

# Title 48 - DEPARTMENT OF BANKING AND FINANCE

## Chapter 7 - INVESTMENT ADVISERS

### 001 GENERAL.

001.01 This Rule has been promulgated pursuant to authority delegated to the Director in Section 8-1120 of the Securities Act of Nebraska ( Act ).

001.02 The Department has determined that this Rule relating to investment advisers is consistent with investor protection and is in the public interest.

001.03 The Director may, on a case-by-case basis, and with prior written notice to the affected persons, require adherence to additional standards and policies, as deemed necessary in the public interest.

001.04 The definitions in 48 NAC 2 apply to the provisions of this Rule, unless otherwise specified.

001.05 Federal statutes and rules of the Securities and Exchange Commission ( SEC ), the Financial Industry Regulatory Authority ( FINRA ), or the Financial Accounting Standards Board ( FASB ) referenced herein means those statutes and rules as amended on or before the effective date of this Rule. A copy of the statutes or rules referenced in this Rule is available as an appendix to this rule at <https://ndbf.nebraska.gov/about/legal/administrative-rules-and-regulations>.

**002 APPLICATION.** The application for initial registration as an investment adviser pursuant to Section 8-1103 of the Act shall be filed as directed in Section 005, below, and contain the following information:

002.01 Uniform Application for Investment Adviser Registration, ( Form ADV ), together with all applicable schedules and exhibits specified therein, complete, accurate and current;

002.02 A current and correct copy of the firm s articles of incorporation, partnership or organization, and any amendments thereto, if applicable;

002.03 A corporate resolution if applicable;

002.04 A completed Affidavit of Investment Advisory Activity in Nebraska ;

002.05 Financial statements as required by Section 009, below;

002.06 Specimen contracts or agreements relating to Nebraska clients;

002.07 Form ADV, Part 2 for the firm, the brochure supplement for each investment adviser representative, and any other promotional or disclosure literature to be furnished or disseminated to any client or prospective client in Nebraska;

002.08 A fee in the amount of two hundred dollars (\$200.00); and

002.09 Any other information the Director may require.

### **003 RENEWAL AND UPDATES**

003.01 An investment adviser s registration automatically expires annually on December 31. An investment adviser s registration must be renewed on or prior to that date.

003.02 An application for renewal of registration as an investment adviser pursuant to Section 8-1103 of the Act shall be filed annually as directed in Section 005, below, and contain the following information:

003.02A Financial statements as required by Section 009, below;

003.02B Specimen contracts or agreements relating to Nebraska clients;

003.02C A fee in the amount of two hundred dollars (\$200.00); and

003.02D Any other information the Director may require.

003.03 An investment adviser shall amend Form ADV, Parts 1 and 2, including all applicable schedules and exhibits:

003.03A Annually within ninety days of the end of its fiscal year;  
and

003.03B Any time required by the instructions to Form ADV.

**004 WITHDRAWAL**. An application for withdrawal of registration as an investment adviser pursuant to Section 8-1103 of the Act shall be filed on Notice of Withdrawal from Registration as Investment Adviser, ( Form ADV-W ), as directed in Section 005, below.

**005 FORMS SUBMISSION.**

005.01 All investment adviser applications, amendments, and fees required to be filed with the Director pursuant to the rules promulgated under the Act, shall be filed electronically with, and transmitted to, the Central Registration Depository/Investment Adviser Registration Depository ( CRD/IARD ). All other documents required by this Rule shall be filed directly with the Director.

005.02 With respect to any document filed electronically through CRD/IARD, when a signature or signatures are required by the particular instructions of any filing to be made through CRD/IARD, a duly authorized officer of the applicant or the applicant him or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to CRD/IARD. Submission of a filing in this manner constitutes irrefutable evidence of legal signature by any individual whose name is typed on the filing.

005.03 A form submitted through CRD/IARD is deemed filed with the Department when the record is transmitted to the Department for review.

**006 SUPERVISION.** An investment adviser is ultimately responsible for the acts of its investment adviser representatives and other associated persons and must maintain reasonable supervision and control over such persons at all times.

**007 AMENDMENT AND CORRECTION OF DOCUMENTS.** If a material change in operations occurs, or if the information contained in any document filed with the Director is or becomes inaccurate or incomplete in any material respect, the investment adviser shall promptly file a correcting amendment on the appropriate form within the time period specified in the instructions to that form. Such amendments and corrections shall be filed as directed in Section 005, above.

**008 FINANCIAL REQUIREMENTS.**

008.01 An investment adviser registered or required to be registered under the Act shall:

008.01A Maintain at all times a minimum net capital of twenty-five thousand dollars (\$25,000.00); or

008.01B Post a surety bond on a form acceptable to the Director in the amount of twenty-five thousand dollars (\$25,000.00).

008.02 Unless otherwise exempted, as a condition of the right to continue to transact business in this state, every investment adviser registered or required to be registered under the Act shall notify the Director if such investment adviser's net capital is less than the minimum required by the close of business on the next business day. After transmitting such notice, the investment adviser shall file a report with the Director of its financial condition by the close of business on the next business day. The report shall include:

008.02A A trial balance of all ledger accounts;

008.02B A statement of all client funds or securities which are not segregated;

008.02C A computation of the aggregate amount of debit balances in the client ledger;

008.02D A statement as to the number of client accounts; and

008.02E Any other information the Director may require.

