

THE CALIFORNIA CORPORATIONS COMMISSIONER HEREBY ADOPTS  
THE FOLLOWING CHANGES TO THE REGULATIONS UNDER THE  
CORPORATE SECURITIES LAW OF 1968  
AS SET FORTH IN CHAPTER 3, TITLE 10,  
CALIFORNIA CODE OF REGULATIONS  
EFFECTIVE: April 3, 2003

1. Section 260.230 is adopted to read:

260.230 Electronic Filings.

(a) DESIGNATION: The Commissioner designates the web-based Investment Adviser Registration Depository ("IARD") operated by the National Association of Securities Dealers Regulation, Inc. to receive and store filings and collect related fees from investment advisers and investment adviser representatives on behalf of the Commissioner.

(b) USE OF IARD: 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 Code may be filed electronically with and transmitted to IARD, except as otherwise indicated in these rules. The following conditions relate to such electronic filings:

(1) Electronic Signature: When a signature or signatures are required by the particular instructions of any filing to be made 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 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.

(2) When filed: Solely for purposes of a filing made through IARD, unless otherwise specified,

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) Any documents required to be filed with the Commissioner that are not permitted to be filed with or cannot be accepted by IARD shall be filed in paper directly with the Commissioner.

NOTE: Authority cited: Sections 25610 and 25612.5, Corporations Code. Reference: Section 1633.7, Civil Code and Section 25612.5, Corporations Code.

2. Section 260.230.1 is adopted to read:

260.230.1 Notice Filing Requirements for Investment Advisers Registered under Section 203 of the Investment Advisers Act of 1940.

(a) INITIAL NOTICE: A person subject to subsection (a) of Corporations Code Section 25230.1 shall file an initial notice consisting of Form ADV (Uniform Application for Investment Adviser Registration, as amended by Securities and Exchange Commission Release No. IA-1916, 34-43758 (December 21, 2000), effective January 1, 2001, and hereby incorporated by reference)(17 CFR 279.1) in accordance with the instructions in Form ADV within thirty (30) days of conducting business in the state. The notice shall be deemed filed when the fee required by Section 25608.1(d) and Form ADV are filed with and accepted by IARD on behalf of this state.

(b) PORTIONS OF FORM ADV NOT YET ACCEPTED BY IARD: If an investment adviser agrees to provide, within five (5) days of a request, Part 2 of Form ADV to the Commissioner, an investment adviser is not required to file Part 2 of Form ADV with the Commissioner until IARD provides for the filing of Part 2 of Form ADV.

(c) ANNUAL RENEWAL: The notice expires December 31<sup>st</sup> unless renewed. The annual renewal shall be filed with IARD in accordance with its procedures. The renewal of the notice filing shall be deemed filed when the fee required by Section 25608.1(d) is filed with and accepted by

IARD on behalf of the state.

(d) AMENDMENTS TO FORM ADV: Any changes to the information contained in Form ADV shall be filed with IARD in accordance with the instructions in Form ADV.

(e) INVESTMENT ADVISER REPRESENTATIVES: Each investment adviser representative, as defined in Section 25009.5(b) of the Code, with a place of business in the state shall be reported in the manner prescribed in Section 260.236.1(b) of these rules.

(f) SWITCHING TO STATE REGISTRATION: Upon the filing of Form ADV-W (Notice of Withdrawal from Registration as an Investment Adviser, as amended by Securities and Exchange Commission Release No. IA-1916, 34-43758 (December 21, 2000), effective January 1, 2001, and hereby incorporated by reference) withdrawing registration with the Securities and Exchange Commission under the Investment Advisers Act of 1940, an investment adviser may not conduct business in this state as an investment adviser until the investment adviser has secured a certificate from the Commissioner or unless the investment adviser is otherwise exempt. An investment adviser may file an application for an investment adviser certificate in accordance with the instructions in Section 260.231 prior to the date the investment adviser's registration with the Securities and Exchange Commission is subject to termination.

NOTE: Authority cited: Sections 25230.1, 25610 and 25612.5, Corporations Code.

Reference: Section 25230.1, 25231, 25608.1(d), and 25612.5, Corporations Code.

3. Section 260.231 is amended to read:

~~260.231. Application for Investment Adviser's Certificate.~~

~~(a) The application for a certificate as an investment adviser pursuant to Section 25231 of the Code and an amendment to such application pursuant to Section 260.241.4(a) shall be filed upon~~

~~Form ADV (Uniform Application for Investment Adviser Registration) (17 CFR 279.1) modified as, and containing the additional information, required by subsection (b) of this rule.~~

~~(b) Instructions for California.~~

~~The instructions for completing Form ADV for filing in California are as follows:~~

~~DEPARTMENT OF CORPORATIONS  
STATE OF CALIFORNIA  
INSTRUCTIONS FOR COMPLETING AND FILING  
APPLICATION FOR INVESTMENT ADVISER CERTIFICATE  
ON FORM ADV  
(UNIFORM APPLICATION FOR INVESTMENT ADVISER  
REGISTRATION) (17 CFR 279.1) IN CALIFORNIA~~

~~(Only for Use in Connection with Applications and Amendments to Applications for Investment Adviser Certificate Pursuant to Section 25231, Corporations Code, and Section 260.241.4, Title 10, California Code of Regulations).~~

~~PART I. FILING FEE AND MAILING ADDRESS~~

~~The fee for filing an initial application for a certificate as an investment adviser is \$125. Payment of this amount shall keep the certificate, if granted, in effect during the calendar year in which it is granted. Make checks payable to the DEPARTMENT OF CORPORATIONS and mail it with Form ADV to Department of Corporations, 980 9th Street, 5th Floor, Sacramento, CA 95814-2725. Fees are not refundable except pursuant to Section 250.15, Title 10, California Code of Regulations.~~

~~PART II. INSTRUCTIONS AS TO ARREST RECORDS.~~

~~(1) Question 11 G. of Part I of Form ADV must be modified, as set forth below, upon an initial application because of the prohibitions of Section 461, Business and Professions Code:~~

Insert after the word "item" the following:

~~"other than a pending proceeding involving an arrest of such person?"~~

~~AN INITIAL APPLICATION WHICH IS NOT MODIFIED IN ACCORDANCE WITH THE FOREGOING INSTRUCTIONS WILL NOT BE RECEIVED FOR FILING BY THE DEPARTMENT AND WILL BE RETURNED WITHOUT PROCESSING.~~

~~PART III. ADDITIONAL INFORMATION.~~

~~(1) Attach a statement demonstrating compliance by the investment adviser, all general partners, officers, directors and associated persons thereof with the examination requirement of Section 260.236, Title 10, California Code of Regulations or, in lieu thereof, a statement setting forth the date and place of the proposed examination to be taken in compliance with said section and the administering authority of the examination.~~

~~(2) Unless applicant is a California corporation, attach a completed Consent to Service of Process on Form 260.165.~~

~~(3) If the applicant intends to take any power of attorney from any investment advisory client to execute transactions, to have custody of any investment advisory client's securities or funds, or intends to receive fees for periodic publications or other investment advisory services paid six months or more in advance of the services, the following additional exhibits must be submitted:~~

~~(a) Attach a balance sheet as of a date within 45 days prior to the filing of the application, which need not be audited. However, if such balance sheet is not audited, there should be filed, in addition, an audited balance sheet as of the end of applicant's last fiscal year;~~

~~(b) Attach a computation of tangible net capital, the ratio of tangible net capital to total aggregate indebtedness, and the ratio of current capital to current aggregate indebtedness of the applicant, in accordance with Section 260.237.1, Title 10, California Code of Regulations, as of the same date as the balance sheets submitted under paragraph (a) above.~~

~~(4) Attach a copy of the standard investment advisory contract form(s) proposed to be used by applicant in this state.~~

~~(5) Attach a properly executed Customer Authorization of Disclosure of Financial Records on Form QR 500.261.~~

~~(6) Attach the name of applicant's worker's compensation insurance carrier or a copy of the certificate of consent to self-insure, if any. See Section 3700, Labor Code.~~

~~NOTE: Social Security Account Numbers: In accordance with Section 7 of the Privacy Act of 1974 (PL. 93-579), the following information is provided in connection with the disclosure of a social security account number in the Schedules to Form ADV.~~

~~Disclosure of a social security account number shall be considered a voluntary disclosure. A social security account number is solicited pursuant to one or more of the following authorities:~~

~~Section 25231, Corporations Code.~~

~~Section 260.231 Title 10, California Code of Regulations.~~

~~Uses to be made of social security account numbers solicited by Form ADV and the Schedules thereto are:~~

~~A. For all persons disclosing social security account numbers, the number may be used, in addition to other information provided, to conduct a background investigation of the individual by the Department of Justice's Identification and Information Branch or by other federal, state or local law enforcement agencies.~~

~~B. The completed form, including any disclosed social security account numbers, shall become a public record and available to members of the public pursuant to the provisions of the Public Records Act (Government Code Sections 6250 et seq.).~~

~~260.231. Application for Investment Adviser Certificate Filing through the Investment Adviser Registration Depository.~~

For any investment adviser that participates in the Investment Adviser Registration Depository ("IARD"), the application for a certificate as an investment adviser and all amendments thereto shall be filed as follows:

(a) INITIAL APPLICATION: The application for a certificate as an investment adviser pursuant to Section 25231 of the Code shall be made by completing Form ADV (Uniform Application for Investment Adviser Registration, as amended by Securities and Exchange Commission Release No. IA-1916, 34-43758 (December 21, 2000), effective January 1, 2001, and hereby incorporated by reference) (17 CFR 279.1) in accordance with the form instructions and by filing the form with IARD for transmission to the Commissioner. The Commissioner may require additional documentation as deemed appropriate as prescribed in subsection (a)(4) of this rule.

