6) Municipal securities:
 - (A) Principals--Series 52, 53 and 63 or 66
 - (B) Agents--Series 52 and 63 or 66
 - (7) Limited agent - corporate securities--Series 62 and 63 or 66
 - (8) Assistant agent - order processing--Series 11 and 63 or 66
- (e) **Change in series number.** Should FINRA examination series numbers change, the most current examination series applicable to the category of registration shall apply. Effective October 1, 2018, FINRA is implementing a new Securities Industry Essentials examination (SIE) and revised agent-level qualification examinations. At that point, it will be necessary for an applicant to pass the SIE for each examination category in (d)(1) through (4) of this Section in addition to the examinations listed in each of those categories. Also effective October 1, 2018, FINRA is retiring the Series 11, 42 and 62 and will no longer permit new registrations in the examination categories (d)(5) through (8) of this Section.
- (f) **Validity of prior examination scores.**
- (1) The Department will not recognize for purposes of qualification for registration under the Securities Act any FINRA examination score (other than the SIE) that predates an initial application for registration by more than two (2) years in the absence of registration as an agent, principal, broker-dealer, investment adviser or investment adviser representative since examination.
 - (2) The Department will not recognize for purposes of qualification for registration under the Securities Act the examination score(s) (other than the SIE) of any person whose most recent registration as an agent, principal, broker-dealer, investment adviser or investment adviser representative has been terminated for a period of two (2) or more years immediately preceding the date of receipt by the Department of a new application for registration under the Securities Act.
 - (3) With respect to the SIE, the time period for validity is four (4) years.
- (g) **Waiver of examination requirement.** The Administrator may waive the examination requirements on a case-by-case basis when such action is determined to be consistent with the purposes fairly intended by the policy and provisions of the Securities Act. Requests for waivers shall be in writing setting forth the reasons therefor.

660:11-5-21. Supplemental disclosures

Every broker-dealer and agent registered under the Securities Act must keep their application current at all times by promptly filing amendments supplementing their application as required by Section 1-406.B of the Securities Act and the instructions to the Form U-5 and Form U-4. "Promptly" shall mean not later than thirty (30) days after learning of the facts or circumstances giving rise to the amendment.

660:11-5-22. Private offering issuer agent exemption

By authority delegated to the Administrator in Section 1-402.B.9 of the Securities Act, an individual meeting all of the following conditions is determined to be exempt from the registration requirement of Section 1-402 of the Securities Act:

- (1) The subject offering is conducted in a manner to be exempt pursuant to Section 1-202.14 of the Securities Act.
- (2) The individual represents the issuer in functioning as an agent in the subject offering.
- (3) The individual is not compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.

(4) Such individual has not within the past five (5) years been subject to the following in connection with a violation of a state or federal securities law or regulation: an order denying, suspending or revoking registration or a cease and desist order of the Administrator; any similar order, judgment, or decree by another state securities agency, the SEC, or any self-regulatory securities organization; or an order of any court of competent jurisdiction temporarily, preliminarily or permanently enjoining such person.

(5) The exemption is only available with respect to transactions in the subject offering. However, the individual is not prohibited from qualifying for this exemption with respect to any other offering so long as all requirements are satisfied.

660:11-5-23. Coordinated limited offering issuer agent exemption

By authority delegated to the Administrator in Section 1-402.B.9 of the Securities Act, an individual meeting all of the following conditions is determined to be exempt from the registration requirement of Section 1-402 of the Securities Act:

(1) The subject offering is conducted in a manner to be exempt pursuant to 660:11-11-43.

(2) The individual represents the issuer in functioning as an agent in the subject offering.

(3) The individual is not compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.

(4) Such individual has not within the past five (5) years been subject to the following in connection with a violation of a state or federal securities law or regulation: an order denying, suspending or revoking registration or a cease and desist order of the Administrator; any similar order, judgment, or decree by another state securities agency, the SEC, or any self-regulatory securities organization; or an order of any court of competent jurisdiction temporarily, preliminarily or permanently enjoining such person.

(5) The exemption is only available with respect to transactions in the subject offering. However, the individual is not prohibited from qualifying for this exemption with respect to any other offering so long as all requirements are satisfied.

660:11-5-24. Oklahoma Accredited Investor issuer agent exemption

By authority delegated to the Administrator in Section 1-402.B.9 of the Securities Act, an individual meeting all of the following conditions is determined to be exempt from the registration requirements of Section 1-402 of the Securities Act:

(1) The subject offering is conducted in a manner to be exempt pursuant to 660:11-11-52.

(2) The individual represents the issuer in functioning as an agent in the subject offering.

(3) The individual is not compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.

(4) Such individual has not within the past five (5) years been subject to the following in connection with a violation of a state or federal securities law or regulation: an order denying, suspending or revoking registration or a cease and desist order of the Administrator; any similar order, judgment, or decree by another state securities agency, the SEC, or any self-regulatory securities organization; or an order of any court of competent jurisdiction temporarily, preliminarily or permanently enjoining such person.

(5) The exemption is only available with respect to transactions in the subject offering. However, the individual is not prohibited from qualifying for this exemption with respect to any other offering so long as all requirements are satisfied.

660:11-5-25. Registration relief for military service members and their spouses

(a) Definitions. For purposes of this Section:

(1) "Military Service Member" means any member of the Armed Forces or Reserves of the United States, National Guard of any state, the Military Reserves of any state, or the Naval Militias of any state.

(2) "Military Spouse" means an individual who is the current spouse of a Military Service Member who is on active duty in this state or claims residency in this state for the six months prior to assignment to active duty or during the period of active duty

(b) Initial registration of a military service member.

(1) The Administrator shall consider the equivalent education, training, and experience completed by an applicant while the applicant was a member of the United States Armed Forces or Reserves, National Guard of any state, the Military Reserves of any state, or the Naval militias of any state, and apply it in the manner most favorable toward satisfying the qualification for registration.

(2) A Military Service Member, who meets the following requirements, may apply to the Administrator for expedited review for registration under the Securities Act. An applicant shall:

(A) Submit a complete application for registration on the forms prescribed by the Administrator;

(B) Notify the Administrator in writing that the Military Service Member is seeking expedited review of the application;

(C) Submit the filing fee specified in Section 1-612 of the Securities Act except as provided in (4) of this subsection;

(D) Submit evidence of passing scores on examinations equivalent to those required by 660:11-5-16; and

(E) Provide any other documentation as required by the Administrator.

(3) No applicant for registration under this Section shall be qualified for expedited review if the applicant is or has been the subject of disqualifying disciplinary action as set forth in Section 1-411.D of the Securities Act or has been discharged for cause from a broker-dealer or investment adviser.

(4) A Military Service Member who makes an initial application within one year of completion of military service may request a waiver of the initial filing fee specified in Section 1-612 of the Securities Act. An applicant shall, upon application, notify the Administrator in writing that the Military Service Member is seeking waiver of the initial filing fee.

(c) Status of a military service member.

(1) Inactive status of currently registered agents.

(A) If a registered agent of a broker-dealer or issuer volunteers for or is called into active duty as a Military Service Member, the agent shall be deemed to be on inactive status upon prompt notification to the Administrator, in writing, of the individual's activation into military duty. That individual will be deemed to be reactivated upon the agent's return to active association with the broker-dealer or issuer. Such agent shall remain eligible to receive transaction-related compensation, including continuing commissions. The associated broker-dealer or issuer also may allow such agent to enter into an arrangement with another registered agent of the broker-dealer or issuer to take over and service the agent's accounts and to share transaction-related compensation based upon the business generated by such accounts. However, because such agents are deemed to be inactive, they may not perform any of the functions and responsibilities performed by a registered agent.

(B) A registered agent who is deemed to be on inactive status under (A) of this paragraph shall not be required to pay the fee specified in Section 1-612 of the Securities Act during the time of that agent's inactive status and for one year thereafter.

(C) The relief provided under this paragraph shall be available only to a registered agent who is deemed to be on inactive status under (A) of this paragraph during the period that such agent remains registered with the broker-dealer or issuer with which the agent was registered at the beginning of active duty, regardless of whether the agent returns to active association with another broker-dealer or issuer upon completion of the agent's active duty.

(D) The relief provided under this paragraph shall be available only to an individual registered as an agent under the Securities Act and only with respect to the period

specified in connection with that individual's service on active military duty. Further, the broker-dealer or issuer with whom such agent is registered shall promptly notify the Administrator, in writing, of such agent's return to active association with the broker-dealer or issuer.

(2) Inactive status of sole proprietorships.

(A) If a broker-dealer that is a sole proprietor temporarily closes his or her business by reason of volunteering for or being called into active military duty, the broker-dealer shall be deemed to be on inactive status upon prompt notification to the Administrator, in writing, of the individual's activation into active military duty.