008.03 For purposes of this Section, net capital means total assets less total liabilities.

008.03A In determining net capital, the following items are not included as assets:

008.03A1 Prepaid expenses, except items properly classified as current assets under generally accepted accounting principles, deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, and all other assets of intangible nature;

008.03A2 Home, home furnishings, automobile(s), and any

other personal items not readily marketable in the case of an individual;

008.03A3 Advances or loans to stockholders or officers in the case of a corporation;

008.03A4 Advances or loans to partners in the case of a partnership; and

008.03A5 Advances or loans to members in the case of a limited liability company.

008.03B The Director may require that a current appraisal be submitted in order to establish the worth of any asset.

008.04 This Section does not apply to an investment adviser whose principal place of business is not located in this state, provided:

008.04A Such investment adviser is registered in the state in which its principal place of business is located; and

008.04B Such investment adviser is in compliance with the minimum financial requirements established by the state in which its principal place of business is located.

008.04C For purposes of this Section, principal place of business means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.

## **009 FINANCIAL REPORTING REQUIREMENTS.**

009.01 Every registered investment adviser who has custody of client funds or securities or who requires payment of advisory fees six months or more in advance and in excess of twelve hundred dollars (\$1,200.00) per client, shall file with the Director audited financial statements showing at a minimum the assets, liabilities and net capital of the investment adviser as of the end of the investment adviser's fiscal year. This requirement does not apply to an investment adviser having custody solely as a consequence of its authority to make withdrawals from client accounts to pay its advisory fee and who complies with the safekeeping requirements in subsections 012.02C2 through 012.02C4, below.

009.01A The financial statements must be:

009.01A1 Examined in accordance with generally accepted auditing standards and prepared in conformity with generally accepted accounting principles;

009.01A2 Audited by an independent public accountant or an independent certified public accountant; and

009.01A3 Accompanied by an opinion of the accountant as to the report of financial position, and by a note stating the principles used to prepare it, the basis of included securities, and any other explanations required for clarity.

009.01B If the date of the audited financial statements is not within ninety days of the date of the initial application or the expiration of the current registration, the investment adviser must also submit a financial statement showing at a minimum the assets, liabilities and net capital of the investment adviser as of a date within ninety days of the date of the initial application or within ninety days of the expiration of the current registration, as the case may be, and signed by an officer, director, partner or member, of the investment adviser, or by the person who prepared the statement, attesting that the statement is true and accurate.

009.02 All other investment advisers registered or required to be registered shall file with the Director financial statements showing at a minimum the assets, liabilities and net capital of the investment adviser, prepared in accordance with generally accepted accounting principles. The financial statements need not be audited but must be signed by the investment adviser, by an officer, director, partner, or member of the investment adviser, or by the person who prepared the statement attesting that the statement is true and accurate, as of a date within ninety days of the date of initial application, or within ninety days of the expiration of a current registration, as the case may be.

009.03 The financial statements required by this Section shall be filed as part of the investment adviser's initial or renewal application.

009.04 This Section does not apply to an investment adviser whose principal place of business is not located in this state, provided:

009.04A Such investment adviser is registered in the state in which

its principal place of business is located; and

009.04B Such investment adviser is in compliance with the minimum financial requirements established by the state in which its principal place of business is located, if any.

009.04C For purposes of this Section, principal place of business means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.

## **010 INVESTMENT ADVISER BROCHURE.**

010.01 Unless otherwise provided in this Rule, an investment adviser registered or required to be registered pursuant to Section 8-1103 of the Act shall, in accordance with the provisions of this subsection, furnish each advisory client and prospective advisory client with:

010.01A A brochure which may be a copy of Part 2A of its Form ADV or written documents containing the information required by Part 2A of Form ADV;

010.01B A copy of the Form ADV Part 2B brochure supplement for each individual that:

010.01B1 Provides investment advice and has direct contact with clients in this state; or

010.01B2 Exercises discretion over assets of clients in this state, even if no direct contact is involved;

010.01C A copy of the Form ADV Part 2A Appendix 1 wrap fee brochure if the investment adviser sponsors or participates in a wrap fee account;

010.01D A summary of material changes, which may be included in Form ADV Part 2 or given as a separate document; and

010.01E Such other information as the Director may require.

010.01F The brochure must comply with the language, organizational format and filing requirements specified in the instructions to Form ADV Part 2.

## 010.02 Delivery.

010.02A Initial Delivery. Except as provided in subsection 010.02C, below, an investment adviser shall deliver the Form ADV Part 2A brochure and any related brochure supplements to a prospective advisory client:

010.02A1 Not less than forty-eight hours prior to entering into any advisory contract with such client or prospective client; or

010.02A2 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.

010.02B Annual Delivery. Except as provided in subsection 010.02C, below, within one hundred twenty days of the end of its fiscal year, an investment adviser must deliver:

010.02B1 A free, updated brochure and related brochure supplements which include or are accompanied by a summary of material changes; or

010.02B2 A summary of material changes that includes an offer to provide a copy of the updated brochure and supplements and information on how the client may obtain a copy of the brochures and supplements.

