

NEBRASKA ADMINISTRATIVE CODE

Title 48 - DEPARTMENT OF BANKING AND FINANCE

Chapter 12 - FRAUDULENT, DISHONEST AND UNETHICAL BUSINESS PRACTICES

001 GENERAL.

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

001.02 The Director has determined that this Rule relating to unethical and fraudulent business practices by broker-dealers, agents, investment advisers, federal covered advisers, and investment adviser representatives is consistent with investor protection and is in the public interest.

001.03 The Director may, on a case-by-case basis, and with prior written notice to the affected persons, require adherence to additional standards or policies, as deemed necessary in the public interest.

001.04 The definitions in 48 NAC 21 apply to the provisions of this Rule, unless otherwise specified.

001.05 The delineation in this Rule of certain acts and practices is not intended to be all inclusive. Acts or practices not enumerated herein may also be deemed fraudulent or dishonest.

001.06 Federal statutes and rules of the Securities and Exchange Commission ("SEC") or the Financial Industry Regulatory Authority ("FINRA") referenced herein means those statutes and rules as amended on or before the effective date of this Rule. A copy of the statutes or rules referenced in this Rule is available as an appendix to this rule at <https://ndbf.nebraska.gov/about/legal/administrative-rules-and-regulations>.

002 FRAUDULENT PRACTICES OF BROKER-DEALERS AND AGENTS. A broker-dealer or agent who engages in one or more of the following practices shall be deemed to have engaged in an "act, practice, or course of business which operates or would operate as a fraud" as used in Section 8-1102(1)(c) of the Act:

002.01 Entering into a transaction with a customer in any security at an unreasonable price, or at a price not reasonably related to the current market price of the security, or receiving an unreasonable commission or profit.

002.02 Contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead, or using any advertising or sales presentation in a deceptive or misleading manner.

002.03 In connection with the offer, sale, or purchase of a security, falsely leading a customer to believe that the broker-dealer or agent is in possession of material, non-public information which would impact on the value of the security.

002.04 In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors of similar investment objectives for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstance of each investor.

002.05 Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution by, among other things, (1) transferring securities to a customer, another broker-dealer or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees, or (2) “parking” or withholding securities.

002.06 Failing to disclose the firm’s present bid and ask price of a particular security at the time of solicitation, and the firm’s bid and ask price at the time of execution of the written confirmation.

002.07 In connection with the solicitation of a purchase or sale of over the counter (“OTC”) unlisted non-~~NASDAQ~~ Nasdaq equity securities, failing to advise the customer, both at the time of solicitation and on the written confirmation, of any and all compensation related to the specific securities transaction which is to be paid to the agent, including commissions, sales charges, or concessions.

002.08 In connection with a principal transaction, failing to disclose, both at the time of solicitation and on the written confirmation, a short inventory position in the firm’s account of more than five percent of the issued and outstanding shares of that class of securities of the issuer, provided that this subsection applies only if the firm is a market maker at the time of the solicitation.

002.09 Conducting sales contests in a particular security.

002.10 After a solicited purchase by a customer, failing or refusing, in connection with a principal transaction, to promptly execute sell orders.

002.11 Soliciting a secondary market transaction when there has not been a bona fide distribution in the primary market.

002.12 Engaging in a pattern of compensating an agent in different amounts for effecting contemporaneous sales and purchases in the same security.

002.13 Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include, but not be limited to:

002.13A Effecting any transaction in a security which involves no change in the beneficial ownership thereof.

002.13B Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any such security, has been, or will be, entered by or for the same or different parties for the purpose of creating a false or misleading

appearance of active trading in the security or a false or misleading appearance with respect to the market for the security. Nothing in this subsection prohibits a broker-dealer from entering bona fide agency cross transactions for its customers.

002.13C Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others.

002.14 Failing to furnish to a customer purchasing securities in an offering, no later than the due date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and any additional document, which together include all information set forth in the final prospectus.

002.15 Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer.

002.16 Representing that a market will be established, or that securities will be subject to an increase in value.

002.17 Engaging in unreasonable and/or unjustifiable delays in the delivery of securities purchased by any of its customers and/or in the payment upon request of free credit balances reflecting completed transactions of any of its customers.

002.18 In connection with the solicitation of a purchase of a designated security:

002.18A Failing to disclose to the customer the bid and ask price, at which the broker-dealer effects transactions with individual, retail customers, of the designated security as well as its spread in both percentage and dollar amounts at the time of solicitation and on the trade confirmation documents; or

002.18B Failing to include with the confirmation a written explanation of the bid and ask price.

