

**TITLE 660. DEPARTMENT OF SECURITIES  
CHAPTER 11. OKLAHOMA UNIFORM SECURITIES ACT OF 2004**

**SUBCHAPTER 7. INVESTMENT ADVISERS AND INVESTMENT ADVISER  
REPRESENTATIVES  
PART 7. RECORD KEEPING AND ETHICAL STANDARDS**

**660:11-7-42. Standards of Ethical Practice [AMENDED]**

(a) **Purpose.** This Section is intended to set forth the standards of ethical practices for investment advisers and investment adviser representatives. Any noncompliance with the standards set forth in this Section will constitute unethical practices in the securities business as the same is set forth in Section 1-411.D.13 of the Securities Act; however, the following is not intended to be a comprehensive listing of all specific events or conditions that may constitute such unethical practices. The standards shall be interpreted in such manner as will aid in effectuating the policy and provisions of the Securities Act, and so as to require that all practices of investment advisers and investment adviser representatives in connection with their activities in this state shall be just, reasonable and not unfairly discriminatory. The standards set forth in this Section ~~and the disclosure delivery requirement set forth in 660:11-7-43 shall apply to all investment advisers and investment adviser representatives~~ apply to federal covered investment advisers only to the extent that the conduct alleged is fraudulent or deceptive or if application is permitted by the National Securities Improvement Act of 1996 (Pub. L. No. 104-290).

(b) **Standards.** An investment adviser or investment adviser representative shall not engage in dishonest or unethical practices including, although not limited to, the following:

(1) Failing to act in accordance with a fiduciary duty to a client. To meet the fiduciary duty, each investment adviser or investment adviser representative shall adhere to duties of utmost care and loyalty to the client.

(A) The duty of care requires an investment adviser or investment adviser representative to use the care, skill, prudence, and diligence that a person acting in a like capacity and familiar with such matters would use, taking into consideration all of the relevant facts and circumstances. For purposes of this paragraph, an investment adviser or investment adviser representative shall make reasonable inquiry, including:

(i) The risks, costs, and conflicts of interest related to all recommendations made and investment advice given;

(ii) The client's investment objectives, risk tolerance, financial situation, and needs; and

(iii) Any other relevant information.

(B) The duty of loyalty requires an investment adviser or investment adviser representative to:

(i) Disclose all material conflicts of interest;

(ii) Make all reasonably practicable efforts to avoid conflicts of interest, eliminate conflicts that cannot be avoided, and mitigate conflicts that cannot be avoided or eliminated; and

(iii) Make recommendations and provide investment advice without regard to the financial or any other interest of any party other than the client.

(C) Disclosing or mitigating conflicts alone does not meet or demonstrate the duty of loyalty.

(D) It shall be presumed to constitute a breach of the duty of loyalty for an investment adviser or investment adviser representative to recommend any investment strategy, the opening of or transferring of assets to a specific type of account, or the purchase, sale, or exchange of any security, if the recommendation is made in connection with any sales contest, implied or express quota requirement, or other special incentive program.

(2) Recommending to a client to whom investment supervisory, management or consulting 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 profile.

(A) A client's investment profile includes, but is not limited to, the client's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information disclosed by the client or known to the investment adviser or investment adviser representative.

(B) Institutional clients.

(i) An investment adviser or an investment adviser representative fulfills the customer-specific suitability obligation for an institutional account, as defined in 660:11-1-3, if

(I) the investment adviser or investment adviser representative has a reasonable basis to believe that the institutional client is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving a security or securities and

(II) the institutional client affirmatively indicates that it is exercising independent judgment in evaluating the investment adviser or investment adviser representative's recommendations.

(ii) Where an institutional client has delegated decision-making authority to an agent, such as an investment adviser or a bank trust department, these factors shall be applied to the agent.

~~(2)~~(3) Exercising any discretionary power 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 power 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)~~(4) 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)~~(5) Placing an order to purchase or sell a security for the account of a client without authority to do so.

~~(5)~~(6) 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)~~(7) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser or investment adviser representative, or a financial institution engaged in the business of loaning funds.

~~(7)~~(8) Lending money to a client unless the investment adviser is a financial institution engaged in the business of lending funds or the client is an affiliate of the investment adviser or investment adviser representative.