010.02C Delivery of the brochure and related brochure supplements required by subsections 010.02A and 010.02B need not be made to:

010.02C1 Clients who receive only impersonal advice and who pay less than five hundred dollars (\$500.00) in fees per year;

010.02C2 An investment company registered under the Investment Company Act of 1940; or

010.02C3 A business development company as defined in the Investment Company Act of 1940 and whose advisory contract meets the requirements of Section 15c of that Act.

010.02D Delivery of the brochure and related supplements may be made electronically if the investment adviser:



010.02D1 In the case of an initial delivery to a potential client, obtains a verification that a readable copy of the brochure and supplements were received by the client;

010.02D2 In the case of other than initial deliveries, obtains each client's prior consent to provide the brochure and supplements electronically;

010.02D3 Prepares the electronically delivered brochure and supplements in the format prescribed in Section 010.01 and the Instructions to Form ADV Part 2;

010.02D4 Delivers the brochure and supplements in a format that can be retained by the client in either electronic or paper form; and

010.02D5 Establishes written procedures to supervise personnel transmitting the brochure and supplements and to prevent violations of this Rule.

010.03 Other Disclosures. Nothing in this Rule relieves any investment adviser from any obligation pursuant to any provision of the Act or the rules and regulations thereunder or other federal or state law, rule, or regulation, to disclose any information to its advisory clients or prospective advisory clients not specifically required by this Rule.

010.04 Definitions. For the purpose of this Rule:

010.04A Contract for impersonal advisory services means any contract relating solely to the provision of investment advisory services:

010.04A1 By means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts;

010.04A2 Through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or

010.04A3 Any combination of the foregoing services.

010.04B Entering into, in reference to an advisory contract, does not include an extension or renewal without material change of any

such contract which is in effect immediately prior to such extension or renewal.

**011 ASSIGNMENTS.** For purposes of Section 8-1102(3)(b) of the Act, a transaction which does not result in a change of actual control or management of an investment adviser is not an assignment.

## **012 CUSTODY OF CLIENT FUNDS OR SECURITIES.**

012.01 Safekeeping required. It is unlawful and deemed to be a fraudulent, deceptive, or manipulative act, practice, or course of business for an investment adviser, registered or required to be registered, to have custody of client funds or securities unless:

012.01A Notice to Director. The investment adviser notifies the Director promptly in writing that the investment adviser has or may have custody. Such notification is required to be given on Form ADV.

012.01B Qualified Custodian. A qualified custodian maintains those funds and securities:

012.01B1 In a separate account for each client under that client's name; or

012.01B2 In accounts that contain only the investment adviser's clients' funds and securities, under 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.

012.01C Notice to Clients. If an investment adviser opens an account with a qualified custodian on its client's behalf, under the client's name, under the name of the investment adviser as agent, or under the name of a pooled investment vehicle, the investment adviser must 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.

012.01D Account Statements. 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.

012.01E Special Rule for Limited Partnerships and Limited Liability Companies. If the investment adviser or a related person is a general partner of a limited partnership, managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle, the account statements required under Section 012.01D, above, must be sent to each limited partner, member or other beneficial owner.

012.01F Independent 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 Rule 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:

012.01F1 File a certificate on Form ADV-E with the Director within one hundred twenty days of the time chosen by the independent certified public accountant to verify client funds and securities, stating that it has examined the funds and securities and describing the nature and extent of the examination.

012.01F2 Notify the Director 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 or overnight delivery, directed to the attention of the Director; and

012.01F3 File within four 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:

012.01F3a The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent certified public accountant; and

012.01F3b An explanation of any problems relating to examination scope or procedure that contributed to such resignation, dismissal, removal, or other termination.

012.01G 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 Rule as a qualified custodian in connection with advisory services the investment adviser provides to clients:

012.01G1 The independent certified public accountant that the investment adviser retains to perform the independent verification required by Section 012.01F, above, must be subject to regulation by the Public Company Accounting Oversight Board ( PCAOB ) or the Nebraska Board of Public Accountancy ( NBPA ), in accordance with applicable rules; and

012.01G2 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.

012.01G2a 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;

012.01G2b 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; and

012.01G2c The independent certified public accountant must be subject to regulation by PCAOB or NBPA in accordance with applicable rules.

012.01H Independent Representatives. A client may designate an independent representative to receive, on his or her behalf, notices and account statements as required under Sections 012.01C and 012.01D, above.

## 012.02 Exceptions.

012.02A Shares of Mutual Funds. With respect to shares of an open-end company as defined in Section 5(a)(1) of the Investment Company Act of 1940 ( mutual fund ), the investment adviser may use the transfer agent for the mutual fund in lieu of a qualified custodian for purposes of complying with Section 012.01, above;

## 012.02B Certain Privately Offered Securities.

012.02B1 The investment adviser is not required to comply with Section 012.01B, above, with respect to securities that are:

012.02B1a Acquired from the issuer in a transaction or chain of transactions not involving any public offering;

012.02B1b Uncertificated and ownership thereof is recorded only on the books of the issuer or its transfer agent in the name of the client; and

012.02B1c Transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

012.02B2 Notwithstanding Section 012.02B1, above, the provisions of this Section are available with respect to securities held for the account of a limited partnership, limited liability company, or other type of pooled investment vehicle only if the limited partnership, limited liability company, or other pooled investment vehicle is audited, and the audited financial statements are distributed, as described in Section 012.02D, below, and the investment adviser notifies the Director in writing that the investment adviser intends to provide audited financial statements, as described above. Such notification is required to be provided on Form ADV.

