TITLE 48 - DEPARTMENT OF BANKING AND FINANCE

Chapter 9 - INVESTMENT ADVISER REPRESENTATIVES

001 GENERAL.

001.01 This Rule has been promulgated pursuant to authority delegated to the Director in Section 8-1120(3) of the Securities Act of Nebraska ("Act").

001.02 The Department has determined that this Rule relating to investment adviser representatives 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 or 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") or the Financial Industry Regulatory Authority ("FINRA") referenced herein mean 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 http://www.ndbf.ne.gov/legal/title48.shtml.

002 APPLICATION. The application for initial registration as an investment adviser representative pursuant to Section 8-1103(3) of the Act shall be filed as directed in Section 008, below, and contain the following information:

002.01 Uniform Application for Securities Industry Registration or Transfer ("Form U4"), complete, accurate, and current;

002.02 Proof of passage of a qualifying examination set forth in Section 003, below;

002.03 A copy of Form ADV Part 2B;

002.03A An investment adviser representative affiliated with a federal covered adviser is responsible for ensuring that Form ADV Part 2B is filed with the Director.

002.04 A fee in the amount of forty dollars ($40.00); and

002.05 Any other information the Director may require.

003 EXAMINATION REQUIREMENTS.

003.01 The investment adviser representative shall have taken and passed the following qualifying examinations administered by the Financial Industry Regulatory Authority:

003.01A The Uniform Investment Adviser Licensing Examination (Series 65 examination) after January 1, 2000, within two years of the date of application; or

003.01B The Uniform Combined State Law Examination (Series 66 examination) after January 1, 2000 and the General Securities Representative Examination (Series 7), within two years of the date of application, and

003.01C The Securities Industry Essential Examination within four years of the date of application.

003.02 The examination requirement does not apply to an individual who currently holds, and who maintains, one of the following professional designations:

003.02A Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.;

003.02B Chartered Financial Consultant (ChFC) awarded by The American College of Financial Services;

003.02C Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;

003.02D Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts; or

003.02E Chartered Investment Counselor (CIC) awarded by the Investment Adviser Association.

003.03 Any individual who was registered as an investment adviser or investment adviser representative in any jurisdiction in the United States on January 1, 2000, and who has no subsequent gap in registration longer than two years, is not required to satisfy the examination requirements for continued registration.

003.04 An individual who has a gap in registration of two years or less between the date of the termination of the individual's most recent registration in Nebraska and the date of application for registration is not required to comply with the examination requirements of this Rule.

003.05 Any individual who is not registered as an investment adviser representative in any state for more than two years but less than five years, who has elected to participate in the FINRA Maintaining Qualifications Program pursuant to FINRA Rule 1240(c), and whose appropriate FINRA qualifying examinations remain valid pursuant to effective participation in the FINRA Maintaining Qualifications Program shall not have to retake the appropriate FINRA qualifying examinations to comply with the examination requirements of Section 003.01; provided, however,

that successful participation in the FINRA Maintaining Qualifications Program shall not extend the Uniform Investment Adviser Licensing Examination (“Series 65 Examination”) or the Unform Combined State Law Examination (“Series 66 Examination”) for purposes of investment adviser representative registration.

003.06 Notwithstanding subsection 003.05 of this rule, an individual who terminates heir registration as an investment adviser representative may maintain the validity of their Series 65 Examination or the investment adviser representative portion of the Series 66 Examination, as applicable, without being employed by or associated with an investment adviser or federal covered investment adviser for a maximum of five years following the termination of the effectiveness of the investment adviser representative registration if the individual meets all of the following:

003.06A The individual previously took and passed the examination for which they seek to maintain validity under this rule;

003.06B The individual was registered as an investment adviser representative for at least one year immediately preceding the termination of the investment adviser representative registration;

003.06C The individual was not subject to a statutory disqualification as defined in Section 3(a)(39) of the Exchange Act while registered as an investment adviser representative or at any period after termination of the registration;

003.06D The person elects to participate in the Exam Validity Extension Program (“EVEP”) under this paragraph within two years from the effective date of the termination of the investment adviser representative registration;

003.06E The individual does not have a deficiency under the investment adviser representative continuing education program at the time the investment adviser representative registration becomes ineffective;

003.06F The person completes annually on or before December 31 of each calendar year in which the person participates in the IAR EVEP:

003.06F1 Six credits of IAR CE Ethics and Professional Responsibility Content offered by an Authorized Provider, including at least three hours covering the topic of ethics, and

003.06F2 Six credits of IAR CE Products and Practice Content offered by an Authorized Provider;

003.07 An individual who elects to participate in EVEP is required to complete credits required by subsection 003.06F of this rule for each calendar year that elapses after the individual's investment adviser representative registration became ineffective regardless of when the individual elects to participate in EVEP; and

003.08 An individual who complies with the FINRA Maintaining Qualification Program under FINRA Rule 1240(c) shall be considered in compliance with subsection 003.06F2 of this rule.