(B) A sole proprietor Military Service Member deemed to be on inactive status as set forth in this paragraph shall not be required to pay the fee as specified in Section 1-612 of the Act during the pendency of such inactive status and for one year thereafter.

(C) The relief described in this paragraph shall be provided only to a sole proprietor Military Service Member and only with respect to the period specified in connection with that individual's service on active military duty. Further, the sole proprietor shall promptly notify the Administrator, in writing, of his or her return to active participation in the investment banking or securities business. The sole proprietor must promptly file an updated Form U-4.

(3) Status of formerly registered agents.

(A) If an agent who was formerly registered with a broker-dealer or issuer volunteers for or is called into active military duty at any time after the date the individual ceased to be registered with a broker-dealer or issuer but during the period of validity of the individual's prior examination scores as set forth in OAC 660:11-5-16 ("examination scores validity periods"), the Administrator shall extend the period of validity of the individual's scores by the individual's period of active military service; provided, the validity of the scores will continue for no less than one (1) year following the individual's completion of active military service.

(B) If an individual deemed to be on inactive status as an agent while serving as a Military Service Member ceases to be registered with a broker-dealer or issuer, the Administrator shall extend the individual's examination scores validity periods by the remaining period of the individual's active military service.

(C) An individual applying to become registered with a broker-dealer or issuer within one (1) year following the completion of the individual's active military service shall not be required to pay the fee specified in Section 1-612 of the Securities Act; provided the fee relief in this subparagraph shall only apply to the individual's first application for registration during such period.

(d) Initial registration of a military spouse.

(1) A Military Spouse who meets the following requirements may apply to the Administrator for expedited review for registration under the Securities Act. An applicant shall:

(A) Submit a complete application for registration on the forms prescribed by the Administrator;

(B) Notify the Administrator in writing that the Military Spouse is seeking expedited review of the application;

(C) Submit evidence of passing scores on examinations equivalent to those required by 660:11-5-16;

(D) Submit the filing fee specified in Section 1-612 of the Securities Act; and

(E) Provide any other documentation as required by the Administrator.

(2) This subsection does not apply if the applicant is or has been the subject of disqualifying disciplinary action as set forth in Section 1-411.D of the Securities Act or has been discharged for cause from a broker-dealer or investment adviser.

(3) This subsection does not apply to a Military Spouse who does not claim residence in the state of Oklahoma.

PART 7. RECORD KEEPING AND ETHICAL STANDARDS

660:11-5-41. Books and records requirements for broker-dealers

17 CFR §240.17a-3 (2013) and 17 CFR §240.17a-4 (2003)(2014), books and records rules established by the SEC under the 1934 Act, are hereby incorporated by reference as if fully set forth into this Chapter.

**SUBCHAPTER 7. INVESTMENT ADVISERS AND INVESTMENT ADVISER
REPRESENTATIVES
PART 1. GENERAL PROVISIONS**

660:11-7-2. Definitions

In addition to the terms defined in 660:11-1-3, the following words and terms when used in this subchapter shall have the following meaning, unless the context clearly indicates otherwise:

"IARD" means the FINRA-operated Investment Adviser Registration Depository.

"Impersonal advisory services" means investment advisory services provided solely:

- (A) by means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts;
- (B) through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or
- (C) any combination of the foregoing services.

"Investment company contract" means a contract with an investment company registered under the 1940 Act that meets the requirements of Section 15(c) of that Act.

"Solicitor" means any person who, directly or indirectly, solicits any client for, or refers any client to, an investment adviser.

PART 3. LICENSING PROCEDURES

660:11-7-11. Initial registration

(a) **Investment adviser.** Investment advisers applying for initial registration pursuant to Section 1-406 of the Securities Act:

- (1) shall file with the IARD:
 - (A) a completed Form ADV; and
 - (B) the filing fee specified in Section 1-612 of the Securities Act;
- (2) shall file with the Department:
 - (A) a list of the addresses, telephone numbers and resident representatives of all branch offices located within the state of Oklahoma, and if the principal office of the investment adviser is located in Oklahoma, all branch offices located elsewhere;
 - (B) audited financial statements as required by 660:11-7-44 unless exempt therefrom;
 - (C) a copy of each form of investment advisory contract to be executed by Oklahoma clients and if the principal office of the investment adviser is located in Oklahoma, a copy of each form of investment advisory contract to be executed by any other clients; and
 - (D) any additional documentation, supplemental forms and information as the Administrator may deem necessary; and
- (3) if a natural person, must have passed the applicable examinations specified in 660:11-7-13.

(b) **Investment adviser representative.** Investment adviser representatives applying for initial registration under the Securities Act:

- (1) shall file with the CRD:
 - (A) a completed or updated Form U-4;
 - (B) the filing fee specified in Section 1-612 of the Securities Act; and
 - (C) ~~any additional documentation, supplemental forms and information as the Administrator may deem necessary;~~ proof of applicant's approved status of registration or licensure in a jurisdiction in which he has an office of employment where such registration is required; and

- (D) any additional documentation, supplemental forms, and information as the Administrator may deem necessary; and
- (2) must have passed the applicable examinations specified in 660:11-7-13.

660:11-7-13. Qualification examination requirements

- (a) **Examination requirement.** Proof of compliance with the written examination requirements of this ~~rule~~Section is prerequisite to a complete filing for registration under the Securities Act.
- (b) **Examinations.** Any natural person seeking registration as an investment adviser or investment adviser representative must pass the Series 65, or both the Series 66 and Series 7, or such other examination(s) or certifications determined by the Administrator to be acceptable in lieu thereof. The Administrator adopts the examinations as administered by FINRA as the required examinations.
- (c) **Change in series number.** Should FINRA examination series numbers change, the most current examination series applicable to the category of registration shall apply. Effective October 1, 2018, FINRA is implementing a new Securities Industry Essentials (SIE) examination and revised agent-level qualification exams. At that point, it will be necessary for an applicant to pass the SIE in addition to the Series 66 and Series 7 as an alternative to passing the Series 65.
- (d) **Validity of prior examination scores.**
- (1) The Department will not recognize for purposes of qualification for registration under the Securities Act any FINRA examination score(s) that predates an initial application for registration by more than two (2) years in the absence of registration as an investment adviser representative, an investment adviser, agent, principal or broker-dealer since examination.
- (2) The Department will not recognize for purposes of qualification for registration under the Securities Act the examination score(s) of any person whose most recent registration as an investment adviser, investment adviser representative, agent, principal or broker-dealer has been terminated for a period of two (2) years immediately preceding the date of receipt by the Department of a new application for registration under the Securities Act.
- (e) **Waiver of examination requirement.** The Administrator may waive the examination requirement on a case-by-case basis when such action is determined to be consistent with the purposes fairly intended by the policy and provisions of the Securities Act. Requests for waivers shall be in writing setting forth the reasons therefor.

660:11-7-18. Oil and gas professional exclusion

By authority delegated to the Administrator in Section 1-102.17.f of the Securities Act, the following persons shall be excluded from the definition of "investment adviser" only when giving advice, analyses, interpretations or reports that relate to interests in oil, gas, or other mineral leases: a professional geologist, professional engineer or professional geophysicist and professional petroleum landman who is engaged in the business of exploring for and/or producing oil and gas or other valuable minerals as an ongoing business.

660:11-7-19. Registration relief for military service members and their spouses

- (a) **Definitions.** For purposes of this Section:
- (1) "Military Service Member" means any member of the Armed Forces or Reserves of the United States, National Guard of any state, the Military Reserves of any state, or the Naval Militias of any state.
- (2) "Military Spouse" means an individual who is the current spouse of a Military Service Member who is on active duty in this state or claims residency in this state for the six months prior to assignment to active duty or during the period of active duty.
- (b) **Initial registration of a military service member.**
- (1) The Administrator shall consider the equivalent education, training, and experience completed by an applicant while the applicant was a member of the United States Armed Forces or Reserves, National Guard of any state, the Military Reserves of any state, or the

Naval militias of any state, and apply it in the manner most favorable toward satisfying the qualification for registration.

(2) A Military Service Member, who meets the following requirements, may apply to the Administrator for expedited review for registration under the Securities Act. An applicant shall:

(A) Submit a complete application for registration on the forms prescribed by the Administrator;

(B) Notify the Administrator in writing that the Military Service Member is seeking expedited review of the application;

(C) Submit the filing fee specified in Section 1-612 of the Securities Act except as provided in (4) of this subsection;

(D) Submit evidence of passing scores on examinations equivalent to those required by 660:11-7-13; and

(E) Provide any other documentation as required by the Administrator.

