RULES
OF
THE GEORGIA COMMISSIONER OF SECURITIES

CHAPTER 590-4-4
INVESTMENT ADVISERS AND REPRESENTATIVES

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590-4-4-.01 Electronic Filing with Designated Entity.

(1) Designation. Pursuant to O.C.G.A. Sec. 10-5-35, the Commissioner designates the web-based Investment Adviser Registration Depository ("IARD") to receive and store filings and collect related fees from investment advisers and investment adviser representatives on behalf of the Commissioner.

(2) Use of IARD. Unless otherwise provided, all investment adviser and investment adviser representative applications, amendments, reports, notices, related filings and fees required to be filed with the Commissioner pursuant to the rules promulgated under the Act, shall be filed electronically with and transmitted to IARD. The following additional conditions relate to such electronic filings:

(a) Electronic Signature. When a signature or signatures are required by the particular instructions of any filing to be made electronically through 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 electronically to IARD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing.

(b) When filed. Solely for purposes of a filing made electronically through IARD, a document is considered filed with the Commissioner when all fees are received and the filing is accepted by IARD on behalf of the state.

(3) Electronic Filing. Notwithstanding subsection (2) of this Rule, the electronic filing of any particular document and the collection of related processing fees shall not be required until such time as IARD provides for receipt of such filings and fees and notice is provided by the Commissioner. Any documents or fees required to be filed with the Commissioner that are not permitted to be filed with or cannot be accepted electronically by IARD shall be filed directly with the Commissioner.

(4) Filed Record. Every document filed with IARD or CRD shall be deemed to have been made in a "record" filed under the Act for purposes of O.C.G.A. Sec. 10-5-54.

Authority: O.C.G.A. Sec. 10-5-35.

590-4-4-.02 Application for Investment Adviser Registration.

(1) Initial Application. The application for initial registration as an investment adviser pursuant to O.C.G.A. Sec. 10-5-32 shall be made by completing Form ADV (Uniform Application for Investment Adviser Registration) in accordance with the form instructions and by filing the form electronically with IARD. The application for initial registration shall also include the following:

(a) Proof of compliance by the investment adviser with the examination requirements of Rule 590-4-4-.09;

(b) Any financial statements required by Rule 590-4-4-.18(1), including a copy of the balance sheet for the last fiscal year, and if such balance sheet is as of a date more than forty-five (45) days from the date of filing of the application, an unaudited balance sheet prepared as set forth in Rule 590-4-4-.18(2);

(c) The fee required by O.C.G.A. Sec. 10-5-39(c) and;

(d) Any other information the Commissioner may reasonably require.

(2) Form ADV Part II. The Commissioner requires Part 2 (including Parts 2A and 2B) to be filed electronically with IARD.

(3) Annual Renewal. The application for annual renewal registration as an investment adviser shall be filed electronically with IARD. The application for annual renewal registration shall include the fee required by O.C.G.A. Sec. 10-5-39(c).

(4) Updates and Amendments.

(a) An investment adviser must file amendments to the investment adviser's Form ADV electronically with IARD, in accordance with the instructions in the Form ADV, including instructions specifying the time periods within which amendments must be filed;

(b) An amendment will be considered to be filed "promptly," as that term is used in the instructions to Form ADV, if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment; and

(c) Within ninety (90) days of the end of the investment adviser's fiscal year, an investment adviser must file electronically with IARD an Annual Updating Amendment to the Form ADV.

(5) Certain Filings Deemed Initial Applications. The following shall be deemed initial applications for registration even though designated as amendments:

(a) A Form ADV filed by an investment adviser corporation, partnership, sole proprietorship, or other entity that is not registered when the form is filed and succeeds to, and continues the business of, a predecessor entity registered as an investment adviser 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;

(b) A Form ADV filed by an investment adviser partnership that is not registered when such form is filed and that succeeds to, and continues the business of, a predecessor partnership registered as an investment adviser if it is filed to reflect the changes in the partnership and to furnish required information concerning any new partners; or

(c) A Form ADV filed by an investment adviser corporation that is not registered when the form is filed and that succeeds to, and continues the business of, a predecessor corporation registered as an investment adviser 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.

(6) Completion of Filing. An application for initial or renewal registration is not considered filed for purposes of O.C.G.A. Sec. 10-5-32 until the required fee and all required submissions have been received by the Commissioner.

Authority: O.C.G.A. Sec. 10-5-32.

590-4-4-.03 Notice Filing Requirements for Federal Covered Investment Advisers.

(1) Notice Filing. The notice filing for a federal covered investment adviser pursuant to O.C.G.A. Sec. 10-5-34(c) shall be filed electronically with IARD on an executed Form ADV (Uniform Application for Investment Adviser Registration). A notice filing of a federal covered investment adviser shall be deemed filed when the fee required by O.C.G.A. Sec. 10-5-39(e) and the Form ADV are filed electronically with and accepted by IARD on behalf of the state.

(2) Form ADV Part 2. The Commissioner may:

(a) Accept a copy of Part 2 of Form ADV as filed electronically with IARD; or

(b) Deem Part 2 of Form ADV filed if a federal covered investment adviser provides, within 5 days of a request, Part 2 of Form ADV to the Commissioner. Because the Commissioner deems Part 2 of Form ADV to be filed, a federal covered investment adviser is not required to submit Part 2 of Form ADV to the Commissioner unless requested.

(3) Renewal. The annual renewal of the notice filing for a federal covered investment adviser pursuant to O.C.G.A. Sec. 10-5-34(c) shall be filed electronically with IARD. The renewal of the notice filing for a federal covered investment adviser shall be deemed filed when the fee required by O.C.G.A. Sec. 10-5-39(e) is filed with and accepted by IARD on behalf of the state.

(4) Updates and Amendments. A federal covered investment adviser must file electronically with IARD, in accordance with the instructions in the Form ADV, any amendments to the federal covered investment adviser's Form ADV.

Authority: O.C.G.A. Sec. 10-5-34.

590-4-4-.04 Investment Advisers Switching to or from SEC Registration.

(1) Investment Advisers Switching to SEC Registration. If an investment adviser is registered with the Commissioner and subsequently applies for registration with the SEC, then no later than 10 days after becoming effective with the SEC, the investment adviser shall file its Form ADV-W (Notice of Withdrawal from Registration as Investment Adviser) and notice file as a federal covered investment adviser pursuant to O.C.G.A. Sec. 10-5-34(c) with the Commissioner through IARD.