012.02C Fee Deduction. Notwithstanding Section 012.01F, above, 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:

012.02C1 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;

012.02C2 The investment adviser has written authorization from the client to deduct advisory fees from the account held with the qualified custodian;

012.02C3 Each time a fee is directly deducted from a client account, the investment adviser concurrently sends:

012.02C3a The qualified custodian an invoice or statement of the amount of the fee to be deducted from the client's account; and

012.02C3b 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.

012.02C4 The investment adviser notifies the Director in writing that the investment adviser intends to use the

safeguards provided above. Such notification is required to be given on Form ADV.

012.02D Limited Partnerships, Limited Liability Companies, and other Pooled Investment Vehicles Subject to Annual Audit An investment adviser is not required to comply with Sections 012.01C and 012.01D, above, and shall be deemed to have complied with Section 012.01F, above, with respect to the account of a limited partnership, limited liability company, or another type of pooled investment vehicle if the following conditions are met:

012.02D1 The investment adviser sends to all limited partners, members or other beneficial owners at least quarterly, a statement showing:

012.02D1a 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;

012.02D1b 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

012.02D1c 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.

012.02D2 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, members or other beneficial owners within one hundred twenty days of the end of its fiscal year;

012.02D3 The audit is performed by an independent certified public accountant that, at the time of the audit, is subject to regulation by PCAOB or NBPA in accordance with applicable rules;

012.02D4 Upon liquidation, the investment adviser distributes the fund's final audited financial statements prepared in accordance with generally accepted accounting principles to all

limited partners, members or other beneficial owners, and the Director promptly after the completion of such audit;

012.02D5 The written agreement with the independent certified public accountant must require the independent certified public accountant, upon resignation or dismissal from, or other termination of, the engagement, or upon removing itself or being removed from consideration for being reappointed, to notify the Director within four business days accompanied by a statement that includes:

012.02D5a The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent certified public accountant; and

012.02D5b An explanation of any problems relating to audit scope or procedure that contributed to such resignation, dismissal, removal, or other termination.

012.02D6 The investment adviser must also notify the Director in writing that the investment adviser intends to employ the use of the statement delivery and audit safeguards described above. Such notification is required to be given on Form ADV.

012.02E Registered Investment Companies. The investment adviser is not required to comply with this Rule with respect to the account of an investment company registered under the Investment Company Act of 1940.

012.03 Delivery to Related Persons. Sending an account statement under Section 012.01E, above, or distributing audited financial statements under Section 012.02D, above, does not satisfy the requirements of this Rule if such account statements or financial statements are sent solely to limited partners, members or other beneficial owners that themselves are limited partnerships, limited liability companies, or another type of pooled investment vehicle and are related persons of the investment adviser.

012.04 Definitions. For purposes of this Rule:

012.04A 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. For purposes of determining control:

012.04A1 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;

012.04A2 A person is presumed to control a corporation if the person:

012.04A2a Directly or indirectly has the right to vote twenty five percent or more of a class of the corporation's voting securities; or

012.04A2b Has the power to sell or direct the sale of twenty five percent or more of a class of the corporation's voting securities;

012.04A3 A person is presumed to control a partnership if the person has the right to receive upon dissolution, or has contributed, twenty five percent or more of the capital of the partnership;

012.04A4 A person is presumed to control a limited liability company if the person:

012.04A4a Directly or indirectly has the right to vote twenty five percent or more of a class of the interests of the limited liability company;

012.04A4b Has the right to receive upon dissolution, or has contributed, twenty five percent or more of the capital of the limited liability company;

012.04A4c Is an elected manager of the limited liability company; or

012.04A5 A person is presumed to control a trust if the person is a trustee or managing agent of the trust.

012.04B Custody means holding directly or indirectly, client funds or securities, or having any authority to obtain possession of or the ability to appropriate client funds or securities. 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.

012.04B1 Custody includes:

012.04B1a Possession of client funds or securities unless the investment adviser receives them inadvertently and returns them to the sender within three business days of receiving them;

012.04B1b Any arrangement, including a general power of attorney, under which the investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser's instruction to the custodian; and

012.04B1c Any capacity, such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust, that gives the investment adviser, its supervised person, or investment adviser representative, legal ownership of or access to client funds or securities.

012.04B2 Receipt of checks drawn by clients and made payable to third parties will not meet the definition of custody if forwarded to the third party within three business days of receipt and the investment adviser maintains the records required under 48 NAC 10.002.22.

012.04C 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)).

012.04D Independent representative means a person who:

012.04D1 Acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners or 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;

012.04D2 Does not control, is not controlled by, and is not under common control with the investment adviser; and

012.04D3 Does not have, and has not had within the past two years, a material business relationship with the investment adviser.

012.04E Qualified custodian means the following:

012.04E1 A bank or savings association that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act;

012.04E2 A broker-dealer registered in this jurisdiction and with the Securities and Exchange Commission holding the client assets in customer accounts;

012.04E3 A registered futures commission merchant registered under Section 4f(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

012.04E4 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.

012.04E5 An investment adviser who 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 is not a qualified custodian.

012.04F 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.