003.09 The Director may require additional examinations for any individual found to have violated any state or federal securities, commodities, banking, insurance, or real estate laws.

003.10 The Director may waive the requirements of this section if the Director finds the waiver is consistent with investor protection and is in the public interest.

004 RENEWAL.

004.01 All investment adviser representative registrations automatically expire annually on December 31. An investment adviser's registration must be renewed on or prior to that date.

004.02 The application for renewal of registration as an investment adviser representative pursuant to Section 8-1103(5) of the Act shall be filed as directed in Section 008 below, and contain the following information:

004.02A Amendments (if any) to the investment adviser representative's Form U4;

004.02B A copy of Form ADV Part 2B supplement for the investment adviser representative;

004.02B1 An investment adviser representative affiliated with a federal covered adviser is responsible for ensuring that the Form ADV Part 2B is filed with the Director.

004.02C A fee in the amount of forty dollars ($40.00); and

004.02D Any other information the Director may require.

005 CONTINUING EDUCATION

005.01 All investment adviser representative must complete the following continuing education requirements each reporting period:

005.01A Ethics and Professional Responsibility Requirement. An investment adviser representative must complete six credits of regulatory and ethics content offered by an authorized provider, with at least three hours covering the topic of ethics; and

005.01B Products and Practice Requirement. An investment adviser representative must complete six credits of products and practice content offered by an authorized provider.

005.02 Agent of FINRA-Registered Broker-Dealer Compliance. An investment adviser representative who is also registered as an agent of a FINRA member broker-dealer and who complies with FINRA's continuing education requirements is considered to be in compliance with the subsection 005.01B above for each applicable reporting period so long as FINRA continuing education content meets all of the following baseline criteria as determined by NASAA.

005.02A The continuing education content focuses on compliance, regulatory, ethical, and sales practices standards.

005.02B The continuing education content is derived from state and federal investment advisory statutes, rules and regulations, securities industry rules and regulations, and accepted standards and practices in the financial services industry.

005.02C The continuing education content requires that its participants demonstrate proficiency in the subject matter of the educational materials.

005.03 Credentialing Organization Continuing Education Compliance. Credits of continuing education completed by an investment adviser representative who was awarded and currently holds a credential that qualifies for an examination waiver under Section 004, above, comply with subdivisions 005.01A and 005.01B, above, provided all of the following are true:

005.03A The investment adviser representative completes the credits of continuing education as a condition of maintaining the credential for the relevant reporting period.

005.03B The credits of continuing education completed during the relevant reporting period by the investment adviser representative are mandatory to maintain the credential.

005.03C The continuing education content provided by the credentialing organization during the relevant reporting

period is approved continuing education content.

005.04 Continuing Education Reporting. Every investment adviser representative is responsible for ensuring that the authorized provider reports the investment adviser representative's completion of the applicable continuing education requirements.

005.05 No Carry-Forward. An investment adviser representative who completes credits of continuing education in excess of the amount required for the reporting period may not carry forward excess credits to a subsequent reporting period.

005.06 Failure to Complete or Report. An investment adviser representative who fails to comply with this rule by the end of a reporting period will renew as "CE Inactive" at the close of the calendar year in this state until the investment adviser representative completes and reports all required IAR continuing education Credits for all reporting periods as required by this rule. An investment adviser who is CE inactive at the close of the next calendar year is not eligible for investment adviser representative registration or renewal of an investment adviser representative registration.

005.07 Discretionary Waiver by the Director. The Director may, in his or her discretion, waive any requirements of this rule.

005.08 Home State. An investment adviser representative registered or required to be registered in this state who is registered as an investment adviser representative in the individual's home state is deemed to be in compliance with this rule provided that both of the following are true:

005.08A The investment adviser representative's home state has continuing education requirements that are at least as stringent as the requirements of this Section.