(1) Part 2 of Form ADV shall be filed directly with the Commissioner until the form can be filed with IARD.

(2) An applicant that files an application through IARD shall complete a Customer Authorization of Disclosure of Financial Records, as set forth in subsection (i), and maintain the form in the applicant's books and records as provided in Section 25241 of the Code and Section 260.241.3 of these rules. The applicant shall provide the form to the Commissioner upon request.

(3) The applicant shall file directly with the Commissioner, a Statement of Financial Condition with worksheet that demonstrates compliance with the minimum financial requirements as prescribed in Section 260.237. 2, investment advisory contract(s), and proof of compliance with the qualification requirements prescribed in Section 260.236.

(4) The Commissioner may request additional information, documentation or detail pertaining to Form ADV to be filed directly with the Commissioner.

(b) FILING FEE: The fee for filing an initial application is \$125 as prescribed in Section 25608(q). The payment of this fee shall keep the certificate, if granted, in effect during the calendar

year during which it is granted. The applicant shall remit the fee directly with IARD in accordance with its procedures for transmission to the Commissioner. Fees are not refundable except pursuant to Government Code Sections 13140-13144.

(c) COMPLETION OF FILING: For the purposes of Section 250.51, an application for a certificate as an investment adviser is not considered filed until the required fee and all required submissions are received by the Commissioner. The filing of Form ADV with IARD does not constitute automatic approval. The applicant shall not consider the application approved until approved by the Commissioner and the approval has been received through IARD.

(d) AMENDMENTS TO FORM ADV: Any amendment to Form ADV shall be filed with IARD in accordance with the requirements of Section 260.241.4.

(e) ANNUAL RENEWAL: The annual renewal shall consist of the fee as prescribed in Section 25608(q). The renewal fee shall be filed through IARD in accordance with its procedures by the 31<sup>st</sup> of December for transmission to the Commissioner. This fee shall keep the certificate in effect for the next calendar year.

(f) SUCCESSIONS: An application for a certificate as an investment adviser pursuant to Section 25231 shall be filed in accordance with the instructions in this section if a person is succeeding to the business of an investment adviser licensed pursuant to Section 25230 or if the investment adviser is changing its form of organization or legal status, and is not eligible for registration with the Securities and Exchange Commission.

(g) SWITCHING TO SECURITIES AND EXCHANGE COMMISSION REGISTRATION: Upon registration with the Securities and Exchange Commission, the investment adviser shall file Form ADV-W (Notice of Withdrawal from Registration as an Investment Adviser, as amended by Securities and Exchange Commission Release No. IA-1916, 34-43758 (December 21, 2000), effective January



1, 2001, and hereby incorporated by reference) with IARD in accordance with instructions in Form ADV-W.

(h) DUALY CERTIFICATED BROKER-DEALERS: Subsections (b) and (e) of this rule shall not apply to a broker-dealer licensed under Section 25210 of the Code.

(i) An authorization for the disclosure of financial records shall be made on the following form:

STATE OF CALIFORNIA  
DEPARTMENT OF CORPORATIONS  
CUSTOMER AUTHORIZATION OF DISCLOSURE  
OF FINANCIAL RECORDS

Pursuant to Corporations Code Section 25241 and Government Code Sections 7470 and 7473, any financial institution, wherever situated, possessing financial records of:

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Name of (check appropriate designation(s) below)

\_\_\_\_\_ Broker-Dealer

\_\_\_\_\_ Investment Adviser

is hereby authorized to disclose to the California Department of Corporations records of the above named broker-dealer or investment adviser business whether such records relate to accounts which have been closed, accounts which are currently maintained, or accounts which are hereafter established.

This authorization is effective as of the date of execution and shall remain effective until five years after the expiration or revocation of the above-named broker-dealer or investment adviser license.

including renewals of such license.

This authorization may not be revoked.

The terms used in this authorization shall have the definitions contained in the California Right to Financial Privacy Act (Government Code Section 7460 et seq.) and the Corporate Securities Law (Corporations Code Section 25000 et seq.).

The above-named licensee has duly caused this authorization to be signed on its behalf by the undersigned, thereunto duly authorized.

Executed on \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_

\_\_\_\_\_

Name of Licensee

\_\_\_\_\_

Licensee's Department of  
Corporations File Number

By \_\_\_\_\_

\_\_\_\_\_

(Title)

STATE OF CALIFORNIA

DEPARTMENT OF CORPORATIONS

INSTRUCTIONS FOR CUSTOMER AUTHORIZATION OF DISCLOSURE OF  
FINANCIAL RECORDS

On the reverse is a Customer Authorization of Disclosure of Financial Records form.

The Commissioner of Corporations is authorized to require such authorization from certain licensees and other persons pursuant to the authority cited in the first paragraph of the form.

The form must be properly executed and submitted with the attached application for license, qualification, registration or other authority.

All information required on the form, except the signature of the person executing the form, is to be typewritten.

If the form requests a Department of Corporations file number, the applicant need only provide such number if it is known to the applicant and is the type of file number appropriate for the license, qualification, registration or other authority applied for in the attached application.

If additional authorization forms are needed, they may be obtained from any office of the Department of Corporations, or accurate copies of the form may be utilized by applicants.

(j) The following notices required by state and federal law are hereby incorporated as part of any uniform form:

NOTICES REQUIRED UNDER STATE AND FEDERAL LAW

INFORMATION PRACTICES ACT OF 1977

(California Civil Code Section 1798.17)

(a) The Department of Corporations of the State of California, Securities Regulation Division, is requesting the information specified in the application for registration, qualification, a certificate or a license.

(b) The Chief Administrative Officer, 1515 K Street, Suite 200 Sacramento, CA 95814, telephone (916) 445-5541, is responsible for the system of records and shall, upon request, inform individuals regarding the location of the Department of Corporations' records and the categories of persons who use the information in the records.

(c) The records are maintained pursuant to the Corporate Securities Law of 1968 (Corporations Code Section 25000, et seq.).

(d) The submission of all items of information is mandatory unless otherwise noted. Section 17520 of the Family Code requires the Department of Corporations to collect social security numbers from all applicants. The Privacy Act of 1974 prohibits a state agency from denying an individual any right, benefit or privilege provided by law because of the individual's refusal to disclose the individual's social security account number.

(e) Failure to provide all or any part of the information requested may preclude the Department of Corporations from approving the application.

(f) The principal purposes within the Department of Corporations for which the information is to be used are to determine whether (1) a license, qualification, registration, certificate or other authority should be accepted, granted, approved, denied, revoked or limited in any way; (2) business entities or individuals

licensed or otherwise regulated by the Department of Corporations are conducting themselves in accordance with applicable laws; and/or (3) laws administered by the Department of Corporations are being or have been violated and whether administrative action, civil action, or referral to appropriate federal, state or local law enforcement or regulatory agencies, or to a self-regulatory organization, as authorized by law, is appropriate.

(g) Any known or foreseeable disclosures of the information pursuant to subdivision (e) or (f) of Civil Code Section 1798.24 may include transfers to other federal, state, or local law enforcement or regulatory agencies, or to a self-regulatory organization, as authorized by law.

(h) Subject to certain exceptions or exemptions, the Information Practices Act grants an individual a right of access to personal information concerning the requesting individual that is maintained by the Department of Corporations.

#### FEDERAL PRIVACY ACT OF 1974 (Public Law 93-579)

In accordance with Section 7 of the Privacy Act of 1974 (found at 5 U.S.C. § 552a note (Disclosure of Social Security Number)), the following is information on whether the disclosure of a social security account number is voluntary or mandatory, by what statutory or other authority such number is solicited, and what uses will be made of it.