002.18C The following transactions shall be exempt from the requirements of this subsection:

002.18C1 Transactions in which the price of the designated security is five dollars (\$5.00) or more, exclusive of costs or charges; provided, however, that if the designated security is a unit composed of one or more securities, the unit price divided by the number of components of the unit other than warrants, options, rights, or similar securities must be five dollars (\$5.00) or more, and any component of the unit that is a warrant, option, right, or similar security, or a convertible security must have an exercise price or conversion price of five dollars (\$5.00) or more;

002.18C2 Transactions that are not recommended by the broker-dealer or agent;

002.18C3 Transactions by a broker-dealer:

002.18C3a Whose commissions, commission equivalents, and mark-ups from transactions in designated securities during each of the immediately preceding three months, and during eleven or more of the preceding twelve months, did not exceed five percent of its total commissions, commission-equivalents, and mark-ups from transactions in securities during those months; and

002.18C3b Who has not executed principal transactions in connection with the solicitation to purchase the designated security that is the subject of the transaction in the immediately preceding twelve months.

002.18C4 Any transaction or transactions that, upon prior written request or upon his or her own motion, the Director conditionally or unconditionally exempts as not encompassed within the purposes of this Section.

002.18D For purposes of this Section, the term “designated security” means any equity security other than a security:

002.18D1 Registered, or approved for registration upon notice of issuance, on a national securities exchange, and the issuer of which makes transaction reports available pursuant to 17 CFR 242.601;

002.18D2 Authorized, or approved for authorization upon notice of issuance, for quotation in the Nasdaq Stock Market;

002.18D3 Issued by an investment company registered under the Investment Company Act of 1940;

002.18D4 That is a put option or call option issued by The Options Clearing Corporation; or

002.18D5 Issued by a company which has net tangible assets in excess of four million dollars (\$4,000,000.00) as demonstrated by financial statements dated less than fifteen months previously that the broker-dealer has reviewed and has a reasonable basis to believe are true and complete in relation to the date of the transaction with the person, and are:

002.18D5a The most recent financial statements of the issuer, other than a foreign private issuer, that have been audited and reported on by an independent public accountant in accordance with the provisions of 17 CFR 210.2-02; or

002.18D5b The most recent financial statements of the foreign private issuer that have been filed with the SEC; furnished to the SEC pursuant to 17 CFR 240.12g3-2(b); or prepared in accordance with generally accepted accounting principles in the country of incorporation, audited in compliance with the requirements of that jurisdiction, and reported on by an accountant duly registered and in good standing in accordance with the regulations of that jurisdiction.

002.19 Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account.

002.20 Executing a transaction on behalf of a customer without authorization to do so.

002.21 Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the executing of orders.

002.22 Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account.

002.23 Failing to segregate customers' free securities or securities held in safekeeping.

002.24 Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business.

002.25 Offering to buy from, or to sell to, any person any security at a stated price unless such broker-dealer is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell.

002.26 Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless the broker-dealer knows or has reasonable grounds to believe that a market for the security exists other than that made, created or controlled by the broker-dealer, or by a person the broker-dealer is acting or with whom the broker-dealer is associated in such distribution, or any person controlled by, controlling or under common control with, the broker-dealer.

002.27 Guaranteeing a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer.

002.28 Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona fide bid for, or offer of, such security.

002.29 Failing to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control with, the issuer of any security before entering into any contract with or for a customer for the purchase or sale of such security, the existence of such control to such customer, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction.

002.30 Failing or refusing to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written request or complaint.

003 UNETHICAL PRACTICES FOR BROKER-DEALERS, ISSUER-DEALERS, AND AGENTS. A broker-dealer, issuer-dealer or agent who engages in one or more of the following practices shall be deemed to have engaged in a “dishonest or unethical practice” as used in Section 8-1103(9)(a)(vii) of the Act:

003.01 Any acts or practices enumerated in Section 002, above.

003.02 In connection with the solicitation of a sale or purchase of an Over the Counter (“OTC”), unlisted, non-Nasdaq security, failing to promptly provide the most current prospectus or the most recent periodic report filed under Section 13 of the Securities Exchange Act of 1934, 15 U.S.C. 78m, when requested to do so by a customer.