(3) No applicant for registration under this Section shall be qualified for expedited review if the applicant is or has been the subject of disqualifying disciplinary action as set forth in Section 1-411.D of the Securities Act or has been discharged for cause from a broker-dealer or investment adviser.

(4) A Military Service Member who makes an initial application within one year of completion of military service may request a waiver of the initial filing fee specified in Section 1-612 of the Securities Act. An applicant shall, upon application, notify the Administrator in writing that the Military Service Member is seeking waiver of the initial filing fee.

(c) Status of a military service member.

(1) Inactive status of currently registered investment adviser representatives.

(A) If a registered investment adviser representative of an investment adviser volunteers for or is called into active duty as a Military Service Member, the investment adviser representative shall be deemed to be on inactive status upon prompt notification to the Administrator, in writing, of the individual's activation into active military duty. That individual will be deemed reactivated upon the investment adviser representative's return to active association with the investment adviser. The associated investment adviser also may allow such investment adviser representative to enter into an arrangement with another registered investment adviser representative of the investment adviser to take over and service the investment adviser representative's accounts and to share compensation based upon the business generated by such accounts. However, because such investment adviser representatives are deemed inactive, they may not perform any of the functions and responsibilities performed by a registered investment adviser representative.

(B) A registered investment adviser representative who is deemed to be on inactive status under this paragraph shall not be required to pay the fee specified in Section 1-612 of the Securities Act during the time of that investment adviser representative's inactive status and for one year thereafter.

(C) The relief provided under this paragraph shall be available only to a registered investment adviser representative who is deemed to be on inactive status under (A) of this paragraph during the period that such investment adviser representative remains registered with the investment adviser with which the investment adviser representative was registered at the beginning of active duty, regardless of whether the investment adviser representative returns to active association with another investment adviser upon completion of the investment adviser representative's active duty.

(D) The relief provided under this paragraph shall be available only to an individual registered as an investment adviser representative under the Securities Act and only with respect to the period specified in connection with that investment adviser representative's service on active military duty. Further, the investment adviser with whom such investment adviser representative is registered shall promptly notify the

Administrator, in writing, of such investment adviser representative's return to active association with the investment adviser.

(2) Inactive status of sole proprietorships.

(A) If an investment adviser that is a sole proprietor temporarily closes his or her business by reason of volunteering for or being called into active military duty, the investment adviser shall be deemed to be on inactive status upon prompt notification to the Administrator, in writing, of the individual's activation into active military duty.

(B) A sole proprietor Military Service Member deemed to be on inactive status as set forth in this paragraph shall be relieved of any other filing requirements under this subchapter during the pendency of the individual's inactive status.

(C) A sole proprietor Military Service Member deemed to be on inactive status as set forth in this paragraph shall not be required to pay the fee as specified in Section 1-612 of the Securities Act during the pendency of such inactive status and for one year thereafter.

(D) The relief described in this paragraph shall be provided only to a sole proprietor Military Service Member and only with respect to the period specified in connection with his or her service on active military duty. Further, the sole proprietor shall promptly notify the Administrator, in writing, of his or her return to active participation in the investment banking or securities business. The sole proprietor must promptly file an updated Form ADV and Form U-4.

(3) Status of formerly registered investment adviser representatives.

(A) If an individual who was formerly registered as an investment adviser representative volunteers for or is called into active military duty at any time within two years after the date the individual ceased to be registered with an investment adviser, but during the period of validity of the individual's prior examination scores as set forth in OAC 660:11-7-13 ("examination scores validity periods"), the Administrator shall extend the period of validity of the individual's scores by the individual's period of active military service; provided, the validity of the scores will continue for no less than one (1) year following the individual's completion of active military service.

(B) If an individual deemed to be on inactive status as an investment adviser representative while serving as a Military Service Member ceases to be registered with an investment adviser, the Administrator shall extend the individual's examination scores validity periods by the remaining period of the individual's active military service.

(C) An individual applying to become associated with an investment adviser within one (1) year following the completion of the individual's active military service shall not be required to pay the fee specified in Section 1-612 of the Securities Act; provided the fee relief in this subparagraph shall only apply to the individual's first application for registration during such period.

(d) Initial registration of a military spouse.

(1) A Military Spouse who meets the following requirements may apply to the Administrator for expedited review for registration under the Securities Act. An applicant shall:

(A) Submit a complete application for registration on the forms prescribed by the Administrator;

(B) Notify the Administrator in writing that the Military Spouse is seeking expedited review of the application;

(C) Submit evidence of passing scores on examinations equivalent to those required by 660:11-7-13;

(D) Submit the filing fee specified in Section 1-612 of the Securities Act; and

(E) Provide any other documentation as required by the Administrator.

(2) This subsection does not apply if the applicant is or has been the subject of disqualifying disciplinary action as set forth in Section 1-411.D of the Securities Act or has been discharged for cause from a broker-dealer or investment adviser.

(3) This subsection does not apply to a Military Spouse who does not claim residence in the state of Oklahoma.

660:11-7-20. Supplemental disclosures

Every investment adviser and investment adviser representative registered under the Securities Act must keep their application current at all times by promptly filing amendments supplementing their application as required by Section 1-406.B of the Securities Act and the instructions to the Form ADV, Form U-5, and Form U-4. "Promptly" shall mean not later than thirty (30) days after learning of the facts or circumstances giving rise to the amendment.

PART 5. REPORTING REQUIREMENTS

660:11-7-31. Post-registration reporting requirements

(a) **Form ADV Amendments.** Every investment adviser registered under Section 1-406 of the Securities Act must amend its Form ADV each year by filing an annual updating amendment within 90 days of the end of its fiscal year. In addition, every investment adviser registered under Section 1-406 of the Securities Act must amend its Form ADV by promptly filing additional amendments (other-than-annual amendments) if required by the written instructions to Form ADV. "Promptly" shall mean not later than 30 days after learning of the facts or circumstances giving rise to the amendment.

(b) Financial Reports.

(1) **Filing requirement.** Pursuant to Section 1-410.B of the Securities Act, every investment adviser registered under Section 1-406 of the Securities Act who has custody, as that term is defined in 660:11-7-48, of clients' funds or securities or requires prepayment of advisory fees six (6) months or more in advance and in excess of ~~\$500.00~~\$1,200.00 per client shall file a post-registration financial report with the Department each fiscal year.

(2) **Report content.** A financial report shall contain the financial or operating report filing fee specified in Section 1-612 of the Securities Act and an audited statement of financial condition as of the investment adviser's fiscal year end.

(3) **Report filing dates.** Financial reports become due on the last day of the fiscal year to which they apply; however a grace period is provided before a filing becomes delinquent. The filing must be made within 90 days of the end of the registrant's fiscal year.

(4) **Amendment.** If the information contained in a financial report is or becomes inaccurate or incomplete in a material respect, the investment adviser shall promptly file a correcting amendment. "Promptly" shall mean not later than 30 days after learning of the facts or circumstances giving rise to the amendment.

(c) **Incomplete or Delinquent Filings.** The Department will not accept incomplete or piecemeal filings. Failure to make a required filing before it becomes delinquent may result in the suspension or revocation of registration.

PART 7. RECORD KEEPING AND ETHICAL STANDARDS

660:11-7-41. Record keeping requirements

(a) **General requirements.** Every investment adviser registered or required to be registered under the Securities Act shall make and keep true, accurate and current the following books 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. In no event shall the general ledger be posted less than once a month.

(3) A record 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 any such order or instruction. The record shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with

the investment adviser who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank or broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

(4) All check books, bank statements, canceled checks and cash reconciliations of the investment adviser.

(5) All bills or statements (or copies thereof), paid or unpaid, relating to the business of the investment adviser as such.

(6) All trial balances, financial statements prepared in accordance with generally accepted accounting principles, and internal audit working papers relating to the business of such investment adviser. The trial balance shall be prepared no later than fifteen (15) business days after the end of the accounting period.

(7) Originals of all written communications received and copies of all written communications sent by the investment adviser relating to the business of the investment adviser, including, but not limited to:

(A) any recommendation made or proposed to be made and any advice given or proposed to be given,

(B) any receipt, disbursement or delivery of funds or securities, or

(C) the placing or execution of any order to purchase or sell any security; provided, however:

(i) that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, an

(ii) that if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to 2 or more persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that 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 the source thereof.

(8) A list or other record identifying all 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 of all agreements entered into by the investment adviser with any client and all other agreements relating to the business of the investment adviser as such, including agreements which set forth the fees to be charged, the manner of computation and method of payment.

(11) A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including any communication by electronic media, that the investment adviser circulates or distributes, directly or indirectly, to 2 or more persons (other than persons connected with the investment adviser), and if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including any communication by electronic media, recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.

(12) When providing investment advice is the primary business of the investment adviser.