(2) Federal Covered Investment Advisers Switching from SEC Registration. If a federal covered investment adviser registered with the SEC loses its eligibility to be registered with the SEC, then no later than 10 days after filing its Form ADV-W through IARD, the federal covered investment adviser must terminate its state notice filing with the Commissioner and file its Form ADV with the Commissioner to register as an investment adviser, unless otherwise exempt from registration with the Commissioner.

Authority: O.C.G.A. Sec. 10-5-35.

590-4-4-.05 Application for Investment Adviser Representatives.

(1) Initial Application. The application for initial registration as an investment adviser representative pursuant to O.C.G.A. Sec. 10-5-33 shall be made by completing Form U4 (Uniform Application for Securities Industry Registration or Transfer) in accordance with the form instructions and by filing the Form U4 electronically on CRD. The application for initial registration shall also include the following:

(a) Proof of compliance by the investment adviser representative with the examination requirements of Rule 590-4-4-.09;

(b) The fee required by O.C.G.A. Sec. 10-5-39(d).

(2) Annual Renewal. The application for annual renewal registration as an investment adviser representative shall be filed electronically on CRD. The application for annual renewal registration shall include the fee required by O.C.G.A. Sec. 10-5-39(d).

(3) Updates and Amendments.

(a) The investment adviser representative is under a continuing obligation to update information required by Form U4 as changes occur.

(b) An investment adviser representative and the investment adviser must electronically file promptly on CRD any amendments to the representative's Form U4; and

(c) An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment.

(4) Completion of Filing. An application for initial or renewal registration is not considered filed for purposes of O.C.G.A. Sec. 10-5-33 until the required fee and all required submissions have been received by the Commissioner.

Authority: O.C.G.A. Sec. 10-5-33.

590-4-4-.06 Multiple Registrations.

(1) An individual may apply to be registered as an investment adviser representative for more than one investment adviser or federal covered investment adviser by the filing of a separate U-4 application through CRD by each investment adviser or federal covered investment adviser and the payment of separate application fees as required through CRD. The Commissioner may deny the multiple registration applications if he or she determines that it is not in the best interests of the public. By having the multiple registration applications submitted on his or her behalf, the investment adviser representative affirmatively represents that he or she will make all disclosures to his or her clients and the effected investment adviser or federal covered investment adviser regarding potential or actual conflicts of interests.

(2) Each investment adviser or federal covered investment adviser that employs a multiple registered investment adviser representative shall comply with the requirements of CRD and IARD regarding the multiple registrations of investment adviser representatives.

(3) Nothing in this Rule shall relieve the investment adviser or federal covered investment adviser for whom an investment adviser representative is actually acting of the responsibilities imposed by the Act for the transactions of each investment adviser representative.

Authority: O.C.G.A. Sec. 10-5-35.

590-4-4-.07 Incomplete and Abandoned Applications.

(1) Any application for registration as an investment adviser or investment adviser representative is deficient if any of the following conditions exist:

(a) The application is not in proper form; or

(b) The application is not in compliance with Code Section 10-5-35 or any other provision of the Act or the Rules.

(2) When an application is found to be deficient, the Commissioner may send a letter explaining the deficiency to the applicant and, if the applicant is an investment adviser representative, to the investment adviser who employs or proposes to employ the applicant. The application shall be deemed to be abandoned by the applicant if the Commissioner receives no communication from the applicant for a period of sixty (60) days after the applicant receives the deficiency letter, the Commissioner may issue an order pursuant to Code Section 10-5-41, denying the application.

Authority: O.C.G.A. Sec. 10-5-35.

590-4-4-.08 Investment Adviser and Investment Adviser Representative Renewal Notices.

(1) All procedures, renewal schedules, and fee collection methods announced by the IARD as well as the CRD shall be applicable to registrations processed through IARD and/or CRD.

(2) All renewal notices must be filed with all necessary information and required filing fees no earlier than October 1st and no later than December 31st of each year.

(3) Investment Adviser Representatives required to be registered with the Commissioner shall submit an annual renewal fee directly to IARD and/or CRD. Renewal of registration shall be effective when notice from IARD and/or CRD has been received by the Commissioner that all fees have been paid.

Authority: O.C.G.A. Sec. 10-5-35.

590-4-4-.09 Examination Requirements.

(1) Unless otherwise waived by the Commissioner, an investment adviser, registered or required to be registered pursuant to Section 10-5-32, or an investment adviser representative, registered or required to be registered pursuant to Section 10-5-33, shall take and pass within the two-year period immediately preceding the date of the application:

(a) The Uniform Investment Adviser State Law Examination (Series 65); or

(b) The Uniform Combined State Law Examination (Series 66) and the General Securities Representative Examination (Series 7).

(2) In the event the applicant for registration as an investment adviser is an entity, rather than an individual, the examination shall be taken on behalf of the applicant by one of its officers, a general partner, a manager, or other managing executive of comparable status and position.

(3) Any person who has been registered as an investment adviser or an investment adviser representative in any state requiring the licensing, registration or qualification of investment advisers or investment adviser representatives within the two year period immediately preceding the date of filing an application shall not be required to comply with the examination requirement set forth in subsection (1) of this Rule.

(4) Compliance with subsections (1) and (2) of this Rule is waived if the applicant has been awarded any of the following designations and, at the time of filing an application, is current and in good standing:

(a) Certified Financial Planner (CFP) awarded by the Certified Financial Planners Board of Standards;

(b) Chartered Financial Consultant (ChFC) or Masters of Science and Financial Services (MSFS) awarded by the American College, Bryn Mawr, Pennsylvania;

(c) Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts;

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

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

(5) An applicant shall not be required to meet the examination requirement in subsection (1) of this Rule if:

(a) The applicant is an agent for a broker-dealer that is also registered as an investment adviser; and

(b) As an agent for a broker-dealer, the applicant is not required by his/her home jurisdiction to make a separate filing on CRD as an investment adviser representative but has previously met the examination requirement in subsection (1) of this Rule necessary to provide advisory services on behalf of the broker-dealer/investment adviser.

Authority: O.C.G.A. Secs. 10-5-35; 10-5-41.

590-4-4-.10 Withdrawal of Investment Adviser Registration.