003.03 Marking any order tickets or confirmations as unsolicited when in fact the transaction was solicited.

003.04 Failing to provide documentation of unsolicited sales to the Department upon request, pursuant to 48 NAC 14.

003.05 Failing to provide each customer with a statement of account which, with respect to all OTC non-Nasdaq equity securities in the account, contains a value for each such security based on the closing market bid on a date certain.

003.05A This statement must cover any month in which activity has occurred in a customer’s account, but in no event shall be provided less than every three months.

003.05B This subsection applies only if the firm has been a market maker in such security at any time during the month in which the monthly or quarterly statement is issued.

003.06 Failing to comply with any applicable provision of fair practice or ethical rules and/or standards promulgated by the SEC, FINRA or by a self-regulatory organization approved by the SEC.

003.07 Failing to cooperate with, or providing false or incomplete information to, the Director in connection with an investigation or inquiry.

004 DISHONEST AND UNETHICAL PRACTICES FOR BROKER-DEALERS AND AGENTS IN CONNECTION WITH THE SALE OF INVESTMENT COMPANY SECURITIES.

A broker-dealer or agent who engages in one or more of the following practices shall be deemed to have engaged in “dishonest or unethical practices in the securities business” as used in Section 8-1103(9)(a)(vii) of the Act:

004.01 Sales Load Communications.

004.01A In connection with the offer or sale of investment company shares, failing to adequately disclose to a customer all sales charges, including asset based and contingent deferred sales charges, which may be imposed with respect to the purchase, retention or redemption of such shares.

004.01B In connection with the solicitation of investment company shares, stating or implying to a customer that the shares are sold without a commission, are “no load” or have “no sales charge” if there is associated with the purchase of the shares a front-end load, a contingent deferred sales load, a SEC Rule 12b-1 fee, 17 CFR 270.12b-1, or a service fee which exceeds one-quarter of one percent of average net fund assets per year, or in the case of closed-end investment company shares, underwriting fees, commissions or other offering expenses.

004.01C In connection with the solicitation of investment company shares, failing to disclose to a customer any relevant:

004.01C1 Sales charge discount on the purchase of shares in dollar amounts at or above a breakpoint; or

004.01C2 Letter of intent feature, if available, which will reduce the sales charges to the customer.

004.01D In connection with the solicitation of investment company shares, recommending to a customer the purchase of a specific class of investment company shares in connection with a multi-class sales charge or fee arrangement without reasonable grounds to believe that the sales charge or fee arrangement associated with such class of shares is suitable and appropriate based on the customer’s investment objectives, financial

situation and other securities holdings, and the associated transaction or other fees.

004.02 Recommendations.

004.02A In connection with the solicitation of investment company shares, recommending to a customer the purchase of investment company shares which results in the customer simultaneously holding shares in different investment company portfolios having similar investment objectives and policies without reasonable grounds to believe that such recommendation is suitable and appropriate based on the customer's investment objectives, financial situation and other securities holdings, and any associated transaction charges or other fees.

004.02B In connection with the solicitation of investment company shares, recommending to a customer the liquidation or redemption of investment company shares for the purpose of purchasing shares in a different investment company portfolio having similar investment objectives and policies without reasonable grounds to believe that such recommendation is suitable and appropriate based on the customer's investment objectives, financial situation and other securities holdings and any associated transaction charges or other fees.

004.03 Disclosure Statements.

004.03A In connection with the solicitation of investment company shares, stating or implying to a customer the fund's current yield or income without disclosing the fund's most recent average annual total return, calculated in a manner prescribed in SEC Form N-1A, 17 CFR 239.15A, for one, five, and ten year periods and fully explaining the difference between current yield and total return; provided, however, that if the fund's registration statement under the Securities Act of 1933 has been in effect for less than one, five or ten years, the time during which the registration statement was in effect shall be substituted for the periods otherwise prescribed.

004.03B In connection with the solicitation of investment company shares, stating or implying to a customer that the investment performance of an investment company portfolio is comparable to that of a savings account, certificate of deposit or other financial institution deposit account without disclosing to the customer that the shares are not insured or otherwise guaranteed by the Federal Deposit Insurance Corporation ("FDIC") or any other government agency and the relevant differences regarding risk, guarantees, fluctuation of principal and/or return, and any other factors which are necessary to ensure that such comparisons are fair, complete and not misleading.

