

CHAPTER 304. POSTREGISTRATION PROVISIONS

Sec.

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§ 304.011. Broker-dealer required records.

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

(b) A broker-dealer registered under the act that is not registered as a broker or dealer with the United States Securities and Exchange Commission (SEC) immediately shall notify the Commission if the broker-dealer fails to make and keep current the books and records required by this section. Within 24 hours after filing the notice with the Commission, the broker-dealer shall file with the Commission a report stating what steps have been taken and are being taken to fully comply with this section.

(c) Every broker-dealer registered under the act shall make, keep and preserve either a separate file of written complaints of customers and actions taken by the broker-dealer in response thereto, or a separate record of the complaints and a clear reference to the files containing the correspondence connected with the complaint maintained by the broker-dealer. A “complaint” shall be deemed to include a written statement of a customer or a person acting on behalf of a customer or a written notation of verbal communication alleging a grievance involving the purchase or sale of securities, the solicitation or execution of a transaction or the disposition of securities or funds of the customer. A registered broker-dealer that also is registered as a broker or dealer with the SEC shall be deemed to be in compliance with the requirements of this subsection if it maintains records of customer complaints as prescribed by applicable SEC rules.

(d) The records required to be maintained under this section shall be retained and preserved for the period of time designated in Rule 17a-4 (17 CFR 240.17a-4) (relating to records to be preserved by certain exchange members, brokers and dealers) promulgated under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78kk) and made easily accessible for inspection by the Commission or its representatives. The retention and preservation of records as required in this section may be upon microfilm, microfiche, or any similar

medium; electronic or digital storage medium; computer disks or tapes or other similar recording process if adequate facilities are maintained for the examination of the facsimiles and if enlargements or paper copies of the facsimiles can be provided promptly upon reasonable request of the Commission or its representatives.

Authority

The provisions of this § 304.011 amended under sections 304(a), (d) and (e) and 609(a) (70 P. S. §§ 1-304(a), (d) and (e) and 1-609(a)).

Source

The provisions of this § 304.011 adopted March 29, 1974, effective March 30, 1974, 4 Pa.B. 582; corrected at May 16, 1987, 17 Pa.B. 1921; amended January 17, 1992, effective January 18, 1992, 22 Pa.B. 288; amended January 28, 1994, effective January 29, 1994, 24 Pa.B. 654; amended December 28, 2001, effective December 29, 2001, 31 Pa.B. 7032. Immediately preceding text appears at serial pages (268831) to (268832).

Cross References

This section cited in 64 Pa. Code § 606.041 (relating to delegation and substitution).

§ 304.012. Investment adviser required records.

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

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

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

(3) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The memoranda 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, 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 of), paid or unpaid, relating to the investment adviser's business as an investment adviser.

(6) All trial balances, financial statements, net worth computation, and internal audit working papers relating to the investment adviser's business as an investment adviser. For purposes of this subsection, "financial statements" shall mean a balance sheet prepared in accordance with generally accepted accounting principles, an income statement and a cash flow statement. The net worth computation means the net worth required by § 303.042 (relating to investment adviser capital requirements), if any.

(7) Originals of all written communications received and copies of all written communications sent by the investment adviser relating to one or more of the following:

(i) Any recommendation made or proposed to be made and any advice given or proposed to be given.

(ii) Any receipt, disbursement or delivery of funds or securities.

(iii) The placing or execution of any order to purchase or sell any security, except that an investment adviser:

(A) Is not required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser.

(B) With respect to any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service sent by the investment adviser to more than 10 persons (including transmission by electronic means), the investment adviser is not 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 its source.

(8) A list or other record of all accounts which list identifies the accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.

(9) A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser.

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

(11) A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser), and if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media recommends the purchase or sale of a specific security and does

not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.

(12) Records of transactions as follows:

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

(A) Transactions effected in any account over which neither the investment adviser nor any investment adviser representative of the investment adviser has any direct or indirect influence or control.

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

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

(II) The price at which it was effected.

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

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

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

(iv) For purposes of this paragraph, the following terms have the following meanings:

(A) *Investment adviser representative*—A partner, officer or director of the investment adviser; any employe who participates in any way in the determination of which recommendations shall be made; any employe of the investment adviser who, in connection with assigned 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:

(I) Any person in a control relationship to the investment adviser.

(II) Any affiliated person of a controlling person.

(III) Any affiliated person of an affiliated person.