(A) A record of every transaction in a security in which the investment adviser or any advisory representative (as defined in (B) of this paragraph) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment adviser nor the advisory representative of the investment adviser has any direct or indirect

influence or control, and (ii) transactions in securities which are direct obligations of the United States. The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded no later than ten (10) days after the end of the calendar quarter in which the transaction was effected.

(B) For purposes of this paragraph, the following definitions will apply:

(i) The term "advisory representative" shall mean any partner, officer or director of the investment adviser; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations or of the information concerning the recommendations:

(I) any person in a control relationship to the investment adviser,

(II) any affiliated person of a controlling person, and

(III) any affiliated person of an affiliated person.

(ii) "Control" shall mean the power to exercise a controlling influence over the management or policies of a company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the voting securities of a company shall be presumed to control such company.

(13) When providing investment advice is not the primary business of the investment adviser:

(A) Notwithstanding the provisions of (12) of this subsection, where the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative (as defined in (C) of this paragraph) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except:

(i) transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and

(ii) transactions in securities which are direct obligations of the United States.

(B) Each record required by (A) of this paragraph shall state the title and amount of the security involved; the date and nature of the transaction (i.e. purchase, sale, or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(C) For purposes of this paragraph, the following definitions will apply:

(i) The term "advisory representative", when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, shall mean any partner, officer, director or employee of the investment adviser who participates in any way in the determination of which recommendations shall be made, or whose functions or duties relate to the

determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of such recommendations or of the information concerning the recommendations:

- (I) any person in a control relationship to the investment adviser,
- (II) any affiliated person of a controlling person, and
- (III) any affiliated person of an affiliated person.

(ii) "Control" shall mean the power to exercise a controlling influence over the management or policies of a company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the voting securities of a company shall be presumed to control such company.

(iii) An investment adviser is "primarily engaged in a business or businesses other than advising investment advisory clients" when, for each of its most recent three fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived from such other business or businesses, on an unconsolidated basis, more than 50% of:

- (I) its total sales and revenues, and
- (II) its income (or loss) before income taxes and extraordinary items.

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

(15) For each client that was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser:

- (A) evidence of a written agreement to which the adviser is a party related to the payment of such fee;
- (B) 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; and
- (C) a copy of the solicitor's written disclosure statement.

(16) All accounts, books, internal working papers, and any other records or documents that are necessary 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 including but not limited to 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); provided, however, 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 shall be deemed to satisfy the requirements of this paragraph.

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

(18) **Recommendations.**

(A) Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.

(B) A record evidencing that the account record of each client consisting of the information described in (A) of this paragraph has been furnished by the investment adviser to the client within thirty days of the signing of an investment advisory contract, and thereafter at intervals no greater than thirty-six months. The account record shall include or be accompanied by prominent statements that the client should mark any corrections and return the account record to the adviser and that the client should notify

the advisor of any changes to information contained in the account record as they occur in the future.

(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. The following standards shall apply to supervisory procedures:

(A) Regardless of its size or complexity, every investment adviser registered or required to be registered under the Securities Act must adopt and implement supervisory procedures that are tailored specifically to their business and must address the activities of all its investment adviser representatives and associated persons. Supervisory procedures must be in writing and must be reasonably designed to achieve compliance with applicable securities laws and the rules of the Oklahoma Department of Securities. Ultimate responsibility for supervision rests with the investment adviser.

(B) Written supervisory procedures must identify who has supervisory responsibilities, 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.

(C) All written supervisory procedures should 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.

(D) Every investment adviser must maintain a copy of each prior version of its written supervisory procedures for a minimum of five years.

(20) A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self regulatory organization and that pertains to the registrant or its investment adviser representatives, which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

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

(22) Where the adviser inadvertently held or obtained a client's securities or funds and returned them to the client within three business days or has forwarded third party checks drawn by clients and made payable to third parties within 24 hours ~~three business days of receipt~~, the adviser ~~will be considered as not having custody but~~ shall keep a ledger or other listing of all securities or funds held or obtained ~~relating to the inadvertent custody~~ disclosing including the following information:

(A) issuer;

(B) type of security and series;

(C) date of issue;

(D) for debt instruments, the denomination, interest rate and maturity date;

(E) certificate number, including alphabetical prefix or suffix;

(F) name in which registered;

(G) date given to the adviser;

(H) date sent to client or sender;

(I) form of delivery to client or sender, or copy of the form of delivery to client or sender; and

(J) mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return; and

(K) date each check was received by the adviser.

(23) If an investment adviser obtains possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving any public offering that comply

with the exception from custody in (c)(2) of 660:11-7-48, the adviser shall keep the following records:

(A) a record showing the issuer or current transfer agent's name, address, phone number and other applicable contact information pertaining to the party responsible for recording client interests in the securities; and

(B) a copy of any legend, shareholder agreement or other agreement showing that those securities are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(b) **Special requirements due to type of custody.**

(1) **Custody as defined in 660:11-7-48.** If an investment adviser has custody, as that term is defined in 660:11-7-48, the records required to be made and kept under (a) of this Section shall include:

(A) a copy of any and all 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 upon the adviser's instruction to the custodian.

(B) 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.

(C) 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.

(D) copies of confirmations of all transactions effected by or for the account of any client.

(E) 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.

(F) 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 such statements along with the date such statements were sent to the clients.

(G) if applicable to the adviser's situation, a copy of the special examination report verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination.

(H) a record of any finding by the independent certified public accountant of any material discrepancies found during the examination.

(I) if applicable, evidence of the client's designation of an independent representative.

(2) **Adviser to pooled investment vehicle.** If an investment adviser has custody because it advises a pooled investment vehicle, the adviser shall also keep the following records:

(A) true, accurate and current account statements;

(B) When the exception set forth in ~~(e)(3)~~(c)(4) of 660:11-7-48 applies, the records required to be made and kept shall include:

(i) the date(s) of the audit;

(ii) a copy of the audited financial statements; and

(iii) 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.

(C) When the description set forth in ~~(b)(7)~~(b)(5) of 660:11-7-48 applies to an investment adviser, the investment adviser is required to make and keep records to include:

(i) a copy of the written agreement with the independent party reviewing all fees and expenses, indicating the responsibilities of the independent third party.

(ii) copies of all invoices and receipts showing approval by the independent party for payment through the qualified custodian.

~~(3) **Trustee.** If an investment adviser has custody because it is acting as the trustee for a beneficial trust as described in (c)(5) of 660:11-7-48 the investment adviser shall also keep the following records until the account is closed or the adviser is no longer acting as trustee:~~

~~(A) a copy of the written statement given to each beneficial owner setting forth a description of the requirements of (b) of 660:11-7-48 and the reason why the adviser will not be complying with those requirements; and~~

~~(B) a written acknowledgment signed and dated by each beneficial owner, and evidencing receipt of the statement required under (a) of this paragraph.~~

(c) **Managed accounts.** Every investment adviser subject to (b) of this Section who renders any investment supervisory or management service to any 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) Records showing separately for each client 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 security held by the client, and the current amount or interest of the client.

(d) **Client identity.** Any books or records required by this Section may be maintained by the investment adviser in such manner that the identity of any client to whom the investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

(e) **Records retention.** Every investment adviser subject to (a) of this Section shall preserve the following records in the manner prescribed:

(1) All books and records required to be made under the provisions of (a) to (c)(1), inclusive, of this Section (except for books and records required to be made under the provisions of (a)(11) and (a)(16) of this Section), shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on record, the first two years 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, shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.

(3) Books and records required to be made under the provisions of (a)(11) and (a)(16) of this Section shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years 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) Books and records required to be made under the provisions of (a)(17)-(22), inclusive, of this Section shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser, or for the time period during which the investment adviser was registered or required to be registered in the state, if less.

(5) Notwithstanding other record preservation requirements of this Section, the following records or copies shall be required to be maintained 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: (A) records required to be preserved under (a)(3),(a)(7)-(10), (a)(14)-(15), (a)(17)-(19), (b) and (c) inclusive, of this Section, and (B) the records or copies required under the provision of (a)(11) and (a)(16) of this Section 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 locations'

physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the applicable period described in this Subsection.

(f) **Ceasing business.** An investment adviser subject to (a) of this Section, before ceasing to conduct or discontinuing business as an investment adviser shall arrange for 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, and shall notify the Administrator in writing of the exact address where the books and records will be maintained during the period.

(g) **Format and storage of records.**

(1) The records required to be maintained and preserved may be immediately produced or reproduced, and maintained and preserved for the required time, by an investment adviser on:

- (A) paper or hard copy form, as those records are kept in their original form; or
- (B) micrographic media, including microfilm, microfiche, or any similar medium; or
- (C) electronic storage media, including any digital storage medium or system that meets the terms of this section.