~~**013 BUSINESS CONTINUITY AND SUCCESSION PLANNING.** Every investment adviser registered or required to be registered under the Act~~

~~shall establish, implement, and maintain written procedures relating to a business continuity and succession plan. The plan shall be based upon the facts and circumstances of the investment adviser's business model including the size of the firm, type(s) of services provided, and the number of locations of the investment adviser. The plan shall provide for at least the following:~~

~~013.01 The protection, backup, and recovery of books and records.—~~

~~013.02 Alternate means of communication with customers, regulators, key personnel, employees, vendors, and service providers, including third party custodians. Such communications shall include, but not be limited to, providing notice of a significant business interruption or the death or unavailability of key personnel or other disruptions or cessation of business activities.—~~

~~013.03 Office relocation in the event of temporary or permanent loss of a principal place of business.—~~

~~013.04 Assignment of duties to qualified responsible persons in the event of the death or unavailability of key personnel.—~~

~~013.05 Otherwise minimizing service disruptions and client harm that could result from a sudden significant business interruption.—~~

**013 POLICIES AND PROCEDURES.** Every investment adviser registered or required to be registered under the Act shall establish, maintain, and enforce written policies and procedures tailored to the investment adviser's business model, taking into account the size of the firm, type(s) of services provided, and the number of locations of the investment adviser. The written policies and procedures must provide for at least the following:

013.01 Compliance Policies and Procedures. The investment adviser must establish, maintain, and enforce written compliance policies and procedures reasonably designed to prevent violations by the investment adviser of the Act and the rules that the Director has adopted under the Act;

013.02 Supervisory Policies and Procedures. The investment adviser must establish, maintain, and enforce written supervisory policies and procedures reasonably designed to prevent violations by the investment adviser's supervised persons of the Act and the rules that the Director has adopted under the Act;

### 013.03 Proxy Voting Policies and Procedures.

013.03A If the investment adviser has the authority to vote client securities:

013.03A1 The investment adviser must establish, maintain, and enforce written proxy voting policies and procedures that are reasonably designed to ensure that the investment adviser votes client securities in the best interest of clients. These procedures must include how the investment adviser addresses material conflicts that may arise between its interests and those of the investment adviser's clients;

013.03A2 Disclose to clients how they may obtain information from the investment adviser about how it voted with respect to their securities; and

013.03A3 Describe to clients the investment adviser's proxy voting policies and procedures and, upon request, furnish a copy of the policies and procedures to the requesting client.

013.03B If the investment adviser does not have the authority to vote client securities then this information must be disclosed to clients.

013.04 Physical Security and Cybersecurity Policies and Procedures. The investment adviser must establish, implement, update, and enforce written physical security and cybersecurity policies and procedures reasonably designed to ensure the confidentiality, integrity, and availability of physical and electronic records and information. The policies and procedures must be tailored to the investment adviser's business model, taking into account the size of the firm, type(s) of services provided, and the number of locations of the investment adviser.

013.04A The physical security and cybersecurity policies and procedures must:

013.04A1 Protect against reasonably anticipated threats or hazards to the security or integrity of client records and information;

013.04A2 Ensure that the investment adviser safeguards

confidential client records and information; and

013.04A3 Protect any records and information the release of which could result in harm or inconvenience to any client.

013.04B The physical security and cybersecurity policies and procedures must cover at least five functions:

013.04B1 Identify. Develop the organizational understanding to manage information security risk to systems, assets, data, and capabilities.

013.04B2 Protect. Develop and implement the appropriate safeguards to ensure delivery of critical infrastructure services.

013.04B3 Detect. Develop and implement the appropriate activities to identify the occurrence of an information security event;

013.04B4 Respond. Develop and implement the appropriate activities to take action regarding a detected information security event; and

013.04B5 Recover. Develop and implement the appropriate activities to maintain plans for resilience and to restore any capabilities or services that were impaired due to an information security event.

013.04C Privacy Policy. The investment adviser must deliver upon the investment adviser's engagement by a client, and on an annual basis thereafter, a privacy policy to each client that is reasonably designed to aid in the client's understanding of how the investment adviser collects and shares, to the extent permitted by state and federal law, non-public personal information. The investment adviser must promptly update and deliver to each client an amended privacy policy if any of the information in the policy becomes inaccurate.

013.05 Code of Ethics.

013.05A The investment adviser must establish, maintain, and enforce a written code of ethics that, at a minimum, includes:

013.05A1 A standard (or standards) of business conduct that

the investment adviser requires of its supervised persons, which must reflect the investment adviser's fiduciary obligations and those of its supervised persons;

013.05A2 Provisions requiring the investment adviser's supervised persons to comply with applicable State and Federal securities laws;

013.05A3 Provisions requiring all of the investment adviser's access persons to report, and the investment adviser to review, their personal securities transactions and holdings periodically as provided below;

013.05A4 Provisions requiring supervised persons to report any violations of the investment adviser's code of ethics promptly to its chief compliance officer or, provided the investment adviser's chief compliance officer also receives reports of all violations, to other persons designated in the investment adviser's code of ethics; and

013.05A5 Provisions requiring the investment adviser to provide each of its supervised persons with a copy of the investment adviser's code of ethics and any amendments and requiring the investment adviser's supervised persons to provide it with a written acknowledgment of their receipt of the code and any amendments.