005.08B The investment adviser representative is in compliance with the home state's investment adviser representative continuing education requirements.

005.09 Unregistered Periods. An investment adviser representative who was previously registered under the Act and became unregistered must complete IAR continuing education for all reporting periods that occurred between the time that the investment adviser representative became unregistered and when the person became registered again under the Act unless the investment adviser representative takes and passes the examination or receives an examination waiver as required by Section 4, above, in connection with the subsequent application for registration.

005.10 For purposes of this section:

005.10A “Approved Continuing Education Content” means the materials, written, oral, or otherwise that have been approved by NASAA or its designee and which make up the educational program provided to an investment adviser representative under this rule.

005.10B “Authorized Provider” means a person that NASAA or its designee has authorized to provide continuing education content required by this rule.

005.10C “Credit” means a unit that has been designated by NASAA or its designee as at least 50 minutes of educational instruction.

005.10D “Ethics and Professional Responsibility Content” means Approved Continuing Education Content that addresses an investment adviser representative’s ethical and regulatory obligations.

005.10E “FINRA” means the Financial Industry Regulatory Authority.

005.10F “Home State” means the state in which the investment adviser representative has its principal office and place of business.

005.10G “NASAA” means the North American Securities Administrators Association or a committee designated by its Board of Directors.

005.10H “Products and Practice Content” means Approved Continuing Education Content that addresses an investment adviser representative’s continuing skills and knowledge regarding financial products, investment features, and practices in the investment advisory industry.

005.10I “Reporting Period” means one twelve-month period as determined by NASAA. An investment adviser representative’s initial Reporting Period with this state commences the first day of the first full Reporting Period after the individual is registered or required to be registered with this state.

006 AMENDMENT OF DOCUMENTS.

006.01 If the information contained in any document filed with the Director is or becomes inaccurate or incomplete in any material respect, the investment adviser representative shall file a correcting amendment.

006.02 Any amendment required by this Section for an investment adviser representative shall be made on Form U4 in the manner prescribed by that form, or as otherwise designated by the Director.

006.03 All amendments shall be filed as directed in Section 008, below.

007 WITHDRAWAL. The application for withdrawal of registration as an investment adviser representative pursuant to Section 8-1103(9)(d) of the Act shall be filed upon Form U5, Uniform Notice of Withdrawal of Securities Industry Registration, as directed in Section 008, below.

008 DUAL REGISTRATION. Registration as an investment adviser representative with more than one investment adviser or federal covered adviser at the same time is prohibited except when the investment adviser representative is in the process of transferring his or her registration or when the investment advisers or federal covered advisers are affiliates.

008.01 Dual registration pending transfer is permitted only if the following conditions are satisfied:

008.01A The investment adviser representative's new investment adviser or federal covered adviser notifies the Director about the transfer within seven days after the investment adviser representative's termination with his or her former investment adviser or federal covered adviser.

008.01B The investment adviser representative's new investment adviser or federal covered adviser submits the agent's Form U4 to the Director within twenty-one days after the notice of termination has been submitted.

008.01C The investment adviser representative does not have a disciplinary history that must be disclosed on Form U4.

008.02 An investment adviser representative may be registered with more than one investment adviser or federal covered adviser if the investment advisers or federal covered advisers involved are affiliates.

008.02A Affiliate means a person who, directly or indirectly, controls, is controlled by, or is under common control with, another person.

008.02B For purposes of this section, control is defined as ownership, directly or beneficially, of eighty percent or more of the outstanding voting securities of another company.

009 FORMS SUBMISSION.

009.01All investment adviser representative applications, amendments, related filings and fees required to be filed with the Director pursuant to the rules promulgated under this Act, shall be filed electronically with, and transmitted to, the Central Registration Depository/Investment Advisers Registration Depository ("CRD/IARD").

009.02 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, the applicant 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 individuals whose names are typed on the filing.

009.03 For purposes of Section 8-1103(4)(a) of the Act, a form submitted through the CRD/IARD is deemed filed with the Director when the record is transmitted to the Director for review.

010 REGISTRATION OF INVESTMENT ADVISER REPRESENTATIVES OF FEDERAL COVERED ADVISERS. An investment adviser representative of a federal covered adviser is required to register pursuant to Neb. Rev. Stat. § 8-1103(3) only if he or she satisfies the following conditions:

010.01 The investment adviser representative has an office in Nebraska at which the investment adviser representative regularly provides, or has a location in Nebraska which the investment adviser holds out to the general public as a location at which the investment adviser representative provides, investment advisory services, solicits, meets with, or otherwise communicates with clients.