(1) Section 17520 of the Family Code requires the Department of Corporations to collect social security numbers from all applicants. The Privacy Act of 1974 prohibits a state agency from denying an individual any right, benefit or privilege provided by law because of the individual's refusal to disclose the individual's social security account number.

(2) A social security account number is solicited pursuant to one or more of the following authorities:

Sections 25210, 25211, 25230, 25230.1, 25231, and 25241 of the Corporations Code;

Sections 260.210, 260.211, 260.211.1, 260.231, 260.231.2, 260.236.1, and 260.236.2 of Title 10, California Code of Regulations; and Section 17520 of the Family Code.

(3) For all persons disclosing a social security account number, the number may be used, in addition to other information provided, to conduct a background investigation of the individual by the Department of Justice's Identification and Information Branch or by other federal, state or local

law enforcement agencies, or a self-regulatory organization, as authorized by law. The social security number may also be used to respond to requests for this number made by child support agencies.

THE PERMIT REFORM ACT OF 1981 (Government Code Section 15378(b))

The California Corporations Commissioner has established time periods for processing an application from the receipt of the initial application to the final application decision. An applicant can appeal directly to the Business, Transportation & Housing Agency for a timely resolution of any dispute arising from a violation of the time periods. Information regarding the appeal process can be found in Title 21, Chapter 6 of the California Code of Regulations, entitled Regulations Relating to Appeals Under the Permit Reform Act of 1981.

NOTE: Authority cited Sections ~~25231 and 25610~~, 25231, 25610 and 25612.5, Corporations Code. Reference: ~~Section 25231, Corporations Code.~~ Section 1798.17, Civil Code, Sections 25230, 25231, 25234, 25236, 25237, 25241, 25242, 25608, 25612.5 and 25613, Corporations Code, Section 17520, Family Code, Sections 7470, 7473, 7490, 13140-13144, and 15378(b), Government Code, and Section 7 of Public Law 93-579 (5 U.S.C. Section 552a note).

4. Section 260.231.2 is adopted to read:

260.231.2. Application for Investment Adviser Certificate Not Filing Through the Investment Adviser Registration Depository.

For any investment adviser that does not participate in the Investment Adviser Registration Depository ("IARD"), the application for a certificate as an investment adviser and all amendments thereto shall be filed as follows:

(a) INITIAL APPLICATION: The application for a certificate as an investment adviser pursuant to Section 25231 of the Code shall be made by completing Form ADV (Uniform Application for Investment Adviser Registration, as amended by Securities and Exchange Commission Release No. IA-1916, 34-43758 (December 21, 2000), effective January 1, 2001, and hereby incorporated by reference) (17 CFR 279.1) in accordance with the form instructions and by filing the form directly with the Commissioner at the Department of Corporations, 1515 K Street, Suite 200, Sacramento, CA 95814-4052. The notices in subsection (j) of Section 260.231 are hereby made a part of Form ADV.

(1) The applicant shall include with Form ADV a Customer Authorization of Disclosure of Financial Records (Section 260.231(i)), Statement of Financial Condition with worksheet that demonstrates compliance with the minimum financial requirements as prescribed in Section 260.237.2, investment advisory contract(s), and proof of compliance with the qualification requirements prescribed in Section 260.236.

(2) The Commissioner may request additional information, documentation or detail pertaining to Form ADV to be filed with the Commissioner.

(b) FILING FEE: The fee for filing an initial application is \$125 as prescribed in Section 25608(q). Checks shall be made payable to the DEPARTMENT OF CORPORATIONS. The payment of this fee shall keep the certificate, if granted, in effect during the calendar year during which it is granted. Fees are not refundable except pursuant to Government Code Sections 13140-13144.

(c) COMPLETION OF FILING: For the purposes of Section 250.51, an application for a certificate as an investment adviser is not considered filed until the required fee and all required submissions are received by the Commissioner. The filing of Form ADV does not constitute automatic approval. The applicant shall not consider the application approved until approved by the Commissioner.

(d) AMENDMENTS TO FORM ADV: Any amendment to Form ADV shall be filed pursuant to Section 260.241.4.

(e) ANNUAL RENEWAL: The annual renewal shall consist of the fee prescribed in Section 25608(g). The renewal fee shall be paid directly to the Commissioner by the 31st of December. This fee shall keep the certificate in effect for the next calendar year.

(f) SUCCESSIONS: An application for a certificate as an investment adviser pursuant to Section 25231 shall be filed in accordance with the instructions in this section if a person is succeeding to the business of an investment adviser licensed pursuant to Section 25230 or if the investment adviser is changing its form of organization or legal status, and is not eligible for registration with the Securities and Exchange Commission.

(g) SWITCHING TO SECURITIES AND EXCHANGE COMMISSION REGISTRATION: Upon registration with the Securities and Exchange Commission, the investment adviser shall file Form ADV-W (Notice of Withdrawal from Registration as an Investment Adviser, as amended by Securities and Exchange Commission Release No. IA-1916, 34-43758 (December 21, 2000), effective January 1, 2001, and hereby incorporated by reference) with IARD in accordance with the instructions in Form ADV-W.

(h) DUALY CERTIFICATED BROKER-DEALERS: Subsections (b) and (e) of this rule shall not apply to a broker-dealer licensed under Section 25210 of the Code.

NOTE: Authority cited: Sections 25231 and 25610, Corporations Code. Reference: 25230, 25231, 25234, 25236, 25237, 25241, 25608 and 25613, Corporations Code, and Sections 7470, 7473, 7490 and 13140 – 13144, Government Code.

5. Section 260.231.3 is adopted to read:

260.231.3. Representation of Eligibility by Investment Adviser.



(a) The filing of an application, renewal, or notice with the Investment Adviser Registration Depository ("IARD") or directly with the Commissioner shall constitute a representation by the applicant or investment adviser that the applicant or investment adviser is not ineligible to receive a certificate under Section 250.60 of these rules.

(b) An applicant subject to Section 250.60 of these rules who files an application through IARD or directly with the Commissioner may, in lieu of filing the form in Section 250.61 of these rules, complete the form and maintain the form and supporting documentation in the applicant's books and records as provided in Section 25241 of the Code and Section 260.241.3 of these rules, if the investment adviser agrees to provide the form and supporting documentation to the Commissioner upon request.

NOTE: Authority cited: Sections 25241 and 25610, Corporations Code. Reference: Sections 25231 and 25241, Corporations Code.

6. Section 260.236 is amended to read:

260.236. Qualifications of Investment Advisers; and Investment Adviser Representatives ~~and Associated Persons~~.

References to an investment adviser representative shall mean both an investment adviser representative and an associated person of an investment adviser, as those terms are defined in Section 25009.5(a) and (b) of the Code.

(a) Qualification Requirements. An investment adviser and each investment adviser representative ~~or associated person thereof (as defined in Section 25000.5 of the Code)~~ shall pass, within two years prior to the date of filing the application for an investment adviser certificate or becoming engaged as an investment adviser representative ~~or associated person~~:

(1) the Series 65/Uniform Investment Adviser Law Examination in effect on January 1, 2000

("2000 Series 65 Examination"), or

(2) the Series 7/General Securities Representative Examination ("Series 7 Examination") and the Series 66/Uniform Combined State Law Examination ("2000 Series 66 Examination").

(b) Waivers: The requirements of subsection (a) do not apply to:

(1) Any investment adviser or individual employed or engaged as an investment adviser representative ~~or associated person~~ registered, reported or licensed in any state of the United States as of December 31, 1999. However, the Commissioner may require additional examinations for any individual found to have violated the Corporate Securities Law of 1968 or the rules promulgated thereunder.

(2) Any investment adviser or investment adviser representative ~~or associated person~~ who has been actively and continuously engaged in the securities business as a broker-dealer, an agent of a broker-dealer, an investment adviser, or an investment adviser representative ~~or associated person~~, ~~or has been employed in a similar capacity in the banking or insurance industries~~ without substantial interruption (two or more years) since passing the examination(s) and who has:

(A) passed the Series 2 Examination (SECO/NASD Nonmember General Securities Examination) or passed the Series 7 Examination before January 1, 1998, or

(B) passed the Series 65 Examination or Series 66 Examination before January 1, 2000 and has passed the Series 7 Examination. ~~either:~~

~~(i) passed the Series 7 Examination, or~~

~~(ii) holds in good standing one of the following designations:~~

~~(1) Chartered Financial Analyst ("CFA") granted by the Association for Investment Management and Research;~~

~~(2) Chartered Financial Consultant ("ChFC") awarded by The American College, Bryn Mawr, Pennsylvania;~~

~~(3) Certified Financial Planner ("CFP") issued by the Certified Financial Planner Board of Standards, Inc.;~~

~~(4) Chartered Investment Counselor ("CIC") granted by the Investment Counsel Association of America; or~~

~~(5) Personal Financial Specialist ("PFS") administered by the American Institute of Certified Public Accountants.~~

(c) Exemptions. Subsection (a) shall not apply to:

(1) any individual who has been registered as an investment adviser or employed or engaged as an investment adviser representative ~~or associated person~~ in any state for two consecutive years immediately before the date of filing an application or notice pursuant to Corporations Code Section 25230(b) or 25230.1(c) in this state. This provision shall not apply to an individual using the exemption in subsection (c) ~~(3)~~ (2).