The application for withdrawal of registration as an investment adviser pursuant to Section 10-5-38 of the Act shall be completed by following the instructions on Form ADV-W (Notice of Withdrawal from Registration as Investment Adviser) and filed electronically upon Form ADV-W with IARD.

Authority: O.C.G.A. Sec. 10-5-38.

590-4-4-.11 Notice of Termination of Investment Adviser Representative Registration.

The notice of termination as an investment adviser representative pursuant to Section 10-5-37(a) of the Act shall be completed by following the instructions on Form U5 (Uniform Termination Notice for Securities Industry Registration) and filed electronically upon Form U5 on CRD within 30 days of the date of termination.

Authority: O.C.G.A. Sec. 10-5-37.

590-4-4-.12 Exclusions from the Definition of Investment Adviser Representative.

The following persons are excluded from the definition of Investment Adviser Representative:

(1) A person who is employed by or associated with a federal covered investment adviser who either:

(a) Does not have “a place of business” in this jurisdiction as that term is defined in the rules and regulations promulgated under Section 203(A) of the Investment Adviser’s Act of 1940 by the U.S. Securities and Exchange Commission; or

(b) Is not an “Investment Adviser Representative” as that term is defined in rules or regulations promulgated under Section 203(A) of the Investment Adviser’s Act of 1940 by the U.S. Securities and Exchange Commission; and either:

1. Is a "Supervised Person" as that term is defined in rules or regulations promulgated under the Investment Adviser's Act of 1940 by the U.S. Securities and Exchange Commission; or

2. Does not solicit, offer, or negotiate for the sale of or sell investment adviser services on behalf of any federal covered adviser.

(2) A person who receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice and who:

(a) Is not subject to the supervision and control of an investment adviser, does not provide investment advice on behalf of the investment adviser and is not required to be registered as an investment adviser representative for reasons other than the solicitation activities described herein;

(b) Is not regulated or required to be regulated by the U.S. Securities and Exchange Commission;

(c) Either:

1. Does not make a determination or representation as to the suitability or advisability of a prospective client entering into a relationship with a particular investment adviser or federal covered investment adviser and merely provides a list of one or more investment advisers for the prospective client; or

2. Receives compensation for soliciting, offering or negotiating for the sale of or for selling investment advisory services with respect to 10 or fewer persons in this State in any calendar year and is not otherwise engaged in the business of being a solicitor; or

3. Is an attorney or certified public accountant licensed to practice such profession in the State of Georgia, acts as a solicitor with respect only to persons with whom he or she has an existing client relationship in connection with such profession and who does not, by virtue of acting as a solicitor, violate any rules relating to such profession;

(d) Discloses in writing to the potential client his or her relationship or affiliation with the investment advisers who are the subject of the solicitation activities and that he or she will be receiving compensation as a result of the solicitation activities; and

(e) Is not an "investment adviser representative" by reason of any conduct or activity other than the receipt of compensation for soliciting, offering or negotiating for the sale of or for selling investment advisory services.

Authority: O.C.G.A. Sec. 10-5-2(19)(D).

590-4-4-.13 Registration Exemptions for Certain Investment Advisers and Federal Covered Investment Advisers.

(1) The provisions of Sections 10-5-32(a) and 10-5-34(a) shall not apply to:

(a) Any investment adviser or federal covered investment adviser whose only clients are insurance companies;

(b) Any investment adviser or federal covered investment adviser who during the course of the preceding 12 months has had fewer than six clients in this state; or

(c) Any broker-dealer, registered pursuant to Section 10-5-30, if such broker-dealer is acting as an investment adviser solely:

1. By means of publicly distributed written materials or publicly made oral statements;

2. By means of written materials or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts;

3. Through the issuance of statistical information containing no expressions of opinion as to the investment merits of a particular security; or

4. Through any combination of the foregoing services; provided, however, that the materials and oral statements include a statement that, if the purchaser of the advisory communication uses the services of the adviser in connection with a sale or purchase of a security that is a subject of the communication, the adviser may act as principal for its own account or as agent for another person; provided, however, that such disclosure does not relieve the investment adviser of any disclosure obligation that, depending upon the nature of the relationship between the investment adviser and the client, may be imposed by operation of law, the Act or these Rules.

(2) Definitions Relating to Subsection (1)(b).

(a) For purposes of subsection (1)(b) of this Rule, the following are deemed to be a single "Client:"

1. A natural person and minor child of the natural person;

2. A natural person and relative, spouse, or relative of the spouse of the natural person who has the same principal residence;

3. All accounts of which the natural person and/or the persons referred to in this subparagraph (b) are the only primary beneficiaries;

4.All trusts of which the natural person and/or any persons referred to in this subparagraph (b) are the only primary beneficiaries;

5. A corporation, general partnership, limited partnership, limited liability company, trust (other than a trust referred to in this subparagraph), or other legal organization (any of which are referred to hereinafter as a "legal organization") that receives investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners, members, or beneficiaries (any of which are referred to hereinafter as an "owner"); and

6. Any other method, as adopted by order of the Commissioner, for determining who may be a single client for purposes of this Rule.

(b) Special Rules. For purposes of this Rule:

1. An owner must be counted as a client if the investment adviser provides investment advisory services to the owner separate and apart from the investment advisory services provided to the legal organization; provided, however, that the determination that an owner is a client will not affect the applicability of this Rule to any other owner;

2. An owner need not be counted as a client of an investment adviser solely because the investment adviser, on behalf of the legal organization, offers, promotes, or sells interests in the legal organization to the owner, or reports periodically to the owners as a group solely with respect to the performance of, or plans for, the legal organization's assets or similar matters;

3. A limited partnership is a client of any general partner or other person acting as an investment adviser to the partnership; and

4. Any person for whom an investment adviser provides investment advisory services without compensation need not be counted as a client.

(3) For purposes of subsection (1)(c) of this Rule, "publicly distributed written materials" are those that are distributed to thirty-five (35) or more persons paying for such materials, and publicly made oral statements are those made simultaneously to thirty-five (35) or more persons paying for access to the statements.

Authority: O.C.G.A. Secs. 10-5-32, 10-5-33 and 10-5-34.

590-4-4-.14 Books and Records to be Maintained by Investment Advisers; Routine Examinations and Fees.

