

660:11-7-47. Payments for client solicitations [\[AMENDED\]](#)

(a) **Prohibition.** An investment adviser required to be registered pursuant to Section 1-403 of the Securities Act shall not pay a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities unless:

- ___ (1) the investment adviser is registered under the Securities Act;
- ___ (2) the solicitor is registered as an investment adviser representative of this or another investment adviser registered under the Securities Act or separately registered as an investment adviser or under the Securities Act; ~~and~~
- ___ (3) such cash fee is paid pursuant to a written agreement to which the investment adviser is a party; ~~and~~
- ___ (4) [the only compensation paid for a referral of investment advisory clients to a solicitor other than one registered as an investment adviser representative of this investment adviser is paid to an investment adviser registered under the Securities Act or a federal covered investment adviser who has filed a notice under Section 1-405 of the Securities Act.](#)

(b) **Written agreement.** If soliciting clients is the only service rendered on behalf of an investment adviser, the written agreement required by (a)(3) of this section shall:

- ___ (1) describe the solicitation activities to be engaged in by the solicitor on behalf of the investment adviser and the compensation to be received therefor;
- ___ (2) contain an undertaking by the solicitor to perform his duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of the Securities Act and the rules thereunder; and
- ___ (3) require that the solicitor, at the time of any solicitation activities for which compensation is paid or to be paid by the investment adviser, provide the customer with a current copy of the investment adviser's written disclosure statement required by 660:11-7-43 and a separate written disclosure document described in (d) of this section.

(c) **Investment adviser responsibilities.** The investment adviser shall receive from the client, prior to, or at the time of, entering into any written ~~or oral~~ investment advisory contract with such client, a signed and dated acknowledgment of receipt of the investment adviser's written disclosure statement and the solicitor's written disclosure document. In addition, the investment adviser shall ascertain whether the solicitor has complied with the agreement, and has a reasonable basis for believing that the solicitor has so complied.

(d) **Disclosure by solicitor.** The separate written disclosure document required to be furnished by the solicitor to the customer pursuant to (b) of this section shall contain the following information:

- ___ (1) the name of the solicitor;
- ___ (2) the name of the investment adviser;
- ___ (3) the nature of the relationship, including any affiliation, between the solicitor and the investment adviser;
- ___ (4) a statement that the solicitor will be compensated for his solicitation services by the investment adviser;
- ___ (5) the terms of such compensation arrangement, including a description of the compensation paid or to be paid to the solicitor; and
- ___ (6) the amount, if any, for the cost of obtaining his account the customer will be charged in addition to the advisory fee, and the differential, if any, among customers with respect to the amount or level of advisory fees charged by the investment adviser if such differential is attributable to the existence of any arrangement pursuant to which the investment adviser has agreed to compensate the solicitor for soliciting customers for, or referring customers to, the investment adviser.