#### 013.05B Reporting Requirements.

013.05B1 Holdings reports. The code of ethics must require the investment adviser's access persons to submit to its chief compliance officer or other persons designated in the investment adviser's code of ethics a report of the access person's current securities holdings that meets the following requirements:

013.05B1a Content of holdings reports. Each holdings report must contain, at a minimum:

013.05B1a1 The title and type of security, and as applicable the exchange ticker symbol or CUSIP number, number of shares, and principal amount of each reportable security in which the access person

has any direct or indirect beneficial ownership;

013.05B1a2 The name of any broker, dealer, or bank with which the access person maintains an account in which any securities are held for the access person's direct or indirect benefit; and

013.05B1a3 The date the access person submits the report.

013.05B1b Timing of holdings reports. The investment adviser's access persons must each submit a holdings report:

013.05B1b1 No later than 10 days after the person becomes an access person, and the information must be current as of a date no more than 45 days prior to the date the person becomes an access person.

013.05B1b2 At least once each 12-month period thereafter on a date selected by the investment adviser, and the information must be current as of a date no more than 45 days prior to the date the report was submitted.

013.05B2 Transaction reports. The code of ethics must require access persons to submit to the investment adviser's chief compliance officer or other persons designated in the investment adviser's code of ethics quarterly securities transactions reports that meet the following requirements:

013.05B2a Content of transaction reports. Each transaction report must contain, at minimum, the following information about each transaction involving a reportable security in which the access person had, or as a result of the transaction acquired, any direct or indirect beneficial ownership:

013.05B2a1 The date of the transaction, the title, and as applicable the exchange ticker symbol or CUSIP number, interest rate and maturity date, number of shares, and principal amount of each reportable



security involved;

013.05B2a2 The nature of the transaction (i.e., purchase, sale or any other type of acquisition or disposition);

013.05B2a3 The price of the security at which the transaction was effected;

013.05B2a4 The name of the broker, dealer, or bank with or through which the transaction was effected; and

013.05B2a5 The date the access person submits the report.

013.05B2b Timing of transaction reports. Each access person must submit a transaction report no later than 30 days after the end of each calendar quarter, which report must cover, at a minimum, all transactions during the quarter.

013.05B3 Exceptions from reporting requirements. The investment adviser's code of ethics need not require an access person to submit:

013.05B3a Any report with respect to securities held in accounts over which the access person had no direct or indirect influence or control;

013.05B3b A transaction report with respect to transactions effected pursuant to an automatic investment plan in which regular periodic purchases or withdrawals are made automatically in or from investment accounts in accordance with a predetermined schedule and allocation, including a dividend reinvestment plan;

013.05B3c A transaction report if the report would duplicate information contained in broker trade confirmations or account statements that the investment adviser holds in its records so long as the investment adviser receives the confirmations or statements no later than 30 days after the end of the applicable calendar

quarter.

013.05B4 Pre-approval of certain investments. The investment adviser's code of ethics must require its access persons to obtain the investment adviser's approval before they directly or indirectly acquire beneficial ownership in any security in an initial public offering or in a limited offering.

013.05B5 Small advisers. If the investment adviser has only one access person, it is not required to submit reports to itself or to obtain its own approval for investments in any security in an initial public offering or in a limited offering, if the investment adviser maintains records of all of its holdings and transactions that this section would otherwise require the investment adviser to report.

013.06 Material Non-Public Information Policy and Procedures. The investment adviser must establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by the investment adviser or any person associated with the investment adviser.

013.07 Business Continuity and Succession Plan. The investment adviser must establish, maintain, and enforce written policies and procedure relating to a business continuity and succession plan. The plan must provide for at least the following:

013.07A The protection, backup, and recovery of books and records.

013.07B Alternate means of communications with customers, key personnel, employees, vendors, service providers (including third-party custodians), and regulators, including, but not limited to, providing notice of a significant business interruption or the death or unavailability of key personnel or other disruptions or cessation of business activities.

013.07C Office relocation in the event of temporary or permanent loss of a principal place of business.

013.07D Assignment of duties to qualified responsible persons in the event of the death or unavailability of key personnel

013.07E Otherwise minimizing service disruptions and client harm that could result from a sudden significant business interruption.

**014 ANNUAL REVIEW.** The investment adviser must review, no less frequently than annually, the adequacy of the policies and procedures established pursuant to section 013 above, and the effectiveness of their implementation.

**015 CHIEF COMPLIANCE OFFICER.** The investment adviser must designate a supervised person as the chief compliance officer responsible for administering the investment adviser's policies and procedures.

**016 DEFINITIONS.** The following definitions apply to Sections 013, 014, and 015 above.

016.01 Supervised person means any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser. The definition includes investment adviser representatives, employees, independent contractors, or other associated persons and supervised personnel, or other person acting on the behalf of the investment adviser.

016.02 Chief compliance officer means a supervised person with the authority and resources to develop and enforce the investment adviser's policies and procedures. The individual designated to serve as chief compliance officer must be registered as an investment adviser representative and must have the background and skills appropriate for fulfilling the responsibilities of the position.

016.03 Act means the Securities Act of Nebraska.

016.04 Access person means:

016.04A Any of the investment adviser's supervised persons:

016.04A1 Who has access to non-public information regarding any client's purchase or sale of securities, or non-public information regarding the portfolio holdings of any reportable fund, or

016.04A2 Who is involved in making securities recommendations to clients, or who has access to such

recommendations that are non-public.