(2) The investment adviser must:

- (A) arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;
- (B) provide promptly any of the following that the Administrator or his representatives may request:

- (i) a legible, true, and complete copy of the record in the medium and format in which it is stored;
- (ii) a legible, true, and complete printout of the record; and
- (iii) means to access, view, and print the records; and

(C) separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section.

(3) In the case of records created or maintained on electronic storage media, the investment adviser must establish and maintain procedures:

- (A) to maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;
- (B) to limit access to the records to properly authorized personnel and the Administrator and his representatives; and
- (C) to reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

(h) **Investment supervisory services.** For purposes of this Section, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client; and "discretionary power" shall not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

(i) **Compliance with federal law.** Any book or other record made, kept, maintained and preserved in compliance with Rules 17a-3 [17 C.F.R. 240.17a-3] and 17a-4 [17 C.F.R. 240.17a-4] under the 1934 Act, which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this Section, shall be deemed to be made, kept, maintained and preserved in compliance with this Section.

(j) **Compliance with other state requirements.** Every investment adviser registered or required to be registered under the Securities Act that has its principal place of business in a state other than Oklahoma shall be exempt from the requirements of this section, provided the investment adviser is licensed in the state in which it maintains its principal place of business and is in compliance with that state's books and records requirements.

660:11-7-42. Standards of ethical practices

(a) **Purpose.** This ~~rule~~Section 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~~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~~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 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 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) Lending money to a client unless the investment adviser is a financial institution engaged in the business of lending 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 Advisers Act.
- (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 Advisers Act.
- (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.

660:11-7-43. Disclosure requirements

(a) **Disclosure delivery requirement.** In furtherance of compliance with the standards of ethical practices specified in 660:11-7-42, every investment adviser, registered or required to be registered under the Securities Act shall, in accordance with the provisions of this section, furnish each advisory client and prospective advisory client with: ~~a written disclosure statement. The disclosure statement must include Part 2A of its Form ADV (also known as a brochure) and, if applicable, any part of its Form ADV (also known as a brochure supplement) and Appendix 1 if offering a wrap fee program; provided however, delivery of the required statement need not be made in connection with entering into a contract with a client;~~

~~(1) that is an investment company;~~

~~(2) for impersonal advisory services; or~~

~~(3) who is an officer, employee or other person related to the adviser that would be a qualified client of the adviser under 17 CFR § 275.205-3(d)(1)(iii).~~

(1) a brochure that may be a copy of Part 2A of its Form ADV or a written document containing the information required by Part 2A of Form ADV;

(2) a copy of its Part 2B brochure supplement for each individual

(A) providing investment advice and having direct contact with clients in this state; or

(B) exercising discretion over assets of clients in this state, even if no direct contact is involved;

(3) a copy of any Part 2A Appendix 1 wrap fee brochure if the investment adviser sponsors or participates in wrap fee accounts;

(4) a summary of material changes, if any, which may be included in Form ADV Part 2 or given as a separate document; and

(5) such other information as the Administrator may require.

(b) **Brochure compliance with Form ADV.** Any brochure or brochure supplement required by (a) of this Section must comply with the language, organizational format, and filing requirements specified in the Instructions to Form ADV, Part 2, except that a change in an advisory fee constitutes a material change that triggers the need to file an amendment to the Form ADV Part 2A.

(b)(c) **Delivery.**

(1) Time of initial delivery. An investment adviser shall deliver the ~~statement~~ documents required by (a) of this section to an advisory client or prospective advisory client:

~~(1)(A)~~ (A) not less than 48 hours prior to entering into any written investment advisory contract with such client or prospective client, or

~~(2)(B)~~ (B) at the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract.

(2) Annual delivery. An investment adviser, except as provided in (3) of this subsection, must:

(A) Deliver within 120 days of the end of its fiscal year free copies of any updated brochure and brochure supplement that include or are accompanied by a summary of material changes; or

(B) Deliver a summary of material changes that includes an offer to provide a copy of any updated brochure and brochure supplement and information on how the client may obtain a copy of such documents. Should a client request a copy of any updated brochures or brochure supplements under this subsection, the requested documents must be mailed or delivered within seven (7) days of the receipt of the request.

(3) Exceptions. Delivery of any documents required by (1) and (2) of this subsection need not be made to:

(A) a client who is an officer, employee or other person related to the adviser that would be a qualified client of the adviser under 17 CFR § 275.205-3(d)(1)(iii);

(B) clients who receive only impersonal advice and who pay less than \$500 in fees per year;

(C) an investment company registered under the 1940 Act; or

(D) a business development company as defined in the 1940 Act and whose advisory contract meets the requirements of section 15(c) of that Act.

(4) **Electronic delivery.** Delivery of any brochure and brochure supplement may be made electronically if the investment adviser:

(A) in the case of an initial delivery to a potential client, obtains a verification that a readable copy of the documents were received by the client;

(B) in the case of other than initial deliveries, obtains each client's prior consent to provide the documents electronically;

(C) prepares the electronically delivered documents in the format prescribed in (a) of this Section and instructions to Form ADV Part 2;

(D) delivers the documents in a format that can be retained by the client in either electronic or paper form; and

(E) establishes procedures to supervise personnel transmitting the brochure and any supplements and prevents violations of this Section.

~~(d) **Annual delivery requirement.** Unless exempted as provided in (a) of this section, an investment adviser annually shall, without charge, deliver or offer in writing to deliver upon written request to each of its advisory clients the statement required by this section. Any statement requested in writing by an advisory client pursuant to an offer required by this subsection must be mailed or delivered within seven (7) days of the receipt of the request.~~

(d) **Other disclosures.** Nothing in this Section shall relieve any investment adviser from any obligation pursuant to any provision of the Securities Act or the rules thereunder or other federal or state law to disclose any information to its advisory clients or prospective advisory clients not specifically required by this Section.

~~(e)~~(e) **"Entering into" exclusion.** For purposes of this section, "entering into" does not include an extension or renewal without material change of any investment advisory contract which is in effect immediately prior to such extension or renewal.

660:11-7-48. Custody requirements for investment advisers

(a) **Definitions.** For purposes of this Subchapter, Section:

(1) **"Control"** means the power, directly or indirectly, to direct the management or policies of a person whether through ownership of securities, by contract, or otherwise. Control includes:

(A) Each of the investment adviser's officers, partners, or directors exercising executive responsibility (or persons having similar status or functions) is presumed to control the investment adviser;

(B) A person is presumed to control a corporation if the person:

(i) directly or indirectly has the right to vote twenty-five (25) percent or more of a class of the corporation's voting securities; or

(ii) has the power to sell or direct the sale of twenty-five (25) percent or more of a class of the corporation's voting securities;

(C) A person is presumed to control a partnership if the person has the right to receive upon dissolution, or has contributed, twenty-five (25) percent or more of the capital of the partnership;

(D) A person is presumed to control a limited liability company if the person:

(i) directly or indirectly has the right to vote twenty-five (25) percent or more of a class of the interests of the limited liability company;

(ii) has the right to receive upon dissolution, or has contributed, twenty-five (25) percent or more of the capital of the limited liability company;

(iii) is an elected manager of the limited liability company; or

(E) A person is presumed to control a trust if the person is a trustee or managing agent of the trust.

(2) "Custody" means holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them or the ability to appropriate them. The investment adviser has custody if a related person holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of them, in connection with advisory services the investment adviser provides to clients.

(A) Custody includes:

(i) possession of client funds or securities unless the investment adviser receivedreceives them inadvertently and returnedreturns them to the sender promptly, but in any case within three (3) business days of receiving them and the investment adviser maintains the records required under 660:11-7-41(a)(22);

(ii) any arrangement (including a general power of attorney) under which you arean investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon yourthe investment adviser's instruction to the custodian; and

(iii) any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another for another type of pooled investment vehicle, or trustee of a trust) that gives you or yourthe investment adviser or its supervised person legal ownership of or access to client funds or securities.

(B) Receipt of checks drawn by clients and made payable to unrelated third parties will not meet the definition of custody if forwarded to the third party within 24-hoursthree (3) business days of receipt and the investment adviser maintains the records required under 660:11-7-41(a)(22).

(3) "Independent certified public accountant" means a certified public accountant that meets the standards of independence described in rule 2-01(b) and (c) of Regulation S-X [17 CFR 210.2-01(b) and (c)].

(4) "Independent party" means a person that:

(A) is engaged by the investment adviser to act as a gatekeeper for the payment of fees, expenses and capital withdrawals from the pooled investment;

(B) does not control and is not controlled by and is not under common control with the investment adviser; and

(C) does not have, and has not had within the past two years, a material business relationship with the investment adviser.