(B) *Control*—The power to exercise a controlling influence over the management or policies of a company, unless the power is solely the result of an official position with the company. A 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 the company.

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

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

(i) Notwithstanding paragraph (12), when the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record shall be maintained of every transaction in a security in which the investment adviser or any investment adviser representative of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except transactions:

(A) Effected in any account over which neither the investment adviser nor any investment adviser representative of the investment adviser has any direct or indirect influence or control.

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

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

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

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

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

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

(iv) An investment adviser is “primarily engaged in a business or businesses other than advising investment advisory clients” when, for each of its most recent 3 fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived, on an unconsolidated basis, more than 50% of the following:

(A) Its total sales and revenues.

(B) Its income (or loss) before income taxes and extraordinary items, from other business or businesses.

(v) For purposes of this paragraph, the following terms have the following meanings:

(A) *Investment adviser representative*—When used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, the term means any partner, officer, direc-

tor or employe of the investment adviser who participates in any way in the determination of which recommendations shall be made; any employe who, in connection with assigned duties, obtains 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 as follows:

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

(B) *Control*—The power to exercise a controlling influence over the management or policies of a company, unless the power is solely the result of an official position with the company. A 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 the company.

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

(14) A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of the investment adviser under § 404.011 (relating to investment adviser brochure rule), 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 shall maintain the following:

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

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

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

(iv) For purposes of this paragraph, the term "solicitor" means any person or entity who, for compensation, directly or indirectly solicits any client for, or refers any client to, an investment adviser.

(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) except that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts 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) Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to the client.

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

(20) A file containing a copy of 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 as that term is defined in paragraph (12), which file should contain, but is not limited to, all applications, amendments, renewal filings and correspondence.

(b) If an investment adviser subject to subsection (a) has custody or possession of securities or funds of any client, the records required to be made and kept by subsection (a) also shall include:

(1) A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for all accounts and all other debits and credits to the accounts.

(2) A separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits.

(3) Copies of confirmations of all transactions effected by or for the account of any client.

(4) A record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount or interest of each client, and the location of each security.

(c) Every investment adviser subject to subsection (a) that 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 client, and the current amount or interest of the client.
- (d) Books or records required by this section may be maintained by the investment adviser so 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) Every investment adviser subject to subsection (a) shall preserve the following records in the manner prescribed:
 - (1) The books and records required to be made under subsections (a), (b) and (c)(1) (except for books and records required to be made under subsection (a)(11) and (a)(16)), shall be maintained and preserved in an easily accessible place for at least 5 years from the end of the fiscal year during which the last entry was made on record, the first 2 years being in the principal office of the investment adviser.
 - (2) Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least 3 years after termination of the enterprise.
 - (3) Books and records required to be made under subsection (a)(11) and (18) shall be maintained and preserved in an easily accessible place for at least 5 years, the first 2 years being in the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication including by electronic media.
 - (4) Books and records required to be made under subsection (a)(19) and (22) shall be maintained and preserved in an easily accessible place for at least 5 years, the first 2 years being in the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication including by electronic media.
 - (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:
 - (i) Records required to be preserved under subsections (a)(3), (7)—(10), (14)—(15), (17)—(19), (b) and (c).

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

(f) An investment adviser subject to subsection (a), before ceasing to do business as an investment adviser, shall arrange and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section, and shall notify the Commission in writing of the exact address where the books and records will be maintained during the period.

(g) The requirements for the storage of records are as follows:

(1) Records required to be maintained and preserved under this section may be immediately produced or reproduced by photograph on film or, as provided in paragraph (2) on magnetic disk, tape or other computer storage medium, and be maintained and preserved for the required time in that form. If records are produced or reproduced by photographic film or computer storage medium, the investment adviser shall:

(i) Arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record.

(ii) Be ready at all times to provide, and promptly provide, any facsimile enlargement of film or computer printout or copy of the computer storage medium which the Commission by its examiners or other representatives may request.

(iii) Store separately from the original one other copy of the film or computer storage medium for the time required.

(iv) With respect to records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records so as to reasonably safeguard records from loss, alteration or destruction.

(v) With respect to records stored on photographic film, at all times have available for the Commission's examination of its records under section 304(a) of the act (70 P. S. § 1-304(a)) facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

(2) An investment adviser may maintain and preserve on computer tape or disk or other computer storage medium records which, in the ordinary course of the adviser's business, are created by the adviser on electronic media or are received by the adviser solely on electronic media or by electronic data transmission.