~~(8)~~(9) Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser or an investment adviser representative or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omitting 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)~~(10) Providing a report or recommendation to any advisory client prepared by someone other than the investment adviser without disclosing the source.

(11) Charging a client an unreasonable advisory fee.

~~(10)~~(12) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

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

(B) Charging a client an advisory fee for rendering advice when a ~~commission~~compensation for ~~executing~~effecting securities transactions pursuant to such advice will be received by the investment adviser or its employees or affiliated persons.

~~(11)~~(13) Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered.

~~(12)~~(14) Publishing, circulating and distributing any advertisement which does not comply with Reg. A § 275.206(4)-1 under the Advisers Act.

~~(13)~~(15) Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client.

~~(14)~~(16) 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 investment adviser's action does not comply with the requirements of Reg. A § 275.206(4)-2 under the Advisers Act.

~~(15)~~(17) Entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment adviser or investment adviser representative and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract.

~~(16)~~(18) Entering into, extending or renewing any investment advisory contract, if such contract contains any provision that limits or purports to limit any of the following:

(A) the liability of the investment adviser for conduct or omission arising from the advisory relationship that does not conform to the Securities Act, applicable federal statutes, or common law fiduciary standard of care;

(B) the remedies available to the client at law or equity; ~~or~~

(C) the jurisdiction or forum where any action shall be filed or heard to include mandatory arbitration; or

~~(C)~~(D) the applicability of the laws of Oklahoma with respect to the construction or interpretation of the provisions of the investment advisory contract.

~~(17)~~(19) Failing to adopt, implement, and follow written supervisory procedures that are tailored specifically to their business and that:

(A) address the activities of all its investment adviser representatives and associated persons;

(B) identify who has supervisory responsibilities, including a record of each associated person who has supervisory responsibilities and the date assigned, and procedures for each business line and applicable securities laws for which each supervisor is responsible; and

(C) specifically identify the individual to perform a supervisory function; what specifically the supervisor will review; when or how often the review will take place and how the supervisor's review will be documented.

(20) 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 Securities Act or any section thereunder.

(21) Accessing a client's account by using the client's own unique identifying information such as username and password.

(22) Failing to establish, maintain, and enforce required policies or procedures.

(23) Failing to maintain a required errors and omissions insurance policy.

(24) Knowingly selling any security to or purchasing any security from a client while acting as principal for its own advisory account, or knowingly effecting any sale or purchase of any security for the account of the client while acting as broker-dealer for a person other than 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 paragraph (23) shall not apply to any transactions 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 prohibition of this paragraph (23) shall not apply to any transaction with a customer of a broker-dealer if the broker-dealer acts as an investment adviser solely:

(i) by means of publicly distributed written materials or publicly made oral statements;

(ii) by means of written materials or oral statements not purporting to meet the objectives or needs of specific individuals or accounts;

(iii) through the issuance of statistical information containing no expressions of opinion as to the investment merits of a particular security; or

(iv) 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 Securities Act.

(D) The prohibition of this paragraph (23) shall not apply to an investment adviser effecting an agency cross transaction for an advisory client provided the following conditions are met:

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

(ii) 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;

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

(I) A statement of the nature of the transaction;

(II) The date the transaction took place;

(III) An offer to furnish, upon request, the time when the transaction took place; and

(IV) 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 tender offer, the written confirmation shall 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 consent.

(iv) 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 subparagraph (D) send each client a written disclosure statement identifying:

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

(b) 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 such period.

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

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

(vii) Nothing in the subparagraph (D) 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 Securities Act.

(E) Definitions for purposes of this paragraph (23).

- (i) "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.
- (ii) "Publicly distributed written materials" means written materials which are distributed to 35 or more persons who pay for those materials.
- (iii) "Publicly made oral statements" means oral statements made simultaneously to 35 or more persons who pay for access to those statements.
- (25) Sharing an office with non-related person without:
- (A) reducing any agreement with the non-related person to writing;
- (B) taking appropriate measures, including, but not limited to, adequate disclosures to eliminate the appearance of an agency relationship with the non-related person when one does not otherwise exist; and
- (C) complying with all applicable laws requiring the safeguarding of customer data from the non-related person.