(D) shall not negotiate or agree to have material business relations or commonly controlled relations with an investment adviser for a period of two years after serving as the person engaged in an independent party agreement.

(2)(5) "Independent representative" means a person who:

(A) acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or contract is obliged to act in the best interest of the advisory client or the limited partners, members, or other beneficial owners;

(B) does not control, is not controlled by, and is not under common control with youthe investment adviser; and

(C) does not have, and has not had within the past two years, a material business relationship with youthe investment adviser.

(3)(6) "Qualified custodian" means the following independent institutions or entities that are not affiliated with the adviser by any direct or indirect common control and have not had a material business relationship with the adviser in the previous two years:

(A) A bank or savings association that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act;

(B) A ~~registered~~ broker-dealer registered in this jurisdiction and with the SEC holding the client assets in customer accounts;

(C) A registered futures commission merchant registered under Section 4f(a)~~6f(a)~~ of the Commodity Exchange Act, holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and

(D) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

(7) "Related person" means any person, directly or indirectly, controlling or controlled by the investment adviser, and any person that is under common control with the investment adviser.

~~(b) Safekeeping required. If you are an investment adviser registered or required to be registered, it is unlawful and deemed to be a fraudulent, deceptive, or manipulative act, practice, or course of business for you an investment adviser, registered or required to be registered, to have custody of client funds or securities unless:~~

~~(1) Notice to Administrator. The investment adviser notifies the Administrator promptly in writing that the investment adviser has or may have custody. Such notification is required to be given on Form ADV.~~

~~(2) Qualified custodian. A qualified custodian maintains those funds and securities:~~

~~(A) in a separate account for each client under that client's name; or~~

~~(B) in accounts that contain only your the investment adviser's clients' funds and securities, under your the investment adviser's name as agent or trustee for the clients, or, in the case of a pooled investment vehicle that the investment adviser manages, in the name of the pooled investment vehicle.~~

~~(3) Notice to clients. If you open an investment adviser opens an account with a qualified custodian on your client's behalf, either its client's behalf, under the client's name, under the name of the investment adviser as agent, or under the client's name of a pooled investment vehicle, or under your name as agent, you the investment adviser must promptly notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information. If the investment adviser sends account statements to a client to which the investment adviser is required to provide this notice, the investment adviser must include in the notification provided to that client and in any subsequent account statement the investment adviser sends that client a statement urging the client to compare the account statements from the custodian with those from the investment adviser.~~

~~(4) Account statements. Account statements must be sent to clients either:~~

~~(A) by a qualified custodian. The investment adviser has a reasonable basis, after due inquiry, for believing that the qualified custodian sends an account statement, at least quarterly, to each client for which it maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period; or~~

~~(B) by the investment adviser.~~

~~(i) The investment adviser sends an account statement, at least quarterly, to each client for whom the investment adviser has custody of funds or securities, identifying the amount of funds and of each security of which the investment adviser has custody at the end of the period and setting forth all transactions during that period; and~~

~~(ii) An independent certified public accountant verifies all client funds and securities by actual examination at least once during each calendar year at a time chosen by the accountant without prior notice or announcement to the adviser and that is irregular from year to year, and files a copy of the auditor's report and financial statements with the Administrator within 30 days after the completion of the~~

~~examination, along with a letter stating that it has examined the funds and securities and describing the nature and extent of the examination; and~~
~~(iii) The independent certified public accountant, upon finding any material discrepancies during the course of the examination, notifies the Administrator within one business day of the finding, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the Administrator;~~

~~(C)(5) **Special rule for limited partnerships and limited liability companies.** If you are the investment adviser or a related person is a general partner of a limited partnership (or managing member of a limited liability company, or ~~holds~~ holds a comparable position for another type of pooled investment vehicle),~~

~~(A) the account statements required under (b)(4)(4) of this Section subsection must be sent to each limited partner (or member or other beneficial owner or their independent representative), and-~~

~~(B) the investment adviser must:~~

~~(i) enter into a written agreement with an independent party who is obliged to act in the best interest of the limited partners, members, or other beneficial owners to review all fees, expenses, and capital withdrawals from the pooled accounts;~~

~~(ii) send all invoices or receipts to the independent party, detailing the amount of the fee, expenses, or capital withdrawal and the method of calculation such that the independent party can:~~

~~(I) determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement) and~~

~~(II) forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment adviser.~~

~~(5)(6) **Independent representatives verification.**~~

~~The client funds and securities of which the investment adviser has custody are verified by actual examination at least once during each calendar year, by an independent certified public accountant, pursuant to a written agreement between the investment adviser and the independent certified public accountant, at a time that is chosen by the independent certified public accountant without prior notice or announcement to the investment adviser and that is irregular from year to year. The written agreement must provide for the first examination to occur within six months of becoming subject to this paragraph, except that, if the investment adviser maintains client funds or securities pursuant to this Section as a qualified custodian, the agreement must provide for the first examination to occur no later than six months after obtaining the internal control report. The written agreement must require the independent certified public accountant to:~~

~~(A) file a certificate on Form ADV-E with the Administrator within 120 days of the time chosen by the independent certified public accountant in this paragraph, stating that it has examined the funds and securities and describing the nature and extent of the examination;~~

~~(B) notify the Administrator within one business day of the finding of any material discrepancies during the course of the examination, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the Administrator; and~~

~~(C) file within four (4) business days of the resignation or dismissal from, or other termination of, the engagement, or removing itself or being removed from consideration for being reappointed, Form ADV-E accompanied by a statement that includes:~~

~~(i) the date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent certified public accountant; and~~

~~(ii) an explanation of any problems relating to examination scope or procedure that contributed to such resignation, dismissal, removal, or other termination. A client may~~

~~designate an independent representative to receive, on his behalf, notices and account statements as required under (b)(3) and (b)(4) of this Section.~~

~~(6) **Direct fee deduction.** An adviser who has custody as defined in (a)(1)(A)(ii) of this Section by having fees directly deducted from client accounts must also provide the following safeguards:~~

~~(A) Written authorization. The investment adviser must have written authorization from the client to deduct advisory fees from the account held with the qualified custodian;~~

~~(B) Notice of fee deduction. Each time a fee is directly deducted from a client account, the investment adviser must concurrently:~~

~~(i) send the qualified custodian an invoice of the amount of the fee to be deducted from the client's account; and~~

~~(ii) send the client an invoice itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee.~~

~~(C) Notice of safeguards. The investment adviser notifies the Administrator in writing that the investment adviser intends to use the safeguards provided in (A) and (B) of this paragraph. Such notification is required to be given on Form ADV.~~

~~(D) Waiver of audited financial statements. An investment adviser having custody solely because it meets the definition of custody as defined in (a)(1)(A)(ii) of this Section and who complies with the safekeeping requirements in (b)(1)-(6) of this Section will not be required to meet the financial requirements for custodial advisers as set forth in 660:11-7-31.~~

~~(7) **Pooled Investments.** An investment adviser who has custody as defined in (a)(1)(A)(iii) of this Section and who does not meet the exception provided under (c)(3) of this Section must, in addition to the safeguards set forth in (b)(1)-(5) of this Section also comply with the following:~~

~~(A) **Engage an Independent Party.** Hire an Independent Party to review all fees, expenses and capital withdrawals from the pooled accounts;~~

~~(B) Review of fees. Send all invoices or receipts to the Independent Party, detailing the amount of the fee, expenses or capital withdrawal and the method of calculation such that the Independent Party can:~~

~~(i) determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement) and~~

~~(ii) forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment adviser.~~

~~(C) For purposes of this paragraph, an "Independent Party" means a person that:~~

~~(i) is engaged by you to act as a gatekeeper for the payment of fees, expenses and capital withdrawals from the pooled investment;~~

~~(ii) does not control and is not controlled by and is not under common control with you; and~~

~~(iii) does not have, and has not had within the past two years, a material business relationship with you.~~

~~(D) **Notice of safeguards.** The investment adviser notifies the Administrator in writing that the investment adviser intends to use the safeguards provided in (A) and (B) of this paragraph. Such notification is required to be given on Form ADV.~~

~~(E) **Waiver of audited financial statements.** An investment adviser having custody solely because it meets the definition of custody as defined in (a)(1)(A)(iii) of this Section and who complies with the safekeeping requirements in (b)(1)-(5) and (7) of this Section will not be required to meet the financial requirements for custodial advisers as set forth in 660:11-7-31.~~

~~(8) **Investment Adviser or Investment Adviser Representative as Trustee.** When a trust retains an investment adviser; investment adviser representative; or employee, director or owner of an investment adviser as trustee and the investment adviser acts as the investment adviser to that trust, the investment adviser will:~~