(h) For purposes of this section, the following terms have the following meanings:

Client—Any person to whom the investment adviser has given investment advice for which the investment adviser has received compensation.

Investment supervisory services—The giving of continuous advice as to the investment of funds on the basis of the individual needs of each client. Discretionary power does 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.

Principal place of business—The meaning set forth in 17 CFR 275.203A-3(c) (relating to definitions) promulgated under the Investment Advisers Act of 1940 (15 U.S.C.A. §§ 80b-1—80b-21).

(i) Any book or other record made, kept, maintained and preserved in compliance with Rules 17a-3 (17 CFR 240.17a-3) (relating to records to be made by certain exchange members, brokers and dealers) and 17a-4 (17 CFR 240.17a-4) (relating to records to be preserved by certain exchange members, brokers and dealers) under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78kk), 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) The requirements of this section do not apply to an investment adviser registered under section 301 of the act that meets the following conditions:

- (1) Has its principal place of business in a state other than this Commonwealth.
- (2) Is licensed as an investment adviser in the state where it has its principal place of business.
- (3) Is in compliance with the recordkeeping requirements of the state in which it has its principal place of business.

Authority

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

Source

The provisions of this § 304.012 adopted March 29, 1974, effective March 30, 1974, 4 Pa. B. 582; amended January 17, 1992, effective January 18, 1992, 22 Pa.B. 289; amended September 1, 2000, effective September 2, 2000, 30 Pa.B. 4551. Immediately preceding text appears at serial pages (200146) to (200147).

Notes of Decisions

Sufficiency

Although the investigator testified that she believed the licensee had not kept required monthly trial balances, she failed to provide the requisite specific, factual basis for her testimony. Therefore, the

evidence did not support the Commission's finding of a violation. *Kalin v. Securities Commission*, 805 A.2d 1258 (Pa. Cmwlth. 2002).

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

Cross References

This section cited in 64 Pa. Code § 606.041 (relating to delegation and substitution).

§ 304.021. Broker-dealer required financial reports.

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

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

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

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

Authority

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

Source

The provisions of this § 304.021 amended January 17, 1992, effective January 18, 1992, 22 Pa.B. 289; amended December 28, 2001, effective December 29, 2001, 31 Pa.B. 7032. Immediately preceding text appears at serial pages (268840) to (268841).

Cross References

This section cited in 64 Pa. Code § 603.031 (relating to public inspection of records).

§ 304.022. Investment adviser required financial reports.

(a) Except as provided in subsections (b) and (c), the following investment advisers registered under section 301 of the act (70 P. S. § 1-301) shall file the following reports of financial condition with the Commission within 120 days of the investment adviser's fiscal year end:

(1) An investment adviser that has custody of client funds or securities or requires prepayment of advisory fees 6 months or more in advance and in excess of \$1,200 per client shall file with the Commission an audited balance sheet as of the end of its fiscal year. The balance sheet shall be prepared in accordance with generally accepted accounting principles and contain an unqualified opinion of an independent certified public accountant. The accountant shall submit, as a supplementary opinion, comments based on the audit as to material inadequacies found to exist in the accounting system, the internal accounting controls and procedures for safeguarding securities and funds, and shall indicate corrective action taken or proposed.

(2) An investment adviser who has discretionary authority over client funds or securities, but not custody, shall file with the Commission a balance sheet as of the end of its fiscal year. The balance sheet need not be audited but shall be prepared in accordance with generally accepted accounting principles. The balance sheet shall contain a representation by the investment adviser that it is true and accurate.

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

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

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

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

(c) When an investment adviser registered under section 301 of the act inadvertently held or obtained a client's securities or funds and returned them to the client within 3 business days or has forwarded third party checks within 24 hours, the investment adviser will not be deemed to have custody and subject to the requirements of subsection (a) if the investment adviser maintains records which contains the following information about the securities or funds returned to the client:

(1) If a security:

(i) The name of the issuer.

(ii) The type of security.

(iii) The date of issuance.