(1) Every investment adviser registered or required to be registered under the Act shall make and keep true, accurate, and current the following books, ledgers, and records relating to its investment advisory business:

(a) All of those books and records required to be maintained and preserved in compliance with SEC Rule 204-2 promulgated under the Investment Advisers Act of 1940, notwithstanding the fact that the investment adviser is not registered nor required to be registered under the Investment Advisers Act of 1940.

(b) All trial balances, financial statements prepared in accordance with generally accepted accounting principles or other applicable accounting standard, and internal audit working papers relating to the investment adviser's business as an investment adviser.

(c) A list, or other record, of all accounts with respect to the funds, securities, or transactions of any client.

(d) A copy, in paper or electronic format, of each investment advisory agreement entered into by the investment adviser with any client.

(e) A file containing a copy of each record required by SEC Rule 204-2(a)(11) promulgated under the Investment Advisers Act of 1940 including any communication by electronic media that the investment adviser circulates or distributes, directly or indirectly, to ten (10) or more persons (other than persons connected with the investment adviser).

(f) A copy of each written statement and each amendment or revision given or sent to any client or prospective client of the investment adviser in accordance with the provisions of Rule 590-4-4-.16, and a record of the dates that each written statement and each amendment or revision was given or offered to be given to any client or prospective client who subsequently becomes a client.

(g) For each client that was obtained by the investment adviser by means of a solicitor to whom a fee was paid by the investment adviser, all records required by SEC Rule 206(4)-3 promulgated under the Investment Advisers Act of 1940, notwithstanding the fact that the investment adviser is not registered nor required to be registered under the Investment Advisers Act of 1940. For the purpose of relying on the solicitation exemption contained in Rule 590-4-4-.12, all documents demonstrating compliance with Rule 590-4-4-.12.

(h) All records required by SEC Rule 204-2(a)(16) promulgated under the Investment Advisers Act of 1940 including, but not limited to, electronic media that the investment adviser circulates or distributes, directly or indirectly, to two (2) or more persons (other than persons connected with the investment adviser).

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

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

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

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

(m) For investment advisers that have custody, as that term is defined in Rule 590-4-4-.20, of client funds or securities, all records and evidence of compliance with Rule 590-4-4-.20.

(2) Every investment adviser subject to paragraph (1) of this Rule shall preserve the following records in the manner prescribed:

(a) Except as provided by subparagraphs (2)(b) and (2)(c) of this Rule, all books and records required to be made under the provisions of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five (5) years from the end of the fiscal year during which the last entry was made on such record, of which the first two (2) years shall be in the principal office of the investment adviser.

(b) Except as provided in subparagraph (2)(c)(ii), books and records required to be made under the provisions of subparagraphs (1)(e) and (1)(h) of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five (5) years from the end of the fiscal year during which the investment adviser last published, or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication.

(c) Notwithstanding other record preservation requirements of this Rule, the following records or copies are required to be maintained at the business location of the investment adviser from which the customer or client is being provided, or has been provided, investment advisory services:

1. Records required to be preserved under:

(i) Paragraphs (a)(3), (a)(7)-(10), (a)(14)-(15), (b) and (c) inclusive, of SEC Rule 204-2 of the Investment Advisers Act of 1940; and

(ii) Subparagraphs (1)(i)-(k) of this Rule.

2. The records or copies required under the provisions of subparagraphs (1)(e), (1)(h), and (1)(l) of this Rule that identify the name of the investment adviser representative providing investment advice from that business location, or that identify the business location's physical address, mailing address, electronic mailing address, or telephone number. These records shall be maintained for the period described in subparagraph (2)(b) of this Rule.

(d) Partnership articles and any amendments thereto, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser, and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least three (3) years after termination of the enterprise.

(e) An investment adviser subject to paragraph (1) of this Rule, before ceasing to conduct or discontinuing business as an investment adviser, shall arrange for, and be responsible for, the

preservation of the books and records required to be maintained and preserved under this Rule for the remainder of the period specified in this Rule, and shall notify the Commissioner in writing of the exact address where such books and records will be maintained during such period.

(3) To the extent that the SEC promulgates changes to the above-referenced rules of the Investment Advisers Act of 1940, investment advisers in compliance with such rules, as amended, shall not be subject to enforcement action by the Commissioner for violating this Rule to the extent that the violation results solely from the investment adviser's compliance with the amended rule.

(4) Every investment adviser that maintains its principal place of business in a state other than Georgia shall be exempt from the requirements of this Rule, provided that the investment adviser is licensed in such other state and is in compliance with that state's recordkeeping requirements.

(5) The records of an investment adviser registered under the Act are subject to such reasonable periodic or special inspections by a representative of the Commissioner as the Commissioner considers necessary or appropriate in the public interest and for the protection of investors. An inspection may be made at any time and without prior notice. The Commissioner may copy and remove any record the Commissioner reasonably considers necessary or appropriate to conduct the inspection. The fee for a routine examination of an investment adviser shall be:

(a) $150 dollars for an investment adviser with assets under management of one (1) million dollars or less;

(b) $200 for an investment adviser with assets under management of more than one (1) million dollars but not more than five (5) million dollars;

(c) $250 for an investment adviser with assets under management of more than five (5) million dollars but not more than ten (10) millions dollars million;

(d) $300 for an investment adviser with assets under management of more than ten (10) million dollars but not more than twenty (20) million dollars; and

(e) $400 for an investment adviser with assets under management of more than twenty (20) million dollars.

Authority: O.C.G.A. Sec. 10-5-40(c).

590-4-4-.15 Supervision of Investment Adviser Representatives and Employees.

(1) Every investment adviser registered or required to be registered under the Act, shall exercise diligent supervision over the investment advisory activities of its investment adviser representatives and employees.

(2) Each investment adviser representative and other office employees shall be subject to supervision by the investment adviser. The investment adviser shall be responsible for administering its policies and procedures.

(3) Written policies and procedures, a copy of which shall be kept in each business office, shall be established, maintained, and enforced and shall set forth the standards and procedures adopted to comply with the requirements imposed by the Act and the Rules.

(4) The investment adviser shall be responsible for inspecting each office location at least annually to ensure that its written policies and procedures are enforced.

(5) It shall be the responsibility of each investment adviser registered or required to be registered under the Act to make certain that, when required by the Act or these Rules, investment adviser representatives have been properly registered prior to rendering investment advice and that proof of the investment adviser representative's registration is immediately accessible prior to his or her rendering such advice.