004.03C In connection with the solicitation of investment company shares, stating or implying to a customer, the existence of insurance, credit quality, guarantees or similar features regarding securities held, or proposed to be held, in the investment company's portfolio without

disclosing to the customer other kinds of relevant investment risks, including but not limited to, interest rate, market, political, liquidity, or currency exchange risks, which may adversely affect investment performance and result in loss and/or fluctuation of principal notwithstanding the creditworthiness of such portfolio securities.

004.03D In connection with the offer or sale of investment company shares, stating or implying to a customer that:

004.03D1 The purchase of such shares shortly before an ex-dividend date is advantageous to such customer unless there are specific, clearly described tax or other advantages to the customer, or

004.03D2 A distribution of long-term capital gains by an investment company is part of the income yield from an investment in such shares.

004.03E In connection with the offer or sale of investment company shares, making:

004.03E1 Projections of future performance;

004.03E2 Statements not warranted under existing circumstances; or

004.03E3 Statements based upon non-public information.

004.04 Prospectus. In connection with the solicitation of investment company shares, the delivery of a prospectus is not dispositive that the broker-dealer or agent has fulfilled the duties set forth in this Rule.

004.05 Definitions. For purposes of this Rule, the following definitions apply:

004.05A Recommend means any affirmative act or statement that endorses, solicits, requests, or commends a securities transaction to a customer or any affirmative act or statement that solicits, requests, commends, importunes or intentionally aids such person to engage in such conduct.

004.05B Solicitation means any oral, written or other communications used to offer or sell investment company shares excluding any proxy statement, report to shareholders, or other disclosure document relating to a security covered under Section 18(b)(2) of the Securities Act of 1933, 15 U.S.C. § 77r(b)(2) that is required to be and is filed with the SEC or any national securities organization registered under Section 15A of the Securities Exchange Act of 1934, 15 U.S.C. § 78o-3.

005 UNETHICAL PRACTICES FOR AGENTS. An agent of a broker-dealer or issuer-dealer who engages in one or more of the following practices shall be deemed to have

engaged in a “dishonest or unethical practice” as used in Section 8-1103(9)(a)(vii) of the Act:

005.01 Engaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian of money, securities or an executed stock power of a customer, unless such customer is a member of the agent’s immediate family.

005.01A For purposes of this subsection, “immediate family” means a spouse, child, sibling, parent, grandparent, or grandchild, including stepparents, stepchildren, stepsiblings, and adoptive relationships.

005.02 Effecting securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction.

005.03 Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited.

005.04 Sharing directly or indirectly in profits or losses in the account of any customer unless the agent obtains the written authorization of the customer and the broker-dealer which the agent represents and the agent’s share of profits or losses is in direct proportion to the financial contributions made to such account by either the member or person associated with a broker-dealer.

005.05 Dividing or otherwise splitting an agent’s commissions, profits or other compensation from the purchase or sale of securities with any person not also registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control.

005.06 Using advertising describing or relating to the agent’s securities business unless the advertising clearly identifies the name of the agent’s employing broker-dealer or issuer-dealer.

005.07 Misrepresenting the services of a registered broker-dealer or issuer-dealer on whose behalf the agent is soliciting business or accounts.

005.08 Conducting a seminar, or advertising for a seminar, unless all advertisements, including, but not limited to, flyers, invitations, postcards, letters, e-mails, sales material, newspaper, television radio, and social media posts related to the seminar, and handouts given to attendees at the seminar, identify the name of the agent offering the seminar and any broker-dealer with which the agent is affiliated

005.08A For purposes of this subsection, “seminar” includes any educational or financial workshop targeted to members of the public at which at least one of the following occur:

005.08A1 Securities products are discussed;

005.08A2 The advertising for the seminar states or implies that securities products are going to be discussed; or

005.08A3 The presenter is collecting contact information to make future solicitations concerning securities products.

006 FRAUDULENT AND DISHONEST OR UNETHICAL PRACTICES FOR INVESTMENT ADVISERS, FEDERAL COVERED ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES. An investment adviser, federal covered adviser, or investment adviser representative, or any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale (collectively “adviser”) who engages in one or more of the following practices shall be deemed to have engaged in an “act, practice, or course of business which operates or would operate as a fraud” for purposes of Section 8-1102(2)(b) or a “dishonest or unethical practice” as used in Section 8-1102(2)(d) and Section 8-1103(9)(a)(vii) of the Act:

006.01 Recommending the purchase, sale or exchange of any security to a client without reasonable grounds to believe the recommendation is suitable for the client based on:

006.01A Information furnished by the client;

006.01B Reasonable inquiry concerning the client’s investment objectives, financial situation and needs by the adviser or its registered representative; and

006.01C Any other information known or acquired by the adviser after reasonable examination of any records provided to the adviser by the client.