016.04B If providing investment advice is the investment adviser's primary business, all of its directors, officers and partners are presumed to be access persons.

016.05 Beneficial ownership is interpreted in the same manner as it would be under 17 C.F.R. § 240.16a-1 in determining whether a person has beneficial ownership of a security for purposes of section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p) and the rules and regulations thereunder. Any report required by 17 C.F.R. 275.204A-1(b) may contain a statement that the report will not be construed as an admission that the person making the report has any direct or indirect beneficial ownership in the security to which the report relates.

016.06 Federal securities laws means the Securities Act of 1933 (15 U.S.C. 77a-aa), the Securities Exchange Act of 1934 (15 U.S.C. 78a-mm), the Investment Company Act of 1940 (15 U.S.C. 80a), the Investment Advisers Act of 1940 (15 U.S.C. 80b), title V of the Gramm-Leach-Bliley Act (Pub. L. 106-102, 113 Stat. 1338 (1999)), the Sarbanes-Oxley Act of 2002 (Pub. L. 107-204, 116 Stat. 745 (2002)), any rules adopted by the U.S. Securities and Exchange Commission under any of these statutes, the Bank Secrecy Act (31 U.S.C. 5311-5314; 5316-5332) as it applies to funds and investment advisers, and any rules adopted thereunder by the U.S. Securities and Exchange Commission or the U.S. Department of the Treasury.

016.07 Fund means an investment company registered under the Investment Company Act.

016.08 Initial public offering means an offering of securities registered under the Securities Act of 1933 (15 U.S.C. 77a), the issuer of which, immediately before the registration, was not subject to the reporting requirements of sections 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)).

016.09 Limited offering means an offering that is exempt from registration under the Securities Act of 1933 pursuant to section 4(2) or section 4(5) (15 U.S.C. 77d(2) or 77d(5)) or pursuant to §§ 230.504, 230.505, or 230.506 of this chapter.

016.10 Purchase or sale of a security includes, among other things, the writing of an option to purchase or sell a security.

016.11 Reportable security means a security as defined in section 202(a)(18) of the Securities Act of 1933(15 U.S.C. 80b-2(a)(18)), except that it does not include:

016.11A Direct obligations of the Government of the United States;

016.11B Bankers' acceptances, bank certificates of deposit, commercial paper and high-quality short-term debt instruments, including repurchase agreements;

016.11C Shares issued by money market funds;

016.11D Shares issued by open-end funds other than reportable funds; and

016.11E Shares issued by unit investment trusts that are invested exclusively in one or more open-end funds, none of which are reportable funds.

016.12 State securities laws means all applicable state securities statutes, rules, and regulations, including, without limitation, the registration, permit or qualification requirements thereunder.

#### **014 017 REGISTRATION OF SUCCESSOR TO REGISTERED**

**INVESTMENT ADVISER.** In the event that an investment adviser succeeds to and continues the business of an investment adviser registered pursuant to Section 8-1103 of the Act, the registration of the predecessor shall be deemed to remain effective as the registration of the successor if the successor, within thirty (days after such succession, files an application for registration on Form ADV, and the predecessor files a notice of withdrawal from registration on Form ADV-W.

014.01 017.01The registration of the predecessor investment adviser will cease to be effective as the registration of the successor investment adviser forty-five days after the application for registration on Form ADV is filed by such successor.

014.02 017.02 Notwithstanding any other provision of this Section:

014.02A 017.02A A Form ADV filed by an investment adviser partnership which is not registered when such form is filed and which succeeds to and continues the business of a predecessor partnership registered as an investment adviser shall be deemed to be an application for registration even though designated as an

amendment if it is filed to reflect the changes in the partnership and to furnish required information concerning any new partners.

~~014.02B~~ **017.02B** A Form ADV filed by an investment adviser corporation which is not registered when such form is filed and which succeeds to and continues the business of a predecessor corporation registered as an investment adviser shall be deemed to be an application for registration even though designated as an amendment if the succession is based solely on a change in the predecessor's state of incorporation and the amendment is filed to reflect that change.

~~014.02C~~ **017.02C** A Form ADV filed by an investment adviser corporation, partnership, sole proprietorship or other entity which is not registered when such form is filed and which succeeds to and continues the business of a predecessor corporation, partnership, sole proprietorship or other entity registered as an investment adviser shall be deemed to be an application for registration even though designated as an amendment if the succession is based solely on a change in the predecessor's form of organization and the amendment is filed to reflect that change.

**015 018 VERIFICATION OF IMMIGRATION STATUS** Every investment adviser who registers investment adviser representatives to transact business in Nebraska must verify the citizenship or immigration status of each investment adviser representative registered to transact business on its behalf in Nebraska and submit such verification to the Department.

~~015.01~~ **018.01** For each investment adviser representative identified as a qualified legal alien, the investment adviser must submit a completed United States Citizenship Attestation Form, and one of the currently acceptable forms of documentation required by the Systematic Alien Verification for Entitlements Program and the Department of Homeland Security.

~~015.02~~ **018.02** The investment adviser shall maintain, as a required book or record under 48 NAC 10.002.21, a copy of the completed United States Citizenship Attestation Form for each investment adviser representative registered in Nebraska, regardless of citizenship or immigration status.