(6) It shall be the responsibility of each investment adviser registered or required to be registered under the Act, and its supervisory personnel, to ensure that all employees of the investment adviser are properly trained regarding the disclosure requirements and the civil and criminal liability provisions of the Act.

(7) For the purposes of this rule, no person shall be deemed to have failed reasonably to supervise any other person if:

(a) There have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other persons, and

(b) Such person has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures and system without reasonable cause to believe that such procedures were not being complied with.

Authority: O.C.G.A. Secs. 10-5-51; 10-5-70.

590-4-4-.16 Investment Adviser Brochure Rule.

(1) General Requirements. Unless otherwise provided in this rule, an investment adviser, registered or required to be registered pursuant to O.C.G.A. Sec. 10-5-32 shall, in accordance with the provisions of this section, furnish each advisory client and prospective advisory client with:

(a) 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;

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

1. Providing investment advice and having direct contact with clients in this state; or

2. Exercising discretion over assets of clients in this state, even if no direct contact is involved;

(c) A copy of its Part 2A Appendix 1 wrap fee brochure if the investment adviser is a sponsor or participates in a Wrap Fee Program;

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

(e) Such other information as the Commissioner may require.

(f) The brochure must comply with the language, organizational format and filing requirements specified in the Instructions to Form ADV Part 2, as published by the SEC.

(2) Delivery.

(a) Initial Delivery. An investment adviser, except as provided in subsection (2)(c), shall deliver the Part 2A brochure and any brochure supplements required by this section to a prospective advisory client:

1. Not less than 48 hours prior to entering into any advisory contract with such client or prospective client; or

2. 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.

(b) Annual Delivery. An investment adviser, except as provided in subsection (2)(c), must:

1. Deliver within 120 days of the end of its fiscal year a free, updated brochure and related brochure supplements which include or are accompanied by a summary of material changes; or

2. Deliver 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. Advisers do not have to deliver a summary of material changes or a brochure to clients if no material changes have taken place since the last summary and brochure delivery.

(c) Delivery of the brochure and related brochure supplements required by subsections (2)(a) and (b) need not be made to:

1. Clients who receive only Impersonal Advice and who pay less than $500 in fees per year; or

2. An investment company registered under the Investment Company Act of 1940; or

3. 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.

(d) Delivery of the brochure and related supplements may be made electronically if the investment adviser:

1. 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;

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

3. Prepares the electronically delivered brochure and supplements in the format prescribed in the instructions to Form ADV Part 2; and

4. Delivers the brochure and supplements in a format that can be retained by the client in either electronic or paper forms;

(3) Other Disclosures. Nothing in this rule shall relieve any investment adviser from any obligation pursuant to any provision of the Act or the Rules thereunder or other federal or state law to disclose any information to its advisory clients or prospective advisory clients not specifically required by this Rule.

(4) Definitions. For the purpose of this Rule:

(a) "Impersonal Advice" means the provision of investment advisory services:

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

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

3. Any combination of the foregoing services.

(b) "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.

(c) "Sponsor" means an investment adviser that is compensated under a wrap fee program for administering, organizing or sponsoring the program, or for selecting or providing advice to clients regarding the selection of other investment advisers in the program.

(d) “Wrap fee program” means a program under which a client is charged a specified fee or fees not based directly on transactions in a client’s account for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and execution of client transactions.

Authority: O.C.G.A. Secs. 10-5-51 and 10-5-70.

590-4-4-.17 Contents of an Investment Advisory Contract.

(1) It is unlawful for any investment adviser, registered or required to be registered pursuant to Section 10-5-32, or investment adviser representative, registered or required to be registered pursuant to Section 10-5-33, to enter into, extend, or renew any investment advisory contract unless it provides in writing:

(a) The services to be provided, the term of the contract, the investment advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of termination or non-performance of the contract, and any grant of discretionary power to the investment adviser;

(b) That no direct or indirect assignment or transfer of the contract may be made by the investment adviser without the consent of the client or other party to the contract;

(c) That the investment adviser, if a partnership, shall notify the client or other party to the investment contract of any change in the membership of the partnership within a reasonable time after the change.

(2) It is unlawful for any investment adviser, registered or required to be registered pursuant to Section 10-5-32, or investment adviser representative, registered or required to be registered pursuant to Section 10-5-33, to enter into, extend or renew any investment advisory contract that:

(a) Includes any condition, stipulation, or provisions binding any person to waive compliance with any provision of the Act or of the Investment Advisers Act of 1940, or any other practice contrary to the provisions of Section 215 of the Investment Advisers Act of 1940;

(b) Is contrary to the provisions of Section 205 of the Investment Advisers Act of 1940. This provision shall apply to all advisers registered or required to be registered under this Act, notwithstanding whether such adviser would be exempt from federal registration pursuant to Section 203(b) of the Investment Advisers Act of 1940.

(3) The provisions of subsections (1) and (2) of this Rule apply to federal covered investment advisers to the extent that the conduct alleged is fraudulent, deceptive, or as otherwise permitted by the National Securities Markets Improvement Act of 1996.

(4) Notwithstanding subsection (2)(b) of this rule, an investment adviser may enter into, extend or renew an investment advisory contract which provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds, or any portion of the funds, if the requirements of all of the following requirements (a) through (d) are met:

(a) The client is a Qualified Client;

(b)The compensation paid to the investment adviser with respect to the performance of any securities over a given period must be based on a formula with the following characteristics:

1. In the case of securities for which market quotations are readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940 (Definition of "Current Net Asset Value" for Use in Computing Periodically the Current Price of Redeemable Security), the formula must include the realized capital losses and unrealized capital depreciation of the securities over the period; and

2. In the case of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940, the formula must include:

(i) The realized capital losses of securities over the period; and

(ii) If the unrealized capital appreciation of the securities over the period is included, the unrealized capital depreciation of the securities over the period.