(2) any investment adviser representative employed by or engaged by an investment adviser only to offer or negotiate for the sale of investment advisory services of the investment adviser.

(3) any individual who currently holds one of the following professional designations:

(A) Chartered Financial Analyst ("CFA") granted by the Association for Investment Management and Research;

(B) Chartered Financial Consultant ("ChFC") awarded by The American College, Bryn Mawr, Pennsylvania;

(C) Certified Financial Planner ("CFP") issued by the Certified Financial Planner Board of Standards, Inc.;

(D) Chartered Investment Counselor ("CIC") granted by the Investment Counsel Association of America; or

(E) Personal Financial Specialist ("PFS") administered by the American Institute of Certified

Public Accounts.

~~(2) any individual who, on January 1, 2000, has actively and continuously been engaged in the securities business as a broker-dealer, an agent of a broker-dealer, an investment adviser, or an investment adviser representative or associated person, or has been employed in a similar capacity in the banking or insurance industries, without substantial interruption (two or more years) since passing the qualifying examination(s).~~

~~(3) any investment adviser representative or associated person employed by or engaged by an investment adviser only to offer or negotiate for the sale of investment advisory services of the investment adviser.~~

~~(4) any individual who currently holds one of the following professional designations: CFA, ChFC, CFP, CIC, or PFS.~~

(d) An individual who has not been registered in any state for a period of two years shall be required to comply with the examination requirements of this rule. This provision shall not apply to an individual using the exemption in subsection ~~(e)(2), (e)(3), or (e)(4)~~ (c)(2) or (c)(3).

NOTE: Authority cited: Sections 25236(a) and 25610, Corporations Code. Reference: Sections 25230, 25230.1, and 25236, Corporations Code.

7. Section 260.236.1 is adopted to read:

260.236.1. Reporting Requirements for Investment Adviser Representatives of Investment Advisers Filing Through the Investment Adviser Registration Depository.

(a) The procedures set forth in this subsection are applicable to investment advisers licensed pursuant to Section 25230 of the Code filing through the Investment Adviser Registration Depository ("IARD"). References to an investment adviser representative shall mean both an investment adviser representative and an associated person of an investment adviser, as those terms are defined in

Section 25009.5(a) of the Code.

(1) Upon employment of an individual as an investment adviser representative, the investment adviser shall:

(A) Obtain a properly executed application for registration, Form U-4 (Uniform Application for Securities Industry Registration or Transfer, Rev. Form U-4 (03/2002), by the National Association of Securities Dealers, Inc. through its wholly owned subsidiary, NASD Regulation, Inc., approved by the Securities and Exchange Commission in Release No.34-45531 (March 11, 2002), and hereby incorporated by reference),

(B) Obtain for its records evidence that such investment adviser representative meets the qualification requirements of Section 260.236 of these rules, and

(C) Have the responsibility and duty to ascertain by reasonable investigation the good character, business reputation, qualifications, and experience of an individual upon employment or engagement as an investment adviser representative. Where an individual has previously been reported to the Central Registration Depository ("CRD"), the investment adviser shall also obtain and review a copy of Form U-5 (Uniform Termination Notice for Securities Industry Registration, Rev. Form U-5 (03/2002), by the National Association of Securities Dealers, Inc. through its wholly owned subsidiary, NASD Regulation, Inc., approved by the Securities and Exchange Commission in Release No.34-45531 (March 11, 2002), and hereby incorporated by reference) filed with CRD by such individual's most recent previous employer, together with any amendments thereto.

The investment adviser shall conduct the investigation required by this section no later than thirty (30) days following the filing of Form U-4 with CRD, or demonstrate that it has made a reasonable effort to comply with this section. Upon completion of the investigation, the investment adviser shall take whatever action is deemed appropriate in accordance with sound business practice and the protection of investors.

Evidence of compliance with Section 260.236 and investigation of the investment adviser representative shall be maintained as a part of the records of the investment adviser as required by Section 260.241.3 of these rules.

(2) Upon employment or engagement of an individual as an investment adviser representative, the investment adviser shall file Form U-4 with CRD in accordance with its procedures, and pay the fee prescribed by Section 25608(p) for transmission to the Commissioner. Form U-4, including any Disclosure Reporting Page(s), shall be completed in accordance with the form instructions.

The filing of Form U-4 with CRD does not constitute an automatic “approval” of the filing by the Commissioner. Investment advisers shall not consider an investment adviser representative “registration” with CRD approved until approved by the Commissioner and the approval has been received by CRD. If requested by the Commissioner, additional information, documentation or detail pertaining to Form U-4 or the investment adviser representative’s compliance with the qualification requirements shall be filed directly with the Commissioner within 15 days from the date of the request. In accordance with Section 250.16, Form U-4 may be abandoned if the Commissioner does not receive the requested information within the time prescribed. The Commissioner shall “reject” with CRD an abandoned Form U-4.

(3) Within thirty (30) days of any changes to the information contained in Form U-4, an amendment to Form U-4 shall be filed with CRD. If Form U-4 is being amended due to a disciplinary occurrence, a copy of the amendment shall be filed with the Commissioner upon request.

(4) Within thirty (30) days after the termination of an individual as an investment adviser representative, Form U-5 shall be filed with CRD in accordance with the form instructions. Form U-5 shall clearly state the reason(s) for termination. If an investment adviser representative has been terminated for cause, Form U-5 shall, upon request, be filed directly with the Commissioner.

An investment adviser shall be responsible for the acts, practices, and conduct of an

investment adviser representative in connection with acting as an investment adviser representative on its behalf until such time as the investment adviser representative has been terminated and Form U-5 has been filed with CRD. No civil liability in favor of any private party shall arise against any person as a result of this provision, except as expressly provided in the Code.

(b) The procedures set forth in this subsection are applicable to investment adviser representatives subject to the provisions of Section 25230.1(c) of the Code.

(1) The reporting of an investment adviser representative shall be made by completing Form U-4 in accordance with the form instructions and by filing Form U-4 with CRD in accordance with its procedures, and by paying the fee prescribed by Section 25608.1(d) for transmission to the Commissioner.

The filing of Form U-4 with CRD does not constitute an automatic “approval” of the filing by the Commissioner. An investment adviser representative “registration” with CRD shall not be considered approved until approved by the Commissioner and the approval has been received by CRD. If requested by the Commissioner, additional information, documentation or detail pertaining to Form U-4 or the investment adviser representative’s compliance with the qualification requirements shall be filed directly with the Commissioner within 15 days from the date of the request. In accordance with Section 250.16, Form U-4 may be abandoned if the Commissioner does not receive the requested information within the time prescribed. The Commissioner shall “reject” with CRD an abandoned Form U-4.

(2) Within thirty (30) days of any changes to the information contained in Form U-4, an amendment to Form U-4 shall be filed with CRD. If Form U-4 is amended due to a disciplinary occurrence, a copy of the amendment shall be filed directly with the Commissioner upon request.

(3) Within thirty (30) days after the termination of an individual as an investment adviser representative, Form U-5 shall be filed with IARD in accordance with the form instructions. Form U-5

shall clearly state the reason(s) for termination. If an investment adviser representative is terminated for cause, Form U-5 shall, upon request, be filed directly with the Commissioner.

(c) The notices in subsection (j) of Section 260.231 are hereby made part of Form U-4 and Form U-5.

NOTE: Authority cited: Sections 25230, 25230.1 and 25610, Corporations Code. Reference: Sections 25230, 25230.1, 25236, 25241, 25510, 25608(p) and 25612.5, Corporations Code.

8. Section 260.236.2 is adopted to read:

260.236.2. Reporting Requirements for Investment Adviser Representatives of Investment Advisers Not Filing Through the Investment Adviser Registration Depository.

References to an investment adviser representative shall mean both an investment adviser representative and an associated person of an investment adviser, as those terms are defined in Section 25009.5(a) of the Code. The procedures set forth in this section are applicable to investment advisers licensed pursuant to Section 25230 of the Code that do not participate in the Investment Adviser Registration Depository ("IARD").

