Part 14 Chapter 6: INVESTMENT ADVISERS

Rule 6.01 Definitions.

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

B. **Cybersecurity** means the protection of investor and firm information from compromise through the use, in whole or in part, of electronic digital media, (e.g., computers, mobile devices, or Internet protocol-based telephony systems). "Compromise" refers to a loss of data confidentiality, integrity, or availability.

C. **Investment Adviser:** In order to provide uniform interpretation of the application of federal and state adviser laws to financial planners and other persons, the Division hereby expressly adopts S.E.C. Release No. IA-1092 (17 C.F.R. § 276.1092), as it relates to the definition of Investment Adviser set forth in Section 75-71-102(15) of the Act.

D. **Investment Adviser Representative:** Notwithstanding Section 75-71-102(16) of the Act, the term investment adviser representative as it applies to a person who is employed by or associated with a federal covered investment adviser only includes an individual who has a place of business in this jurisdiction, as that term is defined in Subsection (E) below, and who either:

   1. Is a supervised person of a federal covered adviser, as defined in Subsection (F) below; or

   2. Is not a supervised person as defined in Subsection (F) below, but solicits, offers, or negotiates for the sale of or sells investment advisory services on behalf of a federal covered investment adviser.

E. **Place of Business** means:

   1. An office at which the investment adviser representative regularly provides investment advisory services, solicits, meets with, or otherwise communicates with clients; or

   2. Any other location that is held out to the general public as a location at which the investment adviser representative provides investment advisory services, solicits, meets with, or otherwise communicates with clients.

F. **Supervised Person** means any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or

other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.

Source: *Miss. Code Ann.* § 75-71-605 (2016).

Rule 6.03 Electronic Filing with Designated Entity.

A. Pursuant to the Act, the Division designates the web-based IARD operated by FINRA to receive and store filings and collect related fees from investment advisers and investment adviser representatives on behalf of the Division.

B. Unless otherwise provided, all investment adviser and investment adviser representative applications, amendments, notices, related filings, and fees required to be filed with the Division pursuant to the Rules promulgated under this Act, shall be filed electronically with and transmitted to IARD. The following additional conditions relate to such electronic filings:

   1. 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 himself, as required, shall affix his electronic signature to the filing by typing his 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. Solely for purposes of a filing made through IARD, a document is considered filed with the Division when all fees are received and the filing is accepted by IARD on behalf of the Division.

C. Notwithstanding Subsection (B) above, the electronic filing of any particular document and the collection of related processing fees shall not be required until such time as IARD provides for receipt of such filings and fees. Any documents or fees required to be filed with the Division that are not permitted to be filed with or cannot be accepted electronically by IARD shall be filed directly with the Division.

D. An investment adviser shall be deemed to have fulfilled the requirement of filing a consent to service of process with the Division upon completing and filing the relevant portion of the revised Form ADV.

E. Investment advisers registered under the Act, or required to be registered under the Act, who experience unanticipated technical difficulties that prevent submission of an electronic filing to IARD may request a temporary hardship exemption from filing electronically with IARD. To request a temporary hardship extension, the investment adviser must:

   1. File Form ADV-H in paper format with the Division no later than one (1) business day after the filing that is subject of Form ADV-H was due; and

2. Submit the filing that is the subject of Form ADV-H in electronic form to IARD no later than seven (7) business days after the filing was due.

F. The temporary hardship exemption will be deemed effective upon receipt by the Division of the complete Form ADV-H. Multiple temporary hardship exemption requests within the same calendar year are discouraged and may be disallowed by the Division.

G. A continuing hardship exemption will be granted only if the investment adviser is able to demonstrate that the electronic filing requirements of this Rule are prohibitively burdensome. To apply for a continuing hardship exemption, the investment adviser must:

1. File Form ADV-H in paper format with the Division at least twenty (20) business days before a filing is due; and

2. If a filing is due to more than one state, the Form ADV-H must be filed with the state where the investment adviser's principal place of business is located. The state who receives the application will grant or deny the application within ten (10) business days after the filing of Form ADV-H.

H. The exemption is effective upon approval by the Division. The time period of the exemption may be no longer than one (1) year after the date on which the Form ADV-H is filed. If the Division approves the application, the investment adviser must, no later than five (5) business days after the exemption approval date, submit filings to IARD in paper format (along with the appropriate processing fees) for the period of time for which the exemption is granted.

I. The decision to grant or deny a request for a hardship exemption will be made by the state where the investment adviser's principal place of business is located, which decision will be conformed to by the other state(s) where the investment adviser is registered.

Source: *Miss. Code Ann.* § 75-71-406(e) (2016).

Rule 6.05 Application for Investment Adviser Registration.

A. *Initial Application*. The application for initial registration as an investment adviser pursuant to Section 75-71-406 of the Act shall be made by filing Form ADV Parts 1and 2 (Uniform Application for Investment Adviser Registration) electronically with IARD and paying the applicable fee. The application for initial registration shall also include the following filed directly with the Division:

1. A copy of the entity's formation documents currently in effect, certified by the governmental agency where filed;

2. Where the adviser does not have custody of client funds or securities or does not require payment of advisory fees six (6) months or more in advance and in excess of Twelve Hundred Dollars ($1,200.00), a balance sheet as of the end of the investment adviser's most recent fiscal year. Each balance sheet filed pursuant to this Rule must be:

   a. Prepared in conformity with generally accepted accounting principles;

   b. Certified with an original notarized signature by an officer of the adviser as true, accurate, and prepared in conformity with generally accepted accounting principles; and

   c. Dated no more than forty-five (45) days prior to submission of Form ADV.