(c) Before entering into the advisory contract and in addition to the requirements of Form ADV, the investment adviser must disclose in writing to the client or the Client's Independent Agent all material information concerning the proposed advisory arrangement, including the following:

1. That the fee arrangement may create an incentive for the investment adviser to make investments that are riskier or more speculative than would be the case in the absence of a performance fee;

2. Where relevant, that the investment adviser may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's account;

3. The periods that will be used to measure investment performance throughout the contract and their significance in the computation of the fee;

4. The nature of any index which will be used as a comparative measure of investment performance, the significance of the index, and the reason the investment adviser believes that the index is appropriate; and

5. Where the investment adviser's compensation is based in part on the unrealized appreciation of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940, how the securities will be valued and the extent to which the valuation will be independently determined.

(d) The investment adviser (and any investment adviser representative acting on behalf of such investment adviser) who enters into the contract must reasonably believe, immediately before entering into the contract, that the contract represents an arm's length arrangement between the parties and that the client (or in the case of a client which is a Company as defined in subsection (6)(d) of this rule, the person representing the Company), alone or together with the client's independent agent, understands the proposed method of compensation and its risks. The representative of a Company may be a partner, director, officer or an employee of the company or the trustee, where the Company is a trust, or any other person designated by the company or trustee, but must satisfy the definition of client's independent agent set forth in subsection (6)(c) of this rule.

(5) Any person entering into or performing an investment advisory contract under this rule is not relieved of any obligations under Rule 590-4-4-.19 or any other applicable provision of the Act or any rule or order thereunder.

(6) Nothing in this rule shall relieve a Client's Independent Agent from any obligation to the client under applicable law.

(7) The following definitions apply for purposes of this rule:

(a) "Affiliate" shall have the same definition as in Section 2(a)(3) of the Investment Company Act of 1940.

(b) "Assignment," as used in subparagraph (1)(b) of this Rule, includes, but is not limited to, any transaction or event that results in any change to the individuals or entities with the power, directly or indirectly, to direct the management or policies of, or to vote more than 50 percent of any class of voting securities of, the investment adviser as compared to the individuals or entities who had such power as of the date when the contract was first entered into, extended or renewed.

(c) "Client's Independent Agent" means any person who agrees to act as an investment advisory client's agent in connection with the contract, but does not include:

1. The investment adviser relying on this Rule;

2. An affiliated person of the investment adviser or an affiliated person of an affiliated person of the investment adviser including an investment adviser representative;

3. An interested person of the investment adviser;

4. A person who receives, directly or indirectly, any compensation in connection with the contract from the investment adviser, an affiliated person of the investment adviser, an affiliated person of an affiliated person of the investment adviser or an interested person of the investment adviser; or

5. A person with any material relationship between himself (or an affiliated person of that person) and the investment adviser (or an affiliated person of the investment adviser) that exists, or has existed at any time during the past two years.

(d) "Company" means a corporation, partnership, association, joint stock company, trust, or any organized group of persons, whether incorporated or not; or any receiver, trustee in a case under title 11 of the United States Code, or similar official or any liquidating agent for any of the foregoing, in his capacity as such. "Company" shall not include:

1. A company required to be registered under the Investment Company Act of 1940 but which is not so registered;

2. A private investment company (for purposes of this subparagraph (B), a private investment company is a company which would be defined as an investment company under Section 3(a) of the Investment Company Act of 1940 but for the exception from that definition provided by Section 3(c)(1) of that act);

3. An investment company registered under the Investment Company Act of 1940; or

4. A business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940, unless each of the equity owners of any such company, other than the investment adviser entering into the contract, is a natural person or a company within the meaning of subsection (6)(d) of this rule.

(e) "Interested person" means:

1. Any member of the immediate family of any natural person who is an affiliated person of the investment adviser;

2. Any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued by the investment adviser or by a controlling person of the investment adviser if that beneficial or legal interest exceeds:

(i) One-tenth of one percent of any class of outstanding securities of the investment adviser or a controlling person of the investment adviser; or

(ii) Five percent of the total assets of the person seeking to act as the client's independent agent; or

(iii) Any person or partner or employee of any person who, at any time since the beginning of the last two years, has acted as legal counsel for the investment adviser.

(f) "Qualified Client" means a person or entity described in Section 205(b)(2), (b)(4) or (b)(5) of the Investment Advisers Act of 1940, a Business Development Company as defined in the Investment Advisers Act of 1940 if the conditions of Section 205(b)(3) are met, or any other person defined as a "Qualified Client" under Rule 205-3(d)(1) under the Investment Advisers Act.

Authority: O.C.G.A. Sec. 10-5-51.

590-4-4-.18 Financial Reporting Requirements for Investment Advisers.

(1) Every investment adviser registered or required to be registered pursuant to Section 10-5-32 of the Act, who has custody of client funds or securities or requires payment of its advisory fees six (6) months or more in advance and in excess of $500 per client shall file with the Commissioner an audited balance sheet as of the end of the investment adviser's most recent fiscal year. Each balance sheet filed pursuant to this Rule must be:

(a) Prepared in conformity with generally accepted accounting principles;

(b) Audited by an independent certified public accountant in accordance with generally accepted auditing standards; and

(c) 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.

(2) Any investment adviser may be required by the Commissioner to file a financial statement showing the investment adviser's financial condition as of the most recent practicable date. Except as provided in subsection (1) of this rule, such financial statements need not be audited.

(3) The financial statements required by this Rule shall be filed with the Commissioner within ninety (90) days following the end of the investment adviser's fiscal year.

(4) Every investment adviser that has its principal place of business in a state other than this State shall file only such reports as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is registered or licensed in such state and is in compliance with such state's financial reporting requirements.

(5) For purposes of this rule, "custody" shall have the same meaning as in Rule 590-4-4-.20.

(6) An investment adviser is not required to comply with subsection (1) of this Rule if all of the following are met:

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

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

(c) The investment adviser notifies the Commissioner in writing, via Form ADV, that it employs the safekeeping procedures of Rule 590-4-4-.20, excluding subsection (1)(f) thereof.

(7) Any filing made pursuant to subsections (1) or (2) of this Rule may be made electronically as provided for by the Commissioner.

Authority: O.C.G.A. Sec. 10-5-40.

590-4-4-.19 Prohibited Conduct in Providing Investment Advice.