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

006.03 Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first obtaining a written authorization from the client.

006.04 Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of specified securities shall be executed, or both.

006.05 Inducing trading in a client’s account that is excessive in size and frequency in view of the client’s financial resources and investment objectives, and character of the account.

006.06 Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the adviser, a financial institution engaged in the business of loaning funds or securities, or a member of the investment adviser representative’s immediate family.

006.06A For purposes of this subsection, “immediate family” means a spouse, child, sibling, parent, grandparent, or grandchild, including stepparents, stepchildren, stepsiblings, and adoptive relationships.

006.07 Lending money to a client unless the adviser is a financial institution engaged in the business of lending funds, the client is an affiliate of the adviser, or the client is a member of the investment adviser representative’s immediate family, as defined in subsection 006.06A of this section.

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

006.09 Providing a report or recommendation to any advisory client prepared by someone other than the adviser to any client, without disclosing that fact, except where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service.

006.10 Charging a client an excessive advisory fee.

006.11 Failing to disclose any material conflict of interest relating to the adviser, any representative or any employee, which could reasonably be expected to impair the rendering of unbiased and objective advice, to a client in writing before entering into or renewing an advisory agreement with that client. Such conflicts include, but are not limited to:

006.11A Receiving compensation relating to advisory services provided to clients which is in addition to compensation received from such clients for such services; and

006.11B Charging a client a fee for rendering advice without disclosing that a commission for executing transactions pursuant to such advice will be received by the adviser, its representatives or its employees, or that the advisory fee will be reduced by the amount of the commission.

006.12 Guaranteeing a client that a specific result, either gain or loss, will be achieved as a result of the advice.

006.13 Disclosing the identity, affairs, or investments of any client to any third party without the client’s consent, unless required by law to do so.

006.14 Failing to comply with the requirements for investment advisers with custody ~~found~~ set forth in 48 NAC 7.012 or for federal covered advisers with custody found in Rule 206(4)-2 under the Investment Advisers Act of 1940, 17 CFR § 275.206(4)-2.

006.15 Entering into, extending or renewing any investment advisory contract, other than a contract for impersonal advisory services as defined in 48 NAC ~~7.010.06A~~7.010.04A, unless:

006.15A The contract is in writing; and

006.15B The contract discloses, in substance:

006.15B1 The services to be provided,

006.15B2 The term of the contract,

006.15B3 The advisory fee or the formula for computing the fee,

006.15B4 The amount or the manner of calculation of the amount of the prepaid fee to be returned in the event of contract termination or non-performance,

006.15B5 The discretionary power granted to the adviser or its representatives, if any, and

006.15B6 The contract shall not be assigned by the adviser without the client's consent.

006.16 Employing any device, scheme, or artifice to defraud or engage in any act, practice or course of business which operates or would operate as a fraud or deceit.

006.17 Failing to disclose to any client or prospective client all material facts with respect to:

006.17A A financial condition of the adviser that is reasonably likely to impair the ability of the adviser to meet contractual commitments to clients, if the adviser has discretionary authority, express or implied, or custody over such client's funds or securities, or requires prepayment of advisory fees of more than twelve hundred dollars (\$1,200.00) from such client, six months or more in advance; or

006.17B A legal or disciplinary event that is material to an evaluation of the adviser's integrity or ability to meet contractual commitments to clients. There is a rebuttable presumption that the following legal or disciplinary events involving the adviser or a management person of the adviser ("person") that were not resolved in the person's favor or subsequently reversed, suspended, or vacated are material within the meaning of this paragraph for a period of ten years from the time of the event:

006.17B1 A criminal action in a court of competent jurisdiction in which the person was convicted or pleaded guilty or nolo contendere ("no contest") to a felony or misdemeanor, or is the named subject of a pending criminal proceeding, involving an investment-related business; fraud, false statements, or

omissions; wrongful taking of property; or bribery, forgery, counterfeiting, or extortion.

