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TITLE 7

BANKING AND SECURITIES

PART 7

STATE SECURITIES BOARD

CHAPTER 116

INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

RULE §116.1

General Provisions

(a) Definitions. Words and terms used in this chapter are also defined in §107.2 of this title (relating to Definitions). The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Applicant--A person who submits an application for registration as an investment adviser or an investment adviser representative.

(2) Branch office--Any location where one or more representatives of an investment adviser regularly conduct investment advisory services or that is held out as such.

(A) This definition excludes:

(i) any location that is established solely for customer service and/or back office type functions where no advisory services are conducted and that is not held out to the public as a branch office;

(ii) any location that is the investment adviser representative's primary residence, provided that:

(I) only one investment adviser representative, or multiple representatives who reside at that location and are members of the same immediate family, conduct business at the location;

(II) the location is not held out to the public as an office and the investment adviser representative does not meet with customers at the location;

(III) neither customer funds nor securities are handled at that location;

(IV) the investment adviser representative is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, advertisements, and other communications to the public by such representative;

(V) the investment adviser representative's correspondence and communications with the public are subject to the investment adviser's supervision;

(VI) electronic communications (e.g., e-mail) are made through the investment adviser's electronic system;

(VII) all orders are entered through the designated branch office or an electronic system established by the investment adviser that is reviewable at the branch office;

(VIII) written supervisory procedures pertaining to supervision of investment advisory services conducted at the residence are maintained by the investment adviser; and

(IX) a list of the residence locations are maintained by the investment adviser;

(iii) any location, other than a primary residence, that is used for investment advisory services for less than 30 business days in any one calendar year, provided the investment adviser complies with the provisions of clause (ii)(II) - (VIII) of this subparagraph;

(iv) any office of convenience, where investment adviser representatives occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office;

(v) any location that is used primarily to engage in non-securities activities and from which the investment adviser representative(s) effects no more than 25 investment advisory services in any one calendar year; provided that any advertisement or sales literature identifying such location also sets forth the address and telephone number of the location from which the representative(s) conducting business at the non-branch locations are directly supervised; and

(vi) a temporary location established in response to the implementation of a business continuity plan.

(B) Notwithstanding the exclusions in subparagraph (A) of this paragraph, any location that is responsible for supervising the activities of persons associated with the investment adviser at one or more non-branch locations of the investment adviser is considered to be a branch office.

(C) The term "business day" shall not include any partial business day provided that the investment adviser representative spends at least four hours on such business day at his or her designated branch office during the hours that such office is normally open for business.

(3) Supervisor--The person named by the investment adviser to supervise the activities of a branch office and registered as an investment adviser representative.

(4) Control--The possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or company, whether through the ownership of voting securities, by contract, or otherwise.

(5) In this state--As used in the Texas Securities Act, §12, has the same meaning as the term "within this state" as defined in §107.2 of this title (relating to Definitions) and paragraph (10) of this subsection.

(6) Investment adviser--A person who, for compensation, engages in the business of advising others, either directly or through publications or writings, with respect to the value of securities or to the advisability of investing in, purchasing, or selling securities or a person who, for compensation and as part of a regular business, issues or adopts analyses or a report concerning securities. The term does not include:

(A) a bank or a bank holding company, as defined by the Bank Holding Company Act of 1956 (12 U.S.C. §1841 et seq.), as amended, that is not an investment company;

(B) a lawyer, accountant, engineer, teacher, or geologist whose performance of the services is solely incidental to the practice of the person's profession;

(C) a dealer or agent who receives no special compensation for those services and whose

investment adviser is not prohibited from being registered with the Securities Commissioner. If a federal covered investment adviser elects to register with the Securities Commissioner, it is subject to all of the registration requirements of the Act.)

(b) Registration of investment advisers, investment adviser representatives, and branch offices.

(1) Requirements of registration.

(A) Any person who renders services as an investment adviser, including acting as a solicitor, may not engage in such activity for compensation without first being registered as an investment adviser under the provisions of the Texas Securities Act or notice-filed under the provisions of paragraph (2) of this subsection. Likewise, every person employed or appointed, or authorized by such person to render services, which include the giving of investment advice or acting as a solicitor, cannot conduct such activities unless registered as an investment adviser or an investment adviser representative under the provisions of the Act, or notice-filed as an investment adviser or an investment adviser representative under the provisions of paragraph (2) of this subsection.

(B) Each branch office of a registered investment adviser in Texas must be registered. A registered officer, partner, or investment adviser representative must be named as supervisor.

(2) Exemption from the registration requirements. The Board pursuant to the Texas Securities Act, §§12.C and 5.T, exempts from the registration provisions of the Act, §12, persons not required to register as an investment adviser or an investment adviser representative on or after July 8, 1997, by act of Congress in Public Law Number 104-290, Title III.

(A) Registration as an investment adviser is not required for the following:

(i) an investment adviser registered under the Investment Advisers Act of 1940, §203;

(ii) an investment adviser registered with the Securities and Exchange Commission pursuant to a rule or order adopted under the Investment Advisers Act of 1940, §203A(c);

(iii) a person not registered under the Investment Advisers Act of 1940, §203, because such person is excepted from the definition of an investment adviser under the Investment Advisers Act of 1940, §202(a)(11); or

(iv) an investment adviser who does not have a place of business located within this state and, during the preceding 12-month period, has had fewer than six clients who are Texas residents.

(B) Registration as an investment adviser representative of an investment adviser described in subparagraph (A) of this paragraph is not required for an investment adviser representative who does not have a place of business located in Texas but who otherwise engages in the rendering of investment advice in this state.

(C) Notice filing requirements and fees for investment advisers and investment adviser representatives exempted from registration pursuant to this subsection only.

(i) Initially, the provisions of subparagraphs (A) and (B) of this paragraph are available provided that the investment adviser files:

(I) Form ADV through the IARD designating Texas as a jurisdiction in which the filing is to be made; and

(II) an initial fee equal to the amount that would have been paid had the investment adviser and each investment adviser representative filed for registration in Texas.

(ii) Annually, the investment adviser files renewal fees which would have been paid had the investment adviser and each investment adviser representative been registered in Texas.

(D) Persons not required to register with the Securities Commissioner pursuant to subparagraphs (A) and (B) of this paragraph, are reminded that the Texas Securities Act prohibits fraud or fraudulent practices in dealing in any manner in any securities whether or not the person engaging in fraud or fraudulent practices is required to be registered. The Agency has jurisdiction to investigate and bring enforcement actions to the full extent authorized in the Texas Securities Act with respect to fraud or deceit, or unlawful conduct by an investment adviser or investment adviser representative in connection with transactions involving securities in Texas.

(c) Types of registrations.

(1) General registration. A general registration is a registration to render advisory services regarding all categories of securities, without limitation.

(2) Restricted registration. A restricted registration as an investment adviser or as an investment adviser representative may be issued based upon the qualifying examination(s) passed by the investment adviser or investment adviser representative.

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