A person who is an investment adviser, an investment adviser representative or a federal covered investment adviser is a fiduciary and has a duty to act primarily for the benefit of its clients. The provisions of this subsection apply to federal covered investment advisers to the extent that the conduct alleged is fraudulent, deceptive, or as otherwise permitted by the National Securities Markets Improvement Act of 1996. While the extent and nature of this duty varies according to the nature of the relationship between an investment adviser, an investment adviser representative or a federal covered investment adviser and its clients and the circumstances of each case, an investment adviser, an investment adviser representative or a federal covered investment adviser shall not engage in prohibited fraudulent, deceptive, or manipulative conduct, including but not limited to the following:

(1) Recommending to a client to whom investment advisory services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser, investment adviser representative or federal covered investment adviser.

(2) Exercising any discretionary authority in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary authority relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

(3) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.

(4) Placing an order to purchase or sell a security for the account of a client without authority to do so.

(5) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.

(6) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser or a financial institution engaged in the business of loaning funds.

(7) Loaning money or securities to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser.

(8) Misrepresenting to any client, or prospective client, the qualifications of the investment adviser, investment adviser representative, federal covered investment adviser, or any employee, or person affiliated with the investment adviser, investment adviser representative or federal covered investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

(9) Providing a report or recommendation to any client prepared by someone other than the investment adviser, investment adviser representative or federal covered investment adviser without disclosing that fact. This prohibition does not apply to a situation where the investment adviser, investment adviser representative or federal covered investment adviser uses published research reports or statistical analyses to render advice or where an investment adviser, investment adviser representative or federal covered investment adviser orders such a report in the normal course of providing service.

(10) Charging a client an unreasonable fee.

(11) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment adviser, investment adviser representative or federal covered investment adviser, or any of its employees, or affiliated persons which could reasonably be expected to impair the rendering of unbiased and objective advice including but not limited to:

(a) Compensation arrangements connected with investment advisory services to clients which are in addition to compensation from such clients for such services; and

(b) Charging a client an investment advisory fee for rendering investment advice when compensation for effecting securities transactions pursuant to such advice will be received by the investment adviser, investment adviser representative or federal covered investment adviser or its employees, or affiliated persons.

(12) While acting as principal for its own advisory account, to knowingly sell any security to or purchase any security from a client, or while acting as broker-dealer for a person other than the client, to knowingly effect any sale or purchase of any security for the account of the client, without disclosing to the client in writing before the completion of the transaction the capacity in which it is acting and obtaining the consent of the client to the transaction.

(a) The prohibitions of this subsection shall not apply to any transaction with a customer of a broker-dealer if the broker-dealer is not acting as an investment adviser in relation to the transaction.

(b) The prohibitions of this subsection shall not apply to any transaction with a customer of a broker-dealer if the broker-dealer acts as an investment adviser solely:

1. By means of publicly distributed written materials or publicly made oral statements;

2. By means of written materials or oral statements not purporting to meet the objectives or needs of specific individuals or accounts;

3. Through the issuance of statistical information containing no expressions of opinion as to the investment merits of a particular security; or

4. Any combination of the foregoing services.

(c) Publicly distributed written materials or publicly made oral statements shall disclose that, if the purchaser of the advisory communication uses the investment adviser’s services in connection with the sale or purchase of a security which is a subject of the communication, the investment adviser may act as principal for its own account or as agent for another person. Compliance by the investment adviser with the foregoing disclosure requirement shall not relieve it of any other disclosure obligations under the Act.

(d) Definitions for purposes of this Rule include:

1. “Publicly distributed written materials” means written materials that are distributed to 35 or more persons who pay for those materials.

2. “Publicly made oral statements” means oral statements made simultaneously to 35 or more persons who pay for access to those statements.

(13) The prohibitions of this Rule shall not apply to an investment adviser effecting an agency cross transaction for an advisory client provided the following conditions are met:

(a) The advisory client executes a written consent prospectively authorizing the investment adviser to effect agency cross transactions for such client;

(b) Before obtaining such written consent from the client, the investment adviser makes full written disclosure to the client that, with respect to agency cross transactions, the investment adviser will act as broker-dealer for, receive commissions from and have a potentially conflicting division of loyalties and responsibilities regarding both parties to the transactions;

(c) At or before the completion of each agency cross transaction, the investment adviser or any other person relying on this rule sends the client a written confirmation. The written confirmation shall include:

1. A statement of the nature of the transaction;

2. The date the transaction took place;

3. An offer to furnish, upon request, the time when the transaction took place; and

4. The source and amount of any other remuneration the investment adviser received or will receive in connection with the transaction. In the case of a purchase, if the investment adviser was not participating in a distribution, or, in the case of a sale, if the investment adviser was not participating in a tender offer, the written confirmation may state whether the investment adviser has been receiving or will receive any other remuneration and that the investment adviser will furnish the source and amount of such remuneration to the client upon the client's written request;

(d) At least annually, and with or as part of any written statement or summary of the account from the investment adviser, the investment adviser or any other person relying on this rule sends each client a written disclosure statement identifying:

1. The total number of agency cross transactions during the period for the client since the date of the last such statement or summary; and

2. The total amount of all commissions or other remuneration the investment adviser received or will receive in connection with agency cross transactions for the client during the period.

(e) Each written disclosure and confirmation required by this rule must include a conspicuous statement that the client may revoke the written consent required under subsection (13)(a) of this rule at any time by providing written notice to the investment adviser.

(f) No agency cross transaction may be effected in which the same investment adviser recommended the transaction to both any seller and any purchaser.

(g) For purposes of this rule, "agency cross transaction for an advisory client" means a transaction in which a person acts as an investment adviser in relation to a transaction in which

the investment adviser, or any person controlling, controlled by, or under common control with such investment adviser, including an investment adviser representative, acts as a broker-dealer for both the advisory client and another person on the other side of the transaction. When acting in such capacity, such person is required to be registered as a broker-dealer in this state unless excluded from the definition.

(h) Nothing in this rule shall be construed to relieve an investment adviser or investment adviser representative from acting in the best interests of the client, including fulfilling his duty with respect to the best price and execution for the particular transaction for the client nor shall it relieve any investment adviser or investment adviser representative of any other disclosure obligations imposed by the Act.

(14) Guaranteeing a client that a specific result will be achieved with advice rendered.

(15) Publishing, circulating or distributing any advertisement that does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940.

(16) Making, in the solicitation of clients, any untrue statement of a material fact, or omitting to state a material fact necessary in order to make the statement made, in light of the circumstances under which they are made, not misleading.

(17) Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of Section 204A of the Investment Advisers Act of 1940.