006.17B2 A criminal or civil action in a court of competent jurisdiction in which the person:

006.17B2a Was found to have been involved in a violation of an investment-related statute or regulation; or

006.17B2b Was the subject of any order, judgment, or decree permanently or temporarily enjoining the person from, or otherwise limiting the person from, engaging in any investment-related activity.

006.17B3 Administrative proceedings before the Director, SEC, any other federal regulatory agency, or any other state agency (collectively “agency”) in which the person:

006.17B3a Was found to have caused an investment-related business to lose its authorization to do business; or

006.17B3b Was found to have been involved in a violation of an investment-related statute or regulation and was the subject of an order by the agency denying, suspending, or revoking the authorization of the person to act in, or barring or suspending the person’s association with, an investment-related business; or otherwise significantly limiting the person’s investment-related activities.

006.17B4 Self-Regulatory Organization (“SRO”) proceedings in which the person:

006.17B4a Was found to have caused an investment-related business to lose its authorization to do business; or

006.17B4b Was found to have been involved in a violation of the SRO’s rules and was the subject of an order by the SRO barring or suspending the person from association with other members, or expelling the person from membership; or fining the person more than two thousand five hundred dollars (\$2,500.00), or otherwise significantly limiting the person’s investment-related activities.

006.17B5 For purposes of calculating the ten year period during which events are presumed to be material under this subsection, the date of a reportable event shall be the date on which the final order, judgment, or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees lapsed.

006.17C The information required to be disclosed by this subsection shall be disclosed to clients within thirty days, and to prospective clients not less than forty-eight hours prior to entering into any written investment advisory contract, or no later than the time of entering into such contract if the client has the right to terminate the contract without penalty within five business days after entering into the contract.

006.17D For purposes of this subsection:

006.17D1 “Management person” means a person with power to exercise, directly or indirectly, a controlling influence over the management or policies of an adviser which is a company or to determine the general investment advice given to clients.

006.17D2 “Found” means determined or ascertained by adjudication or consent in a final SRO proceeding, agency administrative proceeding, or court action.

006.17D3 “Investment-related” means pertaining to securities, commodities, banking, insurance, or real estate, including, but not limited to, acting as or being associated with a broker-dealer, investment company, investment adviser, government securities broker or dealer, municipal securities dealer, bank, savings and loan association, entity or person required to be registered under the Commodity Exchange Act, 7 U.S.C. § 1 et seq., or fiduciary.

006.17D4 “Involved” means acting or aiding, abetting, causing, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.

006.17D5 “Self-Regulatory Organization” means any national securities or commodities exchange, registered association, or registered clearing agency, rule, or regulation.

006.17E Disclosure pursuant to this subsection does not relieve any investment adviser from the obligations of any other disclosure requirement under the Act, the rules and regulations thereunder, or under any other federal or state law.

006.18 Entering into, extending or renewing any investment advisory contract, if such contract contains any provision which limits or purports to limit:

006.18A Liability of the adviser for conduct or omission arising from the advisory relationship which does not conform to the Act, applicable federal statutes, and common law fiduciary standards of care; or

006.18B Applicability of the laws of Nebraska with respect to the construction or interpretation of the contract provisions.

006.19 Failing to cooperate with, or providing false or incomplete information to, the Director in connection with an investigation.

006.20 Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information in violation of Section 204A of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-4a.

006.21 Entering into, extending or renewing any advisory contract which would violate Section 205 of the Investment Advisers Act of 1940, 15 U.S.C § 80b-5, notwithstanding the fact that such adviser would be exempt from federal registration pursuant to Section 203(b) of the Investment Advisers Act of 1940, 15 U.S.C § 80b-3.

006.22 Including a provision which purports to waive compliance with any provision of the Act, of the rules and regulations thereunder, or of the Investment Advisers Act of 1940 in any advisory contract, stipulation or other document binding on any person, or any other practice that would violate Section 215 of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-15.

006.23 Engaging in any act, practice, or course of business which is fraudulent, deceptive or manipulative in contravention of Section 206(4) of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-6, notwithstanding the fact that such investment adviser is not registered or required to be registered under Section 203(b) of the Investment Advisers Act of 1940, 15 U.S.C § 80b-3.

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

006.25 Dividing, splitting or otherwise paying fees or other compensation paid pursuant to the investment adviser contract with any individual or entity which is not registered as an investment adviser or investment adviser representative under the Act.