(a) Upon employment of an individual as an investment adviser representative, the investment adviser shall:

(1) Obtain a properly executed application for registration, Form U-4 (Uniform Application for Securities Industry Registration or Transfer, Rev. Form U-4 (03/2002), by the National Association of Securities Dealers, Inc. through its wholly owned subsidiary, NASD Regulation, Inc., approved by the Securities and Exchange Commission in Release No.34-45531 (March 11, 2002), and hereby incorporated by reference).

(2) Obtain for its records evidence that such investment adviser representative meets the qualification requirements of Section 260.236 of these rules, and



(3) Have the responsibility and duty to ascertain by reasonable investigation the good character, business reputation, qualifications, and experience of an individual upon employment or engagement as an investment adviser representative. Where an individual has previously been reported to the Central Registration Depository ("CRD"), the investment adviser shall also obtain and review a copy of Form U-5 (Uniform Termination Notice for Securities Industry Registration, Rev. Form U-5 (03/2002), by the National Association of Securities Dealers, Inc. through its wholly owned subsidiary, NASD Regulation, Inc., approved by the Securities and Exchange Commission in Release No.34-45531 (March 11, 2002), and hereby incorporated by reference), filed with CRD by such individual's most recent previous employer, together with any amendments thereto.

The investment adviser shall conduct the investigation required by this section no later than thirty (30) days following the filing of Form U-4 with the Commissioner, or demonstrate that it has made a reasonable effort to comply with this section. Upon completion of the investigation, the investment adviser shall take whatever action is deemed appropriate in accordance with sound business practice and the protection of investors.

Evidence of compliance with Section 260.236 and investigation of the investment adviser representative shall be maintained as a part of the records of the investment adviser as required by Section 260.241.3 of these rules.

(b) Upon employment or engagement of an individual as an investment adviser representative, the investment adviser shall file:

(1) Form U-4 and pay the fee prescribed by Section 25608(p). Form U-4, including any Disclosure Reporting Page(s), shall be completed in accordance with the form instructions.

(2) Proof of compliance with the qualification requirements as prescribed in California Code of Regulations, 10 CCR Section 260.236, unless proof may be obtained from CRD.

The filing of Form U-4 with the Commissioner does not constitute an automatic “approval” of the filing by the Commissioner. Investment advisers shall not consider an investment adviser representative “registration” approved until approved by the Commissioner and the investment adviser has been notified of the approval.

If requested by the Commissioner, additional information, documentation or detail pertaining to Form U-4 or the investment adviser representative’s compliance with the qualification requirements shall be filed with the Commissioner within 15 days from the date of the request. In accordance with Section 250.16, Form U-4 may be abandoned if the Commissioner does not receive the requested information within the time prescribed. The Commissioner shall “reject” an abandoned Form U-4.

(c) Within thirty (30) days of any change to the information contained in Form U-4, an amendment to Form U-4 shall be filed with the Commissioner.

(d) Within thirty (30) days after the termination of an individual as an investment adviser representative, Form U-5 shall be filed with the Commissioner. Form U-5 shall clearly state the reason(s) for termination.

An investment adviser shall be responsible for the acts, practices, and conduct of an investment adviser representative in connection with acting as an investment adviser representative on its behalf until such time as the investment adviser representative has been terminated and Form U-5 has been filed with the Commissioner. No civil liability in favor of any private party shall arise against any person as a result of this provision, except as expressly provided in the Code.

(e) The notices in subsection (j) of Section 260.231 are hereby made a part of Form U-4 and Form U-5.

NOTE: Authority cited: Sections 25230, 25230.1 and 25610, Corporations Code. Reference: Sections 25230, 25230.1, 25236, 25241, 25510, and 25608(p), Corporations Code.

9. Section 260.237.1 is amended to read:

260.237.1 ~~Capital Requirements~~ Alternative Minimum Financial Requirements (Until 1/1/05).

An investment Adviser licensed prior to 03/01/03 may comply with either the minimum financial requirements in this section or in Section 260.237.2 until January 1, 2005, at which time this section shall become inoperative and an investment adviser shall comply with the minimum financial requirements in Section 260.237.2.

(a) No investment adviser that has any power of attorney from any investment advisory client to execute transactions or has regular or periodic custody of any of its investment advisory clients' securities or funds, including fees for periodic publications or other investment advisory services paid six months or more in advance of services, shall permit its total aggregate indebtedness to exceed 500% of its tangible net capital or permit its current aggregate indebtedness to exceed its current net capital; and,

(1) The investment adviser shall at all times have and maintain tangible net capital of not less than \$25,000.00; or,

(2) If the investment adviser has any power of attorney from any investment advisory client to execute transactions and does not have regular or periodic custody or possession of any of its investment advisory clients' securities or funds, except the receipt of prepaid subscriptions for periodic publications, or other investment advisory services, it shall at all times have and maintain tangible net capital of not less than \$5,000.00; or,

(3) If the investment adviser receives fees for periodic publications or other investment advisory services paid six months or more in advance of the services and it does not have the authority described in subsection (a)(2) of this section or does not otherwise have regular or periodic custody or possession of any of its investment advisory clients' securities or funds, it shall at all times

have and maintain tangible net capital of not less than \$1,000.00.

(b) Exemptions.

(1) The provisions of subsection (a) of this section shall not apply to any investment adviser licensed as a broker-dealer under Section 25210 of the Code and subject to the capital requirements of Section 260.216.12 of these rules.

(2) The Commissioner may, upon written application, exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any investment adviser who satisfies the Commissioner that, because of the special nature of the investment adviser's business, its financial position, and the safeguards it has established for the protection of clients' funds and securities, it is not necessary in the public interest or for the protection of investors to subject the particular investment adviser to the provisions of this section.

(c) Definitions. For the purposes of subsection (a) of this section, all financial information shall be determined in accordance with generally accepted accounting principles; and,

(1) The term "tangible net capital" shall mean the net worth of the investment adviser, after excluding

(A) intangible assets and

(B) indebtedness which is subordinated to the claims of creditors pursuant to a satisfactory subordination agreement as hereinafter defined;

(2) The term "total aggregate indebtedness" shall mean the total money liabilities of the investment adviser including all unearned income and other deferred credits and excluding indebtedness which is subordinated to the claims of creditors pursuant to a satisfactory subordination agreement, as hereinafter defined;

(3) The term "current net capital" shall mean the current assets of the investment adviser and

(A) includes all unpledged, readily marketable securities and

(B) excludes all advances, loans or other receivables from any subsidiary, holding company, parent, or other affiliate or the officers, directors or controlling persons of such entities or the investment adviser;

(4) The term “current aggregate indebtedness” shall mean the sum of

(A) 20% of the deferred or unearned income from receipts or revenues received on subscriptions for future periods and

(B) the total of all other current liabilities;

(5) The term “satisfactory subordination agreement” shall mean a written agreement duly executed by the investment adviser and the lender which effectively subordinates any right of the lender to demand or receive payment or return of the cash or securities loaned to the claims of all present and future creditors of the investment adviser. The agreement shall provide that the cash or securities are loaned for a term of not less than one year and shall be in the form approved by the Commissioner.

(d) The computation of “total aggregate indebtedness,” “tangible net capital,” “current net capital,” and “current aggregate indebtedness” shall include the consolidation of assets and liabilities of any subsidiary or affiliate for which it guarantees, endorses or assumes, directly or indirectly, the obligations or liabilities. The assets and liabilities of any subsidiary or affiliate whose liabilities and obligations have not been guaranteed, endorsed, or assumed, directly or indirectly, by the investment adviser shall not be so consolidated and the investment shall be valued at the underlying tangible value of the equity in such subsidiary or affiliate.

NOTE: Authority cited: Sections 25237 and 25610, Corporations Code. Reference: Section 25237, Corporations Code.

10. Section 260.237.2 is adopted to read:

260.237.2. Minimum Financial Requirements.

An investment adviser licensed prior to 03/01/03 may comply with either the minimum financial requirements in this section or in Section 260.237.1 until January 1, 2005, at which time Section 260.237.1 shall become inoperative and an investment adviser shall comply with the minimum financial requirements in this section.

(a) Every investment adviser who has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000, and every investment adviser who has discretionary authority over client funds or securities but does not have custody of client funds or securities, shall maintain at all times a minimum net worth of \$10,000.

(b) Every investment adviser who accepts prepayment of more than \$500 per client and six or more months in advance shall maintain at all times a positive net worth.