**~~016 COMPLIANCE PROCEDURES AND PRACTICES~~**

~~016.01 An investment adviser registered or required to be registered pursuant to Section 8-1103 of the Act shall adopt and implement written policies and procedures reasonably designed to prevent violation of the Act and the rules adopted under the Act by the investment adviser and any investment adviser representative or other employee or agent.~~

~~016.02 An investment adviser shall review the adequacy of the policies and procedures established pursuant to this Section and the effectiveness of their implementation on an annual basis and document such review.~~

~~016.03 An investment adviser shall designate an investment adviser representative registered with the Department who is responsible for administering the policies and procedures adopted under this Section.~~

**017 019 USING THE INTERNET FOR GENERAL DISSEMINATION OF INFORMATION ON PRODUCTS AND SERVICES.** Investment advisers shall not be deemed to be transacting business in this state for purposes of Section 8-1103 of the Act based solely on the use of the Internet, world wide web, and similar proprietary or common carrier electronic systems (hereinafter the Internet ) to distribute information on available products and services through certain communications made on the Internet directed generally to anyone having access to the Internet, and transmitted through postings on bulletin boards, social networking sites, blogs or similar sites, displays on Home Pages or similar methods (hereinafter, Internet Communications ) if the following conditions are observed:

~~017.01~~ **019.01** The Internet Communication contains a disclosure statement in which it is clearly stated that:

~~017.01A~~ **019.01A** The investment adviser in question may only transact business in this state if first registered, excluded or exempted from the investment adviser registration requirements of the Act; and

~~017.01B~~ **019.01B** The investment adviser will not make follow-up, individualized responses to persons in this state that involve the rendering of personalized investment advice for compensation, unless the investment adviser has complied with, or has qualified for an applicable exemption or exclusion from, the investment adviser registration requirements of the Act.

~~017.02~~ **019.02** The Internet Communication contains a mechanism,

including and without limitation, technical firewalls or other implemented policies and procedures, designed reasonably to ensure that prior to any subsequent, direct communication with prospective customers or clients in this state, said investment adviser is first registered in this state or qualifies for an exemption or exclusion from such requirement.

~~017.02A~~ 019.02A Nothing in this paragraph shall be construed to relieve an investment adviser from any applicable securities registration requirement in this state;

~~017.03~~ 019.03 The Internet Communication does not involve the rendering of personalized investment advice for compensation in this state over the Internet, but is limited to the dissemination of general information on products and services.

## **018 INVESTMENT ADVISER INFORMATION SECURITY AND PRIVACY POLICIES**

~~018.01 Physical Security and Cybersecurity Policies and Procedures.~~ Every investment adviser registered or required to be registered shall establish, implement, update, and enforce written physical security and cybersecurity policies and procedures reasonably designed to ensure the confidentiality, integrity, and availability of physical and electronic records and information. The policies and procedures must be tailored to the investment adviser's business model, taking into account the size of the firm, type(s) of services provided, and the number of locations of the investment adviser. The physical security and cybersecurity policies and procedures must:

~~018.01A Protect against reasonably anticipated threats or hazards to the security or integrity of client records and information;~~

~~018.01B Ensure that the investment adviser safeguards confidential client records and information;~~

~~018.01C Protect any records and information the release of which could result in harm or inconvenience to any client; and~~

~~018.01D Cover at least the following five functions:~~

~~018.01D1 Identify. Develop the organizational understanding to manage information security risk to systems, assets, data, and~~



capabilities;—

~~018.01D2 Protect. Develop and implement the appropriate safeguards to ensure delivery of critical infrastructure services;~~  
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~~018.01D3 Detect. Develop and implement the appropriate activities to identify the occurrence of an information security event;—~~

~~018.01D4 Respond. Develop and implement the appropriate activities to take action regarding a detected information security event; and—~~

~~018.01D5 Recover. Develop and implement the appropriate activities to maintain plans for resilience and to restore any capabilities or services that were impaired due to an information security event.—~~

~~018.02 Maintenance. The investment adviser must review, no less frequently than annually, and modify, as needed, these policies and procedures to ensure the adequacy of the security measures and the effectiveness of their implementation.~~

~~018.03 Privacy Policy. The investment adviser must deliver upon the investment adviser's engagement by a client, and on an annual basis thereafter, a privacy policy to each client that is reasonably designed to aid in the client's understanding of how the investment adviser collects and shares, to the extent permitted by state and federal law, non-public personal information. The investment adviser must promptly update and deliver to each client an amended privacy policy if any of the information in the policy becomes inaccurate.~~

## **019 020 DISHONEST OR UNETHICAL BUSINESS PRACTICES.**

~~019.01 020.01~~ The conduct set forth in 48 NAC 12.006 I constitutes an act, practice or course of business which operates, or would operate, as a fraud or deceit upon another person by an investment adviser for purposes of Section 8-1102 of the Act and dishonest or unethical business practices by an investment adviser for purposes of Section 8-1102 and Section 8-1103 of the Act.

~~019.02 020.02~~ The delineation of certain acts and practices is not

intended to be all inclusive. Acts or practices not enumerated in 48 NAC 12.006 may also be deemed fraudulent and dishonest.