~~(A) [Notice of safeguards] notify the Administrator in writing that the investment adviser intends to use the safeguards provided in (B) and (C) of this paragraph. Such notification is required to be given on Form ADV.~~

~~(B) [Invoice requirement] send to the grantor of the trust, the attorney for the trust if it is a testamentary trust, the co-trustee (other than the investment adviser; investment adviser representative; or employee, director or owner of the investment adviser); or a defined beneficiary of the trust, at the same time that it sends any invoice to the qualified custodian, an invoice showing the amount of the trustees' fee or investment management or advisory fee, the value of the assets on which the fees were based, and the specific manner in which the fees were calculated.~~

~~(C) [Agreement requirement] enter into a written agreement with a qualified custodian which specifies:~~

~~(i) [Payment of fees] that the qualified custodian will not deliver trust securities to the investment adviser, any investment adviser representative or employee, director or owner of the investment adviser, nor will transmit any funds to the investment adviser; any investment adviser representative or employee; director or owner of the investment adviser, except that the qualified custodian may pay trustees' fees to the trustee and investment management or advisory fees to investment adviser, provided that:~~

~~(I) the grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co-trustee (other than the investment adviser; investment adviser representative; or employee, director or owner of the investment adviser); or a defined beneficiary of the trust has authorized the qualified custodian in writing to pay those fees;~~

~~(II) the statements for those fees show the amount of the fees for the trustee and, in the case of statements for investment management or advisory fees, show the value of the trust assets on which the fee is based and the manner in which the fee was calculated; and~~

~~(III) the qualified custodian agrees to send to the grantor of the trust, the attorneys for a testamentary trust, the co-trustee (other than the investment adviser; investment adviser representative; or employee, director or owner of the investment adviser); or a defined beneficiary of the trust, at least quarterly, a statement of all disbursements from the account of the trust, including the amount of investment management fees paid to the investment adviser and the amount of trustees' fees paid to the trustee.~~

~~(ii) [Distribution of assets] except as otherwise set forth in (b)(8)(C)(i) of this Section, that the qualified custodian may transfer funds or securities, or both, of the trust only upon the direction of the trustee (who may be the investment adviser; investment adviser representative; or employee, director or owner of the investment adviser), who the investment adviser has duly accepted as an authorized signatory. The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co-trustee (other than the investment adviser; investment adviser representative; or employee, director or owner of the investment adviser); or a defined beneficiary of the trust, must designate the authorized signatory for management of the trust. The direction to transfer funds or securities, or both, can only be made to the following:~~

~~(I) to a trust company, bank trust department or brokerage firm independent of the investment adviser for the account of the trust to which the assets relate;~~

~~(II) to the named grantors or to the named beneficiaries of the trust;~~

~~(III) to a third person independent of the investment adviser in payment of the fees or charges of the third person including, but not limited to:~~

~~(a) attorney's, accountant's, or qualified custodian's fees for the trust; and~~

~~(b) taxes, interest, maintenance or other expenses, if there is property other than securities or cash owned by the trust;~~

~~(IV) to third persons independent of the investment adviser for any other purpose legitimately associated with the management of the trust; or
(V) to a broker-dealer in the normal course of portfolio purchases and sales, provided that the transfer is made on payment against delivery basis or payment against trust receipt.~~

~~(D) [Waiver of audited financial statements] not be required to meet the financial requirements for custodial advisers as set forth in 660:11-7-31 if the investment adviser has custody solely because it meets the definition of custody as defined in (a)(1)(A)(iii) of this Section and who complies with the safekeeping requirements in (b)(1)-(5) and (8) of this Section.~~

(7) Investment advisers acting as qualified custodians. If the investment adviser maintains, or if the investment adviser has custody because a related person maintains, client funds or securities pursuant to this Section as a qualified custodian in connection with advisory services the investment adviser provides to clients, the investment adviser must obtain, or receive from its related person, within six months of becoming subject to this paragraph and thereafter no less frequently than once each calendar year a written internal control report prepared by an independent certified public accountant:

(A) The internal control report must include an opinion of an independent certified public accountant as to whether controls have been placed in operation as of a specific date, and are suitably designed and are operating effectively to meet control objectives relating to custodial services, including the safeguarding of funds and securities held by either the investment adviser or a related person on behalf of the investment adviser's clients, during the year; and

(B) The independent certified public accountant must verify that the funds and securities are reconciled to a custodian other than the investment adviser or the investment adviser's related person.

(8) Independent representatives. A client may designate an independent representative to receive, on his behalf, notices and account statements as required under (3) and (4) of this subsection.

(c) Exceptions.

(1) Shares of mutual funds. With respect to shares of an open-end company as defined in Section 5(a)(1) of the 1940 Act [15 U.S.C. 80a-5(a)(1)] ("mutual fund"), ~~you~~the investment adviser may use the mutual fund's transfer agent in lieu of a qualified custodian for purposes of complying with (b) of this Section.

(2) Certain privately offered securities.

~~You are~~The investment adviser is not required to comply with (b)~~(2)~~(2) of this Section with respect to securities that are:

- (i) acquired from the issuer in a transaction or chain of transactions not involving any public offering;
- (ii) uncertificated, and ownership thereof is recorded only on books of the issuer or its transfer agent in the name of the client; and
- (iii) transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(B) Notwithstanding (A) of this paragraph, the provisions of this paragraph are available with respect to securities held for the account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if the limited partnership is audited, ~~and~~ the audited financial statements are distributed as described in ~~(3)(4)~~(4) of this ~~Subsectionsubsection~~subsection, and the investment adviser notifies the Administrator in writing that the investment adviser intends to provide audited financial statements as described in (4) of this subsection. Such notification is required to be given on Form ADV.

(3) Fee deduction. Notwithstanding (b)(6) of this Section, an investment adviser is not required to obtain an independent verification of client funds and securities maintained by a qualified custodian if all of the following are met:

(A) The investment adviser has custody of the funds and securities solely as a consequence of its authority to make withdrawals from client accounts to pay its advisory fee;

(B) The investment adviser has written authorization from the client to deduct advisory fees from the account held with the qualified custodian;

(C) Each time a fee is directly deducted from a client account, the investment adviser concurrently:

(i) sends the independent party designated pursuant to (b)(5)(B)(i) of this Section an invoice or statement of the amount of the fee to be deducted from the client's account; and

(ii) sends the client an invoice or statement itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee.

(D) The investment adviser notifies the Administrator in writing that the investment adviser intends to use the safeguards provided in this paragraph. Such notification is required to be given on Form ADV.

(4) Limited partnerships subject to annual audit. ~~You are~~ An investment adviser is not required to comply with (b)(3) and (b)(4) of this Section and shall be deemed to have complied with (b)(6) of this Section with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) that is subject to audit at least annually and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within 120 days of the end of its fiscal year. The investment adviser must also notify the Administrator in writing that the investment adviser intends to employ the use of the audit safeguards described in (2)(B) of this subsection. Such notification is required to be given on Form ADV. if each of the following conditions are met:

(A) The adviser sends to all limited partners (or members or other beneficial owners) at least quarterly, a statement showing:

(i) the total amount of all additions to and withdrawals from the fund as a whole as well as the opening and closing value of the fund at the end of the quarter based on the custodian's records;

(ii) a listing of all long and short positions on the closing date of the statement in accordance with FASB Rule ASC 946-210-50; and

(iii) the total amount of additions to and withdrawals from the fund by the investor as well as the total value of the investor's interest in the fund at the end of the quarter.

(B) At least annually the fund is subject to an audit and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within 120 days of the end of its fiscal year;

(C) The audit is performed by an independent certified public accountant;

(D) Upon liquidation, the adviser distributes the fund's final audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) and the Administrator promptly after the completion of such audit;

(E) The written agreement with the independent certified public accountant must require the independent certified public accountant to, upon resignation or dismissal from, or other termination of, the engagement, or upon removing itself or being removed from consideration for being reappointed, notify the Administrator within four business days accompanied by a statement that includes:

(i) The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent certified public accountant; and