(c) Unless otherwise exempted, as a condition of the right to continue to transact business in this state, every investment adviser shall, by the close of business on the next business day following the discovery that the investment adviser's net worth is less than the minimum required, notify the Commissioner that the investment adviser's net worth is less than the minimum required. After transmitting such notice, by the close of business on the next business day each investment adviser shall file a report with the Commissioner of its financial condition, including the following:

(1) A trial balance of all ledger accounts;

(2) A statement of all client funds or securities which are not segregated;

(3) A computation of the aggregate amount of client ledger debit balances; and

(4) A statement as to the number of client accounts.

(d) For purposes of this rule, the term "net worth" shall mean an excess of assets over

liabilities, as determined by generally accepted accounting principles, but shall not include as assets: prepaid expenses (except as to items properly classified as current assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, and all other assets of intangible nature; home, home furnishings, automobile(s), and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

(e) For purposes of this rule, a person will be deemed to have custody if said person directly or indirectly holds client funds or securities, has any authority to obtain possession of them, or has the ability to appropriate them.

(f) For purposes of this rule, an investment adviser shall not be deemed to be exercising discretion when it places trade orders with a broker-dealer pursuant to a third party trading agreement if

(1) the investment adviser has executed a separate investment adviser contract exclusively with its client which acknowledges that the investment adviser must secure client permission prior to effecting securities transactions for the client in the client's brokerage account(s), and

(2) the investment adviser in fact does not exercise discretion with respect to the account, and

(3) a third party trading agreement is executed between the client and a broker-dealer which specifically limits the investment adviser's authority in the client's broker-dealer account to the placement of trade orders and deduction of investment adviser fees.

(g) The Commissioner may require that a current appraisal be submitted in order to establish the worth of any asset.

(h) Every investment adviser that has its principal place of business in a state other than this state shall maintain only such minimum capital as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is licensed in such state and is in compliance with such state's minimum capital requirements.

(i) This section shall not apply to an investment adviser that has secured a certificate as a broker-dealer from the Commissioner under Section 25210 of the Code.

(j) For purposes of subsection (c) this rule, if the failure to discover that an investment adviser's net worth is less than the minimum required is the result of the investment adviser's failure to keep true, accurate and current the books and records required under Section 260.241.3, the investment adviser will be deemed to have discovered that the investment adviser's net worth is less than the minimum required by this section.

NOTE: Authority cited: Sections 25237 and 25610, Corporations Code. Reference: Sections 25237 and 25613, Corporations Code.

11. Section 260.240 is amended to read:

260.240. Consent to Service of Process.

~~The consent to service of process required by Section 25240 of the Code shall be in the form set out in Section 260.165 of these rules.~~

(a) An investment adviser's electronic signature on the Execution Page of Form ADV (Uniform Application for Investment Adviser Registration, as amended by Securities and Exchange Commission Release No. IA-1916, 34-43758 (December 21, 2000), effective January 1, 2001, and hereby incorporated by reference) (17 CFR 279.1), filed with the Investment Adviser Registration Depository ("IARD"), shall constitute the consent to service of process required under Section 25240 of the Code. If an investment adviser has not filed Form ADV with IARD, then the consent to service



of process required by Section 25240 of the Code shall be the investment adviser's written signature on the Execution Page of Form ADV filed with the Commissioner.

(b) A broker-dealer's electronic signature on the Execution Page of Form BD (Uniform Application for Broker-Dealer Registration, as amended by Securities and Exchange Commission Release No. 41594 (July 2, 1999), effective July 30, 1999, and hereby incorporated by reference) (17 CFR 249.501) in the Central Registration Depository ("CRD") shall constitute the consent to service of process required under Section 25240 of the Code. If the broker-dealer does not file its Form BD with CRD, then the consent to service of process required by Section 25240 of the Code shall be the broker-dealer's written signature on the Execution Page of Form BD filed with the Commissioner.

NOTE: Authority cited: Sections 25240, 25610, and 25612.5, Corporations Code. Reference: Section 1633.7, Civil Code and Sections 25211, 25231, 25240, and 25612.5, Corporations Code.

12. Section 260.241.2 is amended to read:

260.241.2. Reports by Broker-Dealers and Investment Advisers.

(a) General Rule. Subject to the provisions of subsection (c) of this section, every licensed broker-dealer, and every licensed investment adviser subject to the provisions of Section 260.237.1 or Section 260.237.2, as applicable, of these rules, shall file an annual financial report containing the information required by a form or forms to be supplied or approved by the Commissioner, as follows:

(1) The annual report for broker-dealers shall contain a Statement of Financial Condition, a Statement of Income, a Statement of Changes in Stockholders' or Partners' or Sole Proprietor's Equity and a Statement of Changes in Liabilities Subordinated to Claims of General Creditors. Supporting schedules shall include a Schedule of Securities, a Computation of Net Capital under Rule 15c3-1 under the Securities Exchange Act of 1934 (17 CFR 240.15c3-1), a Computation for Determination of the Reserve Requirement under Rule 15c3-3(a) (17 CFR 240.15c3-3(a)),

Information Relating to the Possession or Control Requirements under Rule 15c3-3 (17 CFR 240.15c3-3), and shall be filed with the annual report. The statements and schedules required in the annual report shall be in a format which is consistent with the statements and schedules specified by Section 260.241.2.

(2) The annual report for investment advisers shall contain a Statement of Financial Condition. Supporting schedules shall contain computations of net capitals, aggregate indebtedness and ratios required under Section 260.237.1 or minimum financial requirements required under Section 260.237.2, as applicable, and the certificate of the accountant required under subsection (e) of Section 260.237 of these rules.

(3) The financial statements included in the annual report shall be prepared in accordance with generally accepted accounting principles and shall be audited by either an independent certified public accountant or independent public accountant; provided, however, the financial statements need not be audited if:

The broker-dealer or investment adviser has not held or accepted custody of funds and securities for or owed money or securities to customers or clients during the period covered by the report; and

(A) if a broker-dealer, the securities business has been limited to soliciting subscriptions for securities of an issuer and the broker-dealer promptly forwarded the subscriptions to the issuer, underwriter, sponsor or other distributor of the securities and received checks, drafts, notes or other evidence of indebtedness payable solely to the issuer, underwriter, sponsor or distributor who delivered the securities purchased directly to the subscriber; and

(B) if an investment adviser, the investment adviser only has discretionary authority over client funds or securities or has taken only limited powers of attorney to execute transactions on behalf of its clients; or

(C) as otherwise permitted by the Commissioner.

(4) The reports shall be filed as of a date within each calendar year, but as of the same date in each year except that the first report shall be as of a date not more than 12 months after the date the licensee's certificate first becomes effective and except that the date may be changed with the approval of the Commissioner upon any change in the fiscal year of the licensee.

(5) The reports shall be filed not more than 90 ~~60~~ days after the date as of which the reports purport to reflect the financial condition and results of operations of the broker-dealer or investment adviser.

(6) Whenever the Commissioner so requires, a financial report shall be filed as of the date, and within the period, and in the form specified in the Commissioner's request. The Commissioner may require the financial report to be audited.

(b) Verification of Reports. Attached to each financial report filed pursuant to subsection (a) of this section shall be a verification that, to the best knowledge and belief of the person making the verification,

(1) the financial statements and supporting schedules are true and correct, and

(2) neither the broker-dealer nor any partner, officer, or director thereof has any proprietary interest in any account classified solely as that of a customer. If the broker-dealer or investment adviser is a sole proprietorship, the verification shall be made by the proprietor; if a partnership, by a general partner; or if a corporation, by a duly authorized officer.

(c) Exemption. The provisions of subsection (a) of this section shall not apply to any broker-dealer registered under the Securities Exchange Act of 1934 (15 USC 78a et seq.), provided that the broker-dealer files with, or transmits for filing to, the Commissioner a copy of the annual reports required under Rule 17a-5(d) (17 CFR 240.17a-5(d)) (or any form in substitution therefor) filed with and accepted by the Securities and Exchange Commission, verified as provided in subsection (b) of

this section, not later than the date on which the reports are required to be filed with the Securities and Exchange Commission.

(d) Interim Reports.

(1) Every broker-dealer subject to the provisions of Section 260.216.12 of these rules shall file a report furnished or approved by the Commissioner within 15 days after

(A) its net capital is reduced to 120% of its required minimum net capital or

(B) if the broker-dealer computes its net capital pursuant to 17 CFR 240.15c3-1(c), its aggregate indebtedness is in excess of 1200% of its net capital or

(C) if the broker-dealer computes its net capital pursuant to 17 CFR 240.15c3-1(f), its net capital is reduced to less than 5% of the aggregate debit items computed in accordance with 17 CFR 240.15c3-3, Exhibit A.