~~006.26 Publishing, circulating or distributing any advertisement, directly or indirectly:~~

~~006.26A Which refers, directly or indirectly, to any testimonial of any kind by any customer concerning the investment adviser or investment adviser representative concerning any advice, analysis, report or other service rendered to the customer by the investment adviser or investment adviser representative.~~

~~006.26B~~—Which refers, directly or indirectly, to past specific recommendations of the investment adviser or investment adviser representative which were or would have been profitable to any person; provided, however, that this does not prohibit an advertisement which sets forth or offers to furnish a list of all recommendations made by the investment adviser or investment adviser representative for the twelve month period immediately preceding the date of the publication of the advertisement, and which:

~~006.26B1~~—Includes the name of each such security recommended, the date and nature of each such recommendation, for example, whether to buy, sell or hold, the market price at the time, the price at which the recommendation was to be acted upon, and the current market price of each such security.

~~006.26B2~~—Contains a disclosure statement prominently displayed on the first page thereof in print or type as large as the largest print or type used in the body or text cautioning investors that future results may vary from the past performance. Examples of acceptable statements include: “IT SHOULD NOT BE ASSUMED THAT RECOMMENDATIONS MADE IN THE FUTURE WILL BE PROFITABLE OR WILL EQUAL THE PERFORMANCE OF THE SECURITIES IN THIS LIST.” and/or “PAST PERFORMANCE IS NOT AN INDICATION OF FUTURE RESULT.”

~~006.26C~~—Which represents, directly or indirectly, that any graph, chart, formula or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula or other device being offered will assist any person in making decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in the advertisement the limitations thereof and the difficulties with respect to its use.

~~006.26D~~—Which contains any statement to the effect that any report, analysis or other service will be furnished free or without charge, unless the report, analysis or other service actually is or will be furnished absolutely without condition or obligation.

~~006.26E~~—Which contains any untrue statement of a material fact, or which is otherwise false or misleading in any material respect, including the failure to disclose compensation, including free or discounted securities, received directly or indirectly in connection with making a recommendation concerning a specific security.

~~006.26F~~—Which recommends the purchase or sale of any security unless the investment adviser or investment adviser representative simultaneously offers to furnish to any person upon request a tabular presentation of:

~~006.26F1~~—The total number of shares or other units of the security held by the investment adviser or investment adviser representative for its own account or for the account of officers, directors, trustees, partners or affiliates of the investment adviser or for discretionary accounts of the investment adviser or investment adviser representative maintained for clients.

~~006.26F2~~—The price or price range at which the securities listed in subsection ~~006.26F1~~ were purchased.

~~006.26F3~~—The date or range of dates during which the securities listed in response to subsection ~~006.26F1~~ were purchased.

~~006.26G~~—Definitions.

~~006.26G1~~—For the purpose of this section, the term “advertisement” includes any notice, circular, letter or other written communication addressed to more than one person or any notice or other announcement in any publication, by radio or television, or by electronic means, which offers:

~~006.26G1a~~—Any analysis, report or publication concerning securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell.

~~006.26G1b~~—Any graph, chart, formula or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell.

~~006.26G1c~~—Any other investment advisory service with regard to securities.

~~006.26G2~~—The term “client” means any person to whom the investment adviser or investment adviser representative has given investment advice for which the investment adviser or investment adviser representative has received compensation.

~~006.26H~~—This section does not apply to federal covered advisers unless the conduct is otherwise actionable under the Act.

006.26 Publishing, circulating or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940, 17 CFR § 275.206(4)-1.

006.27 Conducting a seminar, or advertising for a seminar, unless all advertisements, including but not limited to, flyers, invitations, postcards, letters, e-mails, sales material, newspaper, television, radio, and social media posts related to the seminar, and handouts given to attendees at the seminar, identify the name of

the investment adviser representative offering the seminar and any investment adviser with which the investment adviser is affiliated.

006.27A For purposes of this subsection, “seminar” includes any educational or financial workshop targeted to members of the public at which at least one of the following occur:

006.27A1 Securities products are discussed;

006.27A2 The advertising for the seminar states or implies that securities products are going to be discussed; or

006.27A3 The presenter is collecting contact information to make future solicitations concerning securities products.

006.28 Accessing a client’s account by using the client’s own unique identifying information, such as username and password.

006.29 Failing to establish, maintain, or enforce a required policy or procedure.

006.30 Federal statutory and regulatory provisions referenced herein shall apply to investment advisers and federal covered advisers, regardless of whether the federal provision limits its application to advisers subject to federal registration.