010.02 The investment adviser representative is a partner, officer, director, or other person occupying a similar status or performing similar functions, or employee of a federal covered adviser, or other person who provides investment advice on behalf of the federal covered adviser and is subject to the supervision and control of the federal covered adviser ("supervised person") who:

010.02A Has more than five clients who are natural persons and more than ten percent of whose clients are natural persons (other than excepted persons as defined in Section 009.02C1, below); and

010.02B On a regular basis solicits, meets with, or otherwise communicates with clients of a federal covered adviser, or does not provide only "impersonal investment advice," as defined in Section 010.02C3, below.

010.02C For purposes of this Section:

010.02C1 "Excepted person" means a natural person who immediately after entering into the investment advisory contract with the investment adviser has at least seven hundred fifty thousand dollars ($750,000.00) under management with the investment adviser, or who the investment adviser reasonably believes, immediately prior to entering into the advisory contract, has a net worth, together with assets held jointly with a spouse, at the time the contract is entered into of more than one million five hundred thousand dollars ($1,500,000.00).

010.02C2 The supervised person may rely on the definition of client in 17 C.F.R. 275.202(a)(30)-1 to identify clients for purposes of this

Section, except that a supervised person need not count clients who are not residents of the United States.

010.02C3 Impersonal investment advice means investment advisory services provided by means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts.

010.03 Notwithstanding Section 009.02, above, a person who solicits, offers or negotiates for the sale of, or sells, investment advisory services on behalf of a federal covered adviser shall register as an investment adviser representative even if he or she is not a supervised person.

011 BROCHURE SUPPLEMENT DELIVERY.

011.01 An investment adviser shall disclose, on the Form ADV Part 2B supplement, any alternate name under which the investment adviser representative conducts business.

011.02 An investment adviser representative of a federal covered adviser shall provide a copy of the investment adviser representative's Form ADV Part 2B supplement in accordance with 48 NAC 7.010.

012 USING THE INTERNET FOR GENERAL DISSEMINATION OF INFORMATION ON PRODUCTS AND SERVICES. Investment adviser representatives are not 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, the worldwide web, and similar proprietary or common carrier electronic systems (hereinafter the "Internet") to distribute information on available 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:

012.01 The Internet Communications contain a disclosure statement in which it is clearly stated that:

012.01A The investment adviser representative in question may only transact business in this state if first registered or excluded or exempted from the investment adviser representative registration requirements of the Act; and

012.01B The investment adviser representative 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 representative has complied with, or has qualified for an applicable exemption or exclusion from, the investment adviser representative registration requirements of the Act.

012.02 The Internet Communications contain 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 representative is first registered in this state or qualifies for an exemption or exclusion from such requirement.

012.02A Nothing in this subsection shall be construed to relieve an investment adviser representative from any applicable securities registration requirement in this state;

012.03 The Internet Communications do 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.

012.04 The Internet Communications meet the following requirements:

012.04A The affiliation with the investment adviser or federal covered adviser of the investment adviser representative is disclosed, in a non-italicized font of at least ten points, within the Internet Communications;

012.04B The investment adviser or federal covered adviser with whom the investment adviser representative is associated retains responsibility for reviewing and approving the content of any Internet Communications by the investment adviser representative;

012.04C The investment adviser or federal covered adviser with whom the investment adviser representative is associated first authorizes the distribution of information on the particular products through the Internet Communications; and

012.04D In disseminating information through the Internet Communications, the investment adviser representative acts within the scope of the authority granted by the investment adviser or federal covered adviser.

013 DISHONEST OR UNETHICAL BUSINESS PRACTICES.

013.01 The conduct set forth in 48 NAC 12.005 constitutes “an act, practice or course of business which operates, or would operate, as a fraud or deceit upon another person,” for purposes of Section 8-1102(2)(b) of the Act and “dishonest or unethical business practices” for purposes of Section 8-1102(2)(d) and Section 8-1103(9)(a)(vii) of the Act by an investment adviser representative.

013.02 The delineation of certain acts and practices is not intended to be all inclusive. Acts or practices not enumerated therein may also be deemed fraudulent and dishonest.