- (ii) An explanation of any problems relating to audit scope or procedure that contributed to such resignation, dismissal, removal, or other termination.
- (F) The investment adviser must also notify the Administrator in writing that the investment adviser intends to employ the use of the statement delivery and audit safeguards described in this paragraph. Such notification is required to be given on Form ADV.
- ~~(4)~~**(5) Registered investment companies.** ~~You are~~The investment adviser is not required to comply with this Section with respect to the account of an investment company registered under the 1940 Act [15 U.S.C. 80a-1 to 80a-64].
- ~~(5) Beneficial Trusts.~~ An investment adviser is not required to comply with safekeeping requirements of (b) of this Section or 660:11-7-31 if the investment adviser has custody solely because the investment adviser, investment adviser representative or employee, director or owner of the investment adviser is a trustee for a beneficial trust, if all of the following conditions are met for each trust:
- (A) The beneficial owner of the trust is a parent, a grandparent, a spouse, a sibling, a child or a grandchild of the trustee. These relationships shall include “step” relationships.
- (B) For each account under (A) of this paragraph you comply with the following:
- (i) You provide a written statement to each beneficial owner of the account setting forth a description of the requirements of (b) of this Section and the reasons why you will not be complying with those requirements.
- (ii) You obtain from each beneficial owner a signed and dated statement acknowledging the receipt of the written statement required under (i) of this subparagraph.
- (iii) You maintain a copy of both documents described in (i) and (ii) of this subparagraph until the account is closed or you are no longer trustee.
- ~~(6) Any adviser who intends to have custody of client funds or securities but is not able to utilize a qualified custodian as defined in (a) of this Section must first obtain approval from the Administrator and must comply with all of the applicable safekeeping provisions under (b) of this Section including taking responsibility for those provisions that are designated to be performed by a qualified custodian.~~
- (6) Delivery to Related Persons.** Sending an account statement under (b)(5) of this Section or distributing audited financial statements under (4) of this subsection shall not satisfy the requirements of this Section if such account statements or financial statements are sent solely to limited partners (or members or other beneficial owners) that themselves are limited partnerships (or limited liability companies, or another type of pooled investment vehicle) and are related persons of the investment adviser.

SUBCHAPTER 11. EXEMPTIONS FROM SECURITIES REGISTRATION

PART 5. EXEMPT TRANSACTIONS

660:11-11-40. Manual exemption

- (a) **Recognized securities manuals.** The publications which shall be recognized by the Administrator for purposes of the exemption from registration set forth in Section 1-202.2.d of the Securities Act shall be as follows:
- (1) Best's Insurance Reports, Life-Health
 - (2) Mergent's Industrial Manual
 - (3) Mergent's International Manual
 - (4) Standard & Poor's Corporation Records OTC Markets Group Inc. with respect to securities included in the OTCQX and OTCQB markets.
- (b) **Additional requirements.** To be eligible for the exemption from registration provided by Section 1-202.2.d of the Securities Act, the following additional conditions must be met:

- (1) All information specified as required to be contained in the recognized securities manuals pursuant to Section 1-202.2.d of the Securities Act must be given to the purchaser with the confirmation by providing the purchaser with a copy of either:
 - (A) the information contained in the manual listing; or
 - (B) the information maintained by the broker-dealer effecting the transaction that is required to be kept by such broker-dealer pursuant to the requirements of SEC Rule 15c2-11 promulgated under the provisions of the 1934 Act.
 - (2) The information required under (1) of this subsection must be reasonably current in all material respects. The time for determining whether the information is current is at the date of the particular sale not the date the manual listing is published. For purposes of this paragraph, the term "reasonably current" shall have the meaning set forth in SEC Rule 15c2-11.
 - (3) The financial statements of the issuer required pursuant to Section 1-202.2.d of the Securities Act must be audited by an independent public accountant in accordance with generally accepted auditing standards, presenting fairly, in all material respects, the financial condition of the issuer; provided, if the issuer is an entity formed and operating under the laws of a foreign jurisdiction, the financial statements shall be audited in accordance with the auditing standards applicable in its jurisdiction of formation and operation.
 - (4) The issuer of the security, including any predecessors, has either:
 - (A) been in continuous business or operations for at least two (2) years, unless the issuer is an insurance company in which event it shall have been in business for at least five (5) years; or
 - (B) had a class of equity securities registered under Section 1-301 of the Securities Act within the past five (5) years.
 - (C) As used in this paragraph, "business or operations" means actual activities related to its current business or operations and shall not include merely holding funds or assets for future use.
 - (5) Sales must be made by a broker-dealer, either as principal or agent, who is registered under the provisions of Section 1-401 of the Securities Act.
 - (6) The securities must be offered or sold at a price reasonably related to the current market price of such securities.
 - (7) The securities must be issued and outstanding. The exemption is not available for issuer transactions. For purposes of this paragraph, "issuer" shall include all officers, directors and controlling (5% or more) shareholders of the issuer.
 - (8) The security does not constitute the whole or any part of an unsold allotment to, or subscription or participation by, the broker-dealer as an underwriter of the security.
- (c) **Restriction for promotional or developmental stage companies.** This exemption may not be used to evade the registration requirements of Section 1-301 of the Securities Act. Accordingly, transactions in reliance on this exemption for the securities of an issuer which is a promotional or developmental stage company as defined in 660:11-1-3, involving securities that have not been registered for offer or sale in the state of Oklahoma and which securities would not have met the requirements for registration set forth in Sections 1-303 or 1-304 of the Securities Act and the rules promulgated thereunder, had the securities been filed for registration pursuant to such sections of the Securities Act, may be deemed to have violated this requirement unless proven otherwise.
- (d) **Exemption.** The requirements of (b)(1) of this ~~section~~Section, shall not apply to the sale of the securities of an issuer who has net tangible assets in excess of \$10,000,000.00 (U.S.) as determined by its most recent audited financial statements. For foreign issuers, the net tangible asset value may be determined by applying the exchange rate in effect as of the date of the financial statement relied upon unless there has been a material change in such exchange rate after the date of the financial statement that would reduce by greater than 20% the value in U.S. dollars. In that event, the exchange rate applied should be the rate effective as of the last day of the preceding month. Nothing in this Section shall release the broker-dealer effecting the transaction from its obligation to maintain the information required by SEC Rule 15c2-11 and to

deliver any such information to any person involved in a transaction effected in the security, upon request by such person.

660:11-11-43. Coordinated limited offering exemption

(a) Preliminary notes.

(1) Nothing in this exemption is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of ~~this state's securities laws~~ the Securities Act.

(2) In view of the objective of this ~~section~~ Section and the purposes and policies underlying the Securities Act, the exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this ~~section~~ Section, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this Section.

(3) Nothing in this ~~section~~ Section is intended to relieve registered broker-dealers or agents from the due diligence, suitability, or know your customer standards or any other requirements of law otherwise applicable to such registered persons.

(b) Terms of the exemption. By authority delegated to the Administrator in Section 1-203 of the Securities Act, the following transactions are determined to be classes of transactions for which registration is not necessary or appropriate for the protection of investors and are exempt from Sections 1-301 and 1-504 of the Securities Act: any offer or sale of securities exempted from Section 5 of the 1933 Act pursuant to Section ~~(4)(6)~~ 4(a)(5) thereof; or any offer or sale of securities offered or sold in compliance with the 1933 Act, under SEC Regulation D, Rules Rule 230.504504 [17 C.F.R. § 230.504] and/or 230.505, including any offer or sale made exempt by application of SEC Regulation D, Rule 508(a) [17 C.F.R. § 230.508(a)]; provided the following further conditions and limitations are satisfied:

(1) offering expenses do not exceed those allowed for securities registered pursuant to the provisions of this title;

(2) no general advertising or general solicitation is used; and

(3) the issuer files with the Administrator no later than fifteen (15) days after the first sale of securities subject to the Securities Act one(1) signed copy of the notice of sales on Form D as most recently filed with the SEC, ~~including the Appendix thereto~~. Such filing shall also include the following:

(A) an undertaking by the issuer to furnish to the Administrator, upon written request, the information furnished by the issuer to offerees;

(B) unless otherwise available, a consent to service of process on Form U-2 and (if applicable) Form U-2A; and

(C) the notice of exemption fee required by Section 1-612.A.12 of the Securities Act.

(c) Substantial compliance. A failure to comply with a term, condition or requirement of (b)(3) of this ~~section~~ Section will not result in the loss of the exemption from the requirements of Section 1-301 of the Securities Act for any offer or sale to a particular individual or entity if the person relying on the exemption shows:

(1) the failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity;

(2) the failure to comply was insignificant with respect to the offering as a whole; and

(3) a good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of ~~(3)(b)~~ (b)(3) of this ~~section~~ Section.

(d) Action by Administrator. Where an exemption is established only through reliance upon (c) of this ~~section~~ Section, the failure to comply shall nonetheless be actionable by the Administrator under the Securities Act.

(e) Reliance on other exemptions. Transactions that are exempt under this ~~section~~ Section may not be combined with offers and sales exempt under any other rule or any section of the Securities Act; however, nothing in this limitation shall act as an election. Should for any reason

the offer and sale fail to comply with all of the conditions of this exemption, the issuer may claim the availability of any other applicable exemption.

(f) **Waiver of terms.** The Administrator may, by rule or order, increase the number of purchasers or waive any other conditions of this exemption.

(g) **Title.** The exemption authorized by this section shall be known and may be cited as the "Oklahoma Coordinated Limited Offering Exemption".