(18) Disclosing the identity, investments, or other financial information of any client or former client unless required by law to do so, or unless consented to by the client.

(19) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the action of the investment adviser or investment adviser representative is subject to and does not comply with the requirements of Rule 590-4-4-.20.

(20) Engaging in any act, practice, or course of business that is fraudulent, deceptive, manipulative or unethical.

(21) Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the Act or any rule or regulation thereunder.

(22) Paying a cash fee, directly or indirectly, to an unregistered investment adviser representative required to register under the Act, including any solicitor whose conduct does not meet the exclusion described in Rule 590-4-4-.12.

(23) Employing an investment adviser representative who is not registered as required by the Act.

(24) Exercising voting authority with respect to client securities, unless the investment adviser:

(a) Adopts and implements written policies and procedures that are reasonably designed to ensure that it votes client securities in the best interest of its clients, which procedures must include how the investment adviser addresses material conflicts that may arise between the investment adviser's interests and those of its clients.

(b) Discloses to clients how its clients may obtain information from the investment adviser about how it voted with respect to the clients' securities;

(c) Describes to clients its proxy voting policies and procedures and, upon request, furnishes a copy of the policies and procedures to the requesting client.

Authority: O.C.G.A. Sec. 10-5-51.

590-4-4-.20 Custody Requirements for Investment Advisers.

(1) 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 pursuant to Section 10-5-32, to have custody of client funds or securities unless:

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

(b) Qualified Custodian. A qualified custodian maintains those funds and securities:

1. In a separate account for each client under that client's name; or

2. 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.

(c) 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.

(d) 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.

(e) 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 (or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle), the account statements required under paragraph (1)(d) of this Rule must be sent to each limited partner (member or other beneficial owner of such pooled investment vehicle).

(f) Independent Verification (Surprise Examination).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:

1. File a certificate on Form ADV-E with the Commissioner within 60 days of the time chosen by the independent certified public accountant in subsection (1)(f) of this Rule, stating that it has examined the funds and securities and describing the nature and extent of the examination;

2. Upon finding any material discrepancies during the course of the examination, notify the Commissioner within one (1) business day of the finding, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the Commissioner; and

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

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

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

(g) 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:

1. The independent certified public accountant the investment adviser retains to perform the independent verification required by subsection (1)(f) of this Rule must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by the Public Company Accounting Oversight Board in accordance with its rules; and

2. 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:

(i) 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 advisers clients, during the year;

(ii) 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 advisers related person; and

(iii) The independent certified public accountant must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules.

(h) Independent Representatives. A client may designate an independent representative to receive, on his behalf, notices and account statements as required under paragraphs (1)(c) and (1)(d) of this rule.

(2) Exceptions.

(a) 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 mutual fund’s transfer agent in lieu of a qualified custodian for purposes of complying with subsection (1) of this Rule;

(b) Certain Privately Offered Securities.

1. The investment adviser is not required to comply with subsection (1)(b) of this Rule with respect to securities that are:

(i) Acquired from the issuer in a transaction or chain of transactions not involving any public offering;

(ii) Un-certificated and ownership thereof is recorded only on the books of the issuer or its transfer agent in the name of the client; and

(iii) Transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

2. Notwithstanding subsection (2)(b)1. of this Rule, the provisions of subsection (2)(b) are available with respect to securities held for the account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if the limited partnership is audited, and the audited financial statements are distributed, as described in subsection (2)(d) of this Rule and the investment adviser notifies the Commissioner 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.

(c) Fee Deduction. An investment adviser is not required to comply with subsection (1)(f) of this Rule if all of the following are met:

1. 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;

2. The investment adviser has written authorization from the client to deduct advisory fees from the account held with the qualified custodian; and

3. The investment adviser notifies the Commissioner in writing that the investment adviser intends to use the safeguards provided above. Such notification is required to be given on Form ADV.

(d) Limited Partnerships Subject To Annual Audit. An investment adviser is not required to comply with subsections (1)(c) and (1)(d) and shall be deemed to have complied with subsection (1)(f) of this Rule with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) that is subject to audit (as defined in rule 1–02(d) of Regulation S–X (17 CFR 210.1–02(d))):

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

2. By an independent public accountant that is registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules; and

3. Upon liquidation and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) promptly after the completion of such audit.

4. The written agreement with the independent certified public accountant must require the independent certified public accountant to, upon resignation or dismissal from, or other termination of, the engagement, or upon removing itself or being removed from consideration for

being reappointed, notify the Commissioner within four (4) business days accompanied by a statement that includes:

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

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

5. The investment adviser must also notify the Commissioner in writing that the investment adviser intends to employ the use of the audit safeguards described above. Such notification is required to be given on Form ADV.

(e) 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.

(3) Delivery to Related Persons. Sending an account statement under subsection (1)(e) of this Rule or distributing audited financial statements under subsection (2)(d) of this Rule shall not satisfy the requirements of this Rule if such account statements or financial statements are sent solely to limited partners (or members or other beneficial owners) that themselves are limited partnerships (or limited liability companies, or another type of pooled investment vehicle) and are your related persons.

(4) Definitions. For purposes of the rule:

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

1. 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;

2. A person is presumed to control a corporation if the person:

(i) Directly or indirectly has the right to vote 25 percent or more of a class of the corporation’s voting securities; or

(ii) Has the power to sell or direct the sale of 25 percent or more of a class of the corporation’s voting securities;

3. A person is presumed to control a partnership if the person has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the partnership;

4. A person is presumed to control a limited liability company if the person:

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

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

(iii) Is an elected manager of the limited liability company.

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

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

1. Custody includes:

(i) Possession of client funds or securities unless the investment adviser receives them inadvertently and returns them to the sender promptly but in any case within three business days of receiving them;

(ii) Any arrangement (including general partner or 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

(iii) 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 or its supervised person legal ownership of or access to client funds or securities.

2. 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 (3) business days of receipt and the investment adviser maintains the records required under Rule 590-4-4-.14;

(c) “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)).

(d) “Independent representative” means a person who:

1. 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;

2. Does not control, is not controlled by, and is not under common control with investment adviser; and

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

(e) “Qualified custodian” means the following:

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

2. A broker-dealer registered in this jurisdiction and with the SEC holding the client assets in customer accounts;

3. 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

4. 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.

(f) “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.

Authority: O.C.G.A. Sec. 10-5-51.