- (iv) A certificate number or other identifying information.
- (v) The denomination, interest rate and maturity date applicable to a debt security.
- (vi) The name in which the securities are registered.
- (2) If funds:
 - (i) The name of the payee or beneficial owner.
 - (ii) The check number, transmittal number, payor name and address and any other identifying information.
- (3) The date on which the funds or securities were received by the investment adviser.
- (4) The date on which the funds or securities were sent by the investment adviser to the client.
- (5) The form of delivery used by the investment adviser to transmit the funds or securities to the client and a copy of written confirmation of receipt of the funds or securities by the client.
- (d) For purposes of this section, the following term has the following meaning:

Principal place of business—The meaning set forth in 17 CFR 275-203A-3(c) (relating to definitions) promulgated under the Investment Advisers Act of 1940 (15 U.S.C.A. §§ 80b-1—80b-21).

Authority

The provisions of this § 304.022 amended under sections 303(a) and (c), 304(b) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-303(a) and (c), 1-304(a), (b) and (e) and 1-609(a)).

Source

The provisions of this § 304.022 amended June 26, 1987, effective June 27, 1987, 17 Pa.B. 2606; amended January 17, 1992, effective January 18, 1992, 22 Pa.B. 291; amended September 8, 1995, effective September 9, 1995, 25 Pa. B. 3722; amended September 1, 2000, effective September 2, 2000, 30 Pa.B. 4551; amended April 15, 2005, effective April 16, 2005, 35 Pa.B. 2307. Immediately preceding text appears at serial pages (286727) to (286729).

Cross References

This section cited in 64 Pa. Code § 603.031 (relating to public inspection records).

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

(a) In the conduct of an examination authorized under section 304(d) of the act (70 P. S. § 1-304(d)), every broker-dealer and investment adviser registered under the act shall honor all requests by representatives of the Commission to have physical access to all areas of the office which is the subject of the examination and, upon request, shall permit them to review and examine the files in the physical place where the files routinely are maintained. In complying with a request, a representative of the broker-dealer or investment adviser may accompany the representatives of the Commission.

(b) Files referred to in subsection (a) include, but are not limited to, books, ledgers, accounts, records, and electronic files required to be kept by broker-dealers and investment advisers in accordance with this chapter, rules of the United States Securities and Exchange Commission or rules of a National Securities Exchange or National securities association registered with the United States Securities and Exchange Commission, and any document reasonably related to these required records.

Authority

The provisions of this § 304.041 issued under section 304(a), (d) and (e) of the Pennsylvania Securities Act of 1972 (70 P. S. § 1-304(a), (d) and (e)).

Source

The provisions of this § 304.041 adopted December 28, 2001, effective December 29, 2001, 31 Pa.B. 7032.

§ 304.051. Broker-dealer compensation.

No broker-dealer registered under the act may charge or receive commissions or other compensation in connection with the purchase or sale of securities unless the compensation is fair and reasonable and is determined on an equitable basis, adequately disclosed to each customer in writing at or prior to final confirmation. Compensation which complies with the Conduct Rules of the National Association of Securities Dealers, Inc. shall be deemed fair and reasonable and, unless otherwise required to be disclosed in writing by the Conduct Rules, need not be disclosed in writing.

Authority

The provisions of this § 304.051 amended under section 304(a), (d) and (e) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. § 1-304(a), (d) and (e) and 1-609(a)).

Source

The provisions of this § 304.051 adopted May 31, 1974, effective June 1, 1974, 4 Pa. B. 1085; amended December 28, 2001, effective December 29, 2001, 31 Pa.B. 7032. Immediately preceding text appears at serial page (268843).

§ 304.052. Investment adviser compensation.

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

Authority

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

Source

The provisions of this § 304.052 adopted March 29, 1974, effective March 30, 1974, 4 Pa.B. 582; amended September 1, 2000, effective September 2, 2000, 30 Pa.B. 4551. Immediately preceding text appears at serial page (200149).

§ 304.061. Free credit balances.

No broker-dealer registered or required to register under the act may use funds arising out of a free credit balance carried for the account of a customer in connection with the operation of the business of the broker-dealer unless the broker-dealer has established adequate procedures under which each customer for whom a free credit balance is carried will be given or sent, together with or as a part of the customer's statement of account, whenever sent but not less frequently than once every 3 months, a written statement informing the customer of the amount due to the customer by the broker-dealer on the date of the statement and containing a written notice that:

(1) Funds are not segregated and may be used in the business of the broker-dealer.

(2) Funds are payable on the demand of the customer.

For the purpose of this section, the term "customer" means every person other than the broker-dealer.

Source

The provisions of this § 304.061 adopted March 29, 1974, effective March 30, 1974, 4 Pa.B. 582.

[Next page is 305-1.]

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