(2) (A) Every investment adviser subject to the provisions of Section 260.237.1 of these rules shall file a report furnished or approved by the Commissioner within 15 days after:

~~(A)~~ 1. its tangible net capital is reduced to less than 120% of its required minimum tangible net capital or

~~(B)~~ 2. its total aggregate indebtedness is in excess of 400% of its tangible net capital.

(B) Every investment adviser subject to the provisions of Section 260.237.2 of these rules shall file a report furnished or approved by the Commissioner within 15 days after its net worth is reduced to less than 120% of its required minimum net worth.

(3) The report required by subsections (d) (1) and (d)(2) of this section shall be as of a date within the 15 day period. Additional reports shall be filed on the same form within 10 days after each subsequent monthly accounting period until three successive months have elapsed during which

none of the conditions specific in subsection (d)(1) or (d)(2) of this section have occurred.

(e) Confidential Treatment.

All of the statements filed pursuant to subsections (a) and (c) shall be public, except that if the Statement of Financial Condition is bound separately from the balance of the annual financial statements, the balance of the financial statements and the individual reports meeting the requirements of subsection (a) or Rule 17a-5(d) (17 CFR 240.17a-5(d)) filed pursuant to subsection (c) shall be confidential, except in cases where the Commissioner determines that it is in the public interest to direct otherwise.

NOTE: Authority cited: Sections 25241 and 25610, Corporations Code. Reference: Section 25241; and 25613, Corporations Code.

12. Section 260.241.3 is amended to read:

260.241.3. Books and Records to Be Maintained by Investment Advisers.

(a) Every licensed investment adviser shall make and keep true, accurate and current the following books and records relating to such person's investment advisory business:

(1) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

(2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

(3) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from a client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. Such memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment

adviser who recommended the transaction to the client and the person who placed such order; and shall show the account for which entered, the date of entry, and the bank or broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of a power of attorney shall be so designated.

(4) All check books, bank statements, cancelled checks and cash reconciliation's of the investment adviser.

(5) All bills or statements (or copies thereof), paid or unpaid, relating to the business of the investment adviser as such.

(6) All trial balances, financial statements, worksheets that contain computations of minimum financial requirements required under Section 260.237.1 or Section 260.237.2, as applicable, of these rules, and internal audit working papers relating to the business of such investment adviser.

(7) Originals of all written communications received and copies of all written communications sent by such investment adviser relating to (i) any recommendation made or proposed to be made and any advice given or proposed to be given, (ii) any receipt, disbursement or delivery of funds or securities, or (iii) the placing or execution of any order to purchase or sell any security; provided, however, that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser; and provided that if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 10 persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent, except that if such notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of such notice, circular or advertisement a memorandum describing the list and the source thereof.

(8) A list or other record of all accounts in which the investment adviser is vested with any

power of attorney with respect to the funds, securities or transactions of any client.

(9) All powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser, or copies thereof.

(10) All written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser as such.

(11) A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication recommending the purchase or sale of a specific security, which the investment adviser circulates or distributes, directly or indirectly, to 10 or more persons (other than investment supervisory clients or persons connected with such investment adviser), and if such notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication does not state the reasons for such recommendation, a memorandum of the investment adviser indicating the reasons therefor.

(12) A record of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and (ii) transactions in securities which are direct obligations of the United States. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar

quarter in which the transaction was effected.

For purposes of this subsection (12):

(A) The term "advisory representative" shall mean any partner, officer or director of the investment adviser; any employee who makes any recommendation, who participates in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which recommendation shall be made; any employee who, in connection with such person's duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of such recommendations or of the information concerning such recommendations; and any of the following persons who obtain information concerning securities recommendations being made by such investment adviser prior to the effective dissemination of such recommendations or of the information concerning such recommendations: (i) any person in a control relationship to the investment adviser, (ii) any affiliated person of such controlling person and (iii) any affiliated person of such affiliated person.

(B) The term "control" shall mean the power to exercise a controlling influence over the management and policies of a person, unless such power is solely the result of an official position with such person.

An investment adviser shall not be deemed to have violated the provisions of this subsection (12) because of its failure to record securities transactions of any advisory representative if it establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(13) Notwithstanding the provisions of subsection (12) above, where the investment adviser is primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of such investment adviser



has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and (ii) transactions in securities which are direct obligations of the United States. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

For the purposes of this subsection (13):

(A) The term "advisory representative," when used in connection with a company primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients, shall mean any partner, officer, director or employee of the investment adviser who makes any recommendation, who participates in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which recommendation shall be made, or who, in connection with its duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of such recommendations or of the information concerning such recommendations; and any of the following persons who obtain information concerning securities recommendations being made by such investment adviser prior to the effective dissemination of such recommendations of the information concerning such recommendations: (i) any person in a control relationship to the investment adviser, (ii) any affiliated person of such controlling person and (iii) any affiliated person of such affiliated person.

(B) The term "control" shall mean the power to exercise a controlling influence over the management and policies of a person, unless such power is solely the result of an official position with such person.

(C) An investment adviser is "primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients" when, for each of its most recent three fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived, on an unconsolidated basis, more than 50% of (i) its total sales and revenues, and (ii) its income (or loss) before income taxes and extraordinary items, from other business or businesses.

An investment adviser shall not be deemed to have violated the provisions of this subsection (13) because of such person's failure to record securities transactions of any advisory representative if it establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(14) A properly completed and executed Customer Authorization of Disclosure of Financial Records (Section 260.231(i)).

(15) If the investment adviser is an individual owner (e.g., sole proprietorship), a properly completed and executed Statement of Citizenship, Alienage, and Immigration Status form (Section 250.61) and any documents establishing proof thereof.

(16) Evidence of compliance with Section 260.236 and the investigation of each investment adviser representative.

(17) For investment advisers filing through IARD, copies, with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form U-4.

(b) If a licensed investment adviser has custody or possession of securities or funds of any client, the records required to be made and kept under Subsection (a) above shall include:

(1) A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for such accounts and all other debits and credits to such accounts.

(2) A separate ledger account for each such client showing all purchases, sales, receipts and deliveries of securities, the date and price of each such purchase or sale, and all debits and credits.

(3) Copies of confirmations of all transactions effected by or for the account of any such client.

(4) A record for each security in which any such client has a position, which record shall show the name of each such client having any interest in such security, the amount of interest of each such client, and the location of each such security.

(c) Every licensed investment adviser who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:

(1) Records showing separately for each such client the securities purchased and sold, and the date, amount and price of each such purchase or sale.

(2) For each security in which any such client has a current position, information from which the investment adviser can promptly furnish the name of each such client, and the current amount of the interest of such client.

(d) Any books or records required by this section may be maintained by the investment adviser in such manner that the identity of any client to whom such investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

(e) (1) All books and records required to be made under the provisions of subsections (a) to (c)(1), inclusive, of this section shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser.

(2) Charter documents, 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 years after termination of the enterprise.

(f) A licensed investment adviser, 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 section for the remainder of the period specified in this section, and shall notify the Commissioner in writing of the exact address where such books and records will be maintained during such period.

(g) (1) The records required to be maintained and preserved pursuant to this rule may be produced or reproduced by photograph on film or, as provided in paragraph (g) (2) below, on magnetic disk, tape or other computer storage medium, and be maintained and preserved for the required time in that form. If records are produced or reproduced by photographic film or computer storage medium, the investment adviser shall:

(A) arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record;

(B) be ready at all times to promptly provide any facsimile enlargement of film or computer printout or copy of the computer storage medium which the Commissioner, the Commissioner's examiners or other representatives of the Commissioner may request;

(C) store separately from the original one other copy of the file or computer storage medium for the time required;

(D) with respect to records stored on computer storage medium, maintain procedures for maintenance and preservation of and access to, records so as to reasonably safeguard records from loss, alteration, or destruction, and

(E) with respect to records stored on photographic film, at all times have available for

examination by the Commissioner, the Commissioner's examiners or other representatives of the Commissioner's records pursuant to Section 25241 of the Code facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

(2) Pursuant to subsection (g) (1) an adviser may maintain and preserve on computer tape or disk or other computer storage medium records which, in the ordinary course of the adviser's business, are created by the adviser on electronic media or are received by the adviser solely on electronic media or by electronic data transmission.

(h) (1) Any book or other record made, kept, maintained and preserved in compliance with sections 260.241 and 260.241.1 of these rules, which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this section, shall satisfy the requirements of this section.

(2) A record made and kept pursuant to any provision of subsection (a) of this section, which contains all the information required under any other provision of subsection (a), need not be maintained in duplicate in order to meet the requirements of the other provision of subsection (a) of the section.

(i) As used in this section, the terms "power of attorney" and "discretionary authority" do not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

(j) Any investment adviser who is subject to the minimum financial capital requirements of Section 260.237.1 or Section 260.237.2, as applicable, shall, in addition to the records otherwise required under this section, maintain a record of the proof of money balances of all ledger accounts in the form of trial balances and a record of the computations of net capitals and aggregate indebtedness pursuant to Section 260.237.1 of these rules or minimum net worth pursuant to Section

230.237.2 of these rules (as of the trial balance date). The trial balances and computations shall be prepared currently at least once a month.

NOTE: Authority cited: Sections 25241 and 25610, Corporations Code. Reference: Sections 25230, 25236, 25237, 25241, and 25613, Corporations Code.

13. Section 260.241.4 is amended to read:

260.241.4. Notice of Changes by Broker-Dealer and Investment Adviser.

(a) Each licensed broker-dealer and each licensed investment adviser shall, upon any change in the information contained in its application for a certificate (other than financial information contained therein) promptly file an amendment to such application setting forth the changed information (and in any event within 30 days after the change occurs).

(b) ~~Effective February 1, 1989, each~~ A licensed broker-dealer ~~who~~ that is a member of the National Association of Securities Dealers Regulation, Inc. shall file changed information contained in its Form BD ~~and Schedules A or B or C and D and thereto~~ and any schedules thereto (Uniform Application for Broker-Dealer Registration, as amended by Securities and Exchange Commission Release No. 41594 (July 2, 1999), effective July 30, 1999, and hereby incorporated by reference) (17 CFR 249.501), through the Central Registration Depository ("CRD") in accordance with its procedures for transmission to the Commissioner. If the broker-dealer does not participate in CRD, the broker-dealer shall file changed information directly with the Commissioner.

(c) ~~Each~~ A licensed broker-dealer shall notify the Commissioner of the employment of any new agent in California and of the termination of employment of any agent in California in accordance with Section 260.210.

(d) A licensed investment adviser shall file changed information contained in its Form ADV (Uniform Application for Investment Adviser Registration, as amended by Securities and Exchange

Commission Release No. IA-1916, 34-43758 (December 21, 2000), effective January 1, 2001, and hereby incorporated by reference) (17 CFR 279.1) with the Investment Adviser Registration Depository ("IARD") in accordance with its procedures for transmission to the Commissioner. If the investment adviser does not participate in IARD, the investment adviser shall file changed information directly with the Commissioner.

(e) A licensed investment adviser shall file an annual updating amendment, in accordance with the instruction in Form ADV, with IARD in accordance with its procedures for transmission to the Commissioner within ninety (90) days of the end of the investment adviser's fiscal year. If the investment adviser does not participate in IARD, the investment adviser shall file a complete Form ADV that includes changed information directly with the Commissioner.

(f) A licensed investment adviser shall notify the Commissioner of the employment or engagement of any new investment adviser representative, as defined in Section 25009.5(a) of the Code and the termination thereof in accordance with Section 260.236.1 or Section 260.236.2.

NOTE: Authority cited: Sections 25241 and 25610, Corporations Code. Reference: Section 1798.18, Civil Code and Sections 25210, 25230, 25241, and 25612.5, Corporations Code.

14. Section 260.242 is amended to read:

~~260.242. Surrender of Certificate as a Broker-Dealer or Investment Adviser.~~

~~Effective February 1, 1989:~~

~~(a) An application to surrender a certificate as a broker-dealer shall be filed on Form BDW (Uniform Request for Broker-Dealer Withdrawal) (17 CFR 249.501a). Each licensed broker-dealer who is a member of the National Association of Securities Dealers, Inc. shall file Form BDW through the Central Registration Depository in accordance with its procedures for transmission to the Commissioner. All other broker-dealers shall file Form BDW directly with the Commissioner.~~

(b) An application to surrender a certificate as an investment adviser shall be made on the following form:

File No. \_\_\_\_\_

Date of Application \_\_\_\_\_

~~COMMISSIONER OF CORPORATIONS  
STATE OF CALIFORNIA  
APPLICATION TO SURRENDER CERTIFICATE  
AS AN INVESTMENT ADVISER  
PURSUANT TO SECTION 25242 OF THE  
CORPORATE SECURITIES LAW OF 1968~~

\_\_\_\_\_  
1. Full name of applicant: (If individual, \_\_\_\_\_ Social Security  
give last, first, middle name.) \_\_\_\_\_ or IRS Tax No.

\_\_\_\_\_  
2. Name under which business is conducted, if different from above:

\_\_\_\_\_  
3. Address of actual \_\_\_\_\_ No. and Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code  
—location of principal  
—place of business:

\_\_\_\_\_  
4. State the reasons in full for surrender of certificate:

\_\_\_\_\_  
5. Does applicant have custody or possession of any funds or securities of clients?



Yes  No

~~—If answer is “yes,” furnish all of the following information on funds or securities of clients in custody or possession of applicant:~~

~~(a) Amount of Funds: \_\_\_\_\_ \$ \_\_\_\_\_~~

~~(b) Market Value of Securities: \_\_\_\_\_ \$ \_\_\_\_\_~~

~~(c) Arrangement made for return of funds and securities:~~

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~~6. Does applicant owe any money to any client for the unexpired portion of prepaid subscription or other fees for investment advisory services or publications, or owe money to any client for any reason other than as stated in answer to question 5.? \_\_\_\_\_  Yes  No~~

~~If answer is “yes,” furnish all of the following information~~

~~(a) Amount of money owed: \$ \_\_\_\_\_~~

~~(b) Arrangements made for the payment of the money owed:~~

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~~7. Has applicant assigned any of its investment advisory contracts to another person?~~

Yes  No

~~If answer is “yes,” furnish all of the following information:~~

~~(a) Name and business address of the person to whom contracts were assigned.~~

~~(b) Did applicant obtain the consent of each client prior to the assignment of its contracts?~~

Yes  No

~~If answer is “Yes,” attach a copy of communication sent to clients to obtain their consent.~~

~~(c) What alternative was provided with respect to those clients who did not consent to the assignment of their contracts?~~

~~8. Is applicant involved in any legal action or proceeding?~~

~~Yes  No~~

~~If so, furnish complete information with respect to each.~~

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~~9. Are there any unsatisfied judgments or liens against applicant?~~

~~If so, furnish complete information with respect to each.~~

~~Yes  No~~

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~~10. If the answer was "yes" to any questions in paragraphs 5, 6, 7, 8 or 9 above, attach a statement of financial condition in such detail as will disclose the nature and amount of assets and liabilities and the net worth of applicant as of a date within 10 days of filing (securities of applicant or in which applicant has an interest must be listed in a separate schedule at market price, if any; and if no current independent market exists the basis upon which value has been assigned should be stated).~~

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~~11. Furnish below the name and address of the person who has or will have custody or possession of applicant's books and records which are required to be preserved pursuant to Section 260.241.3 of Title 10 of the California Code of Regulations.~~

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~~12. The applicant has duly caused this application to be signed on its behalf by the undersigned, thereunto duly authorized.~~

\_\_\_\_\_

(Applicant)

By: \_\_\_\_\_

\_\_\_\_\_

(Title)

~~I certify (or declare) under penalty of perjury under the laws of the State of California that I have read this application and the exhibits thereto and know the contents thereof, and that the statements therein are true and correct.~~

Executed at, on \_\_\_\_\_, 19\_\_\_\_\_.

(Place)

\_\_\_\_\_

(Signature)

260.242. Surrender of Certificate as a Broker-Dealer or Investment Adviser

(a) An application to surrender a certificate as a broker-dealer shall be filed on Form BDW (Uniform Request for Broker-Dealer Withdrawal, as amended by Securities and Exchange Commission Release No. 34-41356 (May 10,1999), effective June 9, 1999, and hereby incorporated by reference) (17 CFR 249.501a). Each licensed broker-dealer that is a member of the National Association of Securities Dealers Regulation, Inc. shall file Form BDW through the Central Registration Depository in accordance with its procedures for transmission to the Commissioner. All other broker-dealers shall file Form BDW directly with the Commissioner.

(b) An application to surrender a certificate as an investment adviser shall be filed on Form ADV-W (Notice of Withdrawal from Registration as an Investment Adviser, as amended by Securities and Exchange Commission Release No. IA-1916, 34-43758 (December 21,2000), effective January

1, 2001, and hereby incorporated by reference) (17 CFR 279.2) in accordance with the instructions in Form ADV-W. Form ADV-W shall be filed with the Investment Adviser Registration Depository (IARD) in accordance with its procedures for transmission to the Commissioner. Investment adviser that do not participate in IARD shall file Form ADV-W directly with the Commissioner.

NOTE: Authority cited: Section 25610, Corporations Code. Reference: Section 25242, and 25612.5, Corporations Code.

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