3. Where the adviser has custody of client funds or securities or requires payment of advisory fees six (6) months or more in advance and in excess of Twelve Hundred Dollars ($1,200.00), each balance sheet filed pursuant to this Rule must be:

   a. Audited in accordance with Rule 6.11(C)(1)-(3);

   b. Dated no more than forty-five (45) days prior to submission of FORM ADV; and

   c. If the audited balance sheet is dated more than forty-five (45) days prior to submission of FORM ADV, a current certified unaudited balance sheet must also be submitted.

   d. An adviser in existence less than a year at the time of initial filing must submit a current certified unaudited balance sheet accompanied by a designation of the accountant who will perform the applicant's first annual audit.

4. A copy of the surety bond required by Rule 6.07, if applicable;

5. Copies of all standard advisory contracts;

6. A list of persons, including CRD numbers, whom the adviser intends to register as investment adviser representatives in this state; and

7. Any other information the Division may reasonably require.

B. *Annual Renewal*. The application for annual renewal registration as an investment adviser shall be filed electronically with IARD and shall include the fee required by Rule 4.15. The application for annual renewal registration shall also include, if applicable, a copy of the surety bond required by Rule 6.07 and financial statements required by Rule 6.11 to be filed directly with the Division.

C. *Updates and Amendments*. The Division shall be notified within thirty (30) days whenever the information contained in any application or amendment for registration as an investment adviser or representative changes in a material way or is or becomes inaccurate or incomplete in any respect.

   1. Events requiring notification shall include, but are not limited to, those described in Rule 6.17.

   2. An investment adviser must file electronically with IARD any amendments to the investment adviser's Form ADV.

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

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

D. *Withdrawal of Investment Adviser Registration.*

   1. Withdrawal of registration as an investment adviser shall be completed by filing Form ADV-W electronically with IARD.

   2. Any investment adviser who is no longer in existence or is not engaged in business as an investment adviser shall, within thirty (30) days of such cessation, file Form ADV-W electronically with IARD.

E. *Completion of Filing*.

   1. An application for initial or renewal registration is not considered filed for purposes of Section 75-71-403(a) of the Act until the required fee and all required submissions have been received by the Division.

   2. The Division is not required to issue a certificate, license, or permit.

Source: *Miss. Code Ann.* §§ 75-71-403(a), 406 (2016).

Rule 6.07 Bonding Requirements for Investment Advisers.

A. Every investment adviser registered or required to be registered under the Act having custody of or discretionary authority over client funds or securities shall be bonded in an amount determined by the Division based upon the number of clients and the total assets under management of the investment adviser and which shall be at a minimum of Thirty Thousand Dollars ($30,000.00) for investment advisers having custody of client funds, or requiring payment of advisory fees six (6) months or more in advance and in

excess of Twelve Hundred Dollars ($1,200.00), and Ten Thousand Dollars ($10,000.00) for investment advisers with discretionary authority over client funds.

B. Any bond required by this Rule shall be issued by a company qualified to do business in this state in the form determined by the Division and shall be subject to the claims of all clients of such investment adviser regardless of the client's state of residence.

C. The requirements of this Rule shall not apply to those applicants or registrants who comply with the minimum financial requirements of Rule 6.09.

D. An investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of Subsection (A) of this Rule, provided that the investment adviser is registered or licensed as an investment adviser in the state where it has its principal place of business and is in compliance with such state's requirements relating to bonding and/or minimum financial requirements.

Source: *Miss. Code Ann.* § 75-71-411(e) (2016).

Rule 6.09 Minimum Financial Requirements for Investment Advisers.

A. An investment adviser registered or required to be registered under the Act who has custody of client funds or securities or requires payment of advisory fees six (6) months or more in advance and in excess of Twelve Hundred Dollars ($1,200.00) shall maintain at all times a minimum net worth of Thirty-Five Thousand Dollars ($35,000.00) except:

   1. An investment adviser posts a bond pursuant to Rule 6.07.

   2. Pursuant to these Rules, an investment adviser is otherwise exempted from complying with the bonding and net worth requirements.

B. An investment adviser registered or required to be registered under the Act 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 Ten Thousand Dollars ($10,000.00) except:

   1. An investment adviser posts a bond pursuant to Rule 6.07.

   2. Pursuant to these Rules, an investment adviser is otherwise exempted from complying with the bonding and net worth requirements.

C. An investment adviser registered or required to be registered under the Act shall maintain at all times a positive net worth.

D. Unless otherwise exempted, as a condition of the right to transact business in this state, every investment adviser registered or required to be registered under the Act shall by the close of business on the next business day notify the Division if such investment

adviser's net worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next business day a report with the Division 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.

E. **Net Worth**, for the purposes of this Rule, 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 assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, 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.

F. **Discretionary Authority**, for the purposes of this Rule, shall 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.

G. For the 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 a third party trading agreement will be executed to allow the investment adviser to effect securities transactions for the client in the client's broker-dealer account;

2. The investment adviser contract specifically states that the client does not grant discretionary authority to the investment adviser and 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.

H. The Division may require that a current appraisal be submitted in order to establish the worth of any asset.

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

Source: *Miss. Code Ann.* § 75-71-411(a) (2016).

Rule 6.11 Financial Reporting for Investment Advisers.

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

B. Unless an investment adviser is otherwise exempted from complying with the financial reporting requirements of this Rule, every registered investment adviser who has custody of client funds or securities or requires payment of advisory fees six (6) months or more in advance and in excess of Twelve Hundred Dollars ($1,200.00) for any client shall annually file with the Division an audited balance sheet as of the end of the investment adviser's most recent fiscal year.

C. The audited balance sheet filed pursuant to this Rule must be:

1. Examined and prepared in conformity with generally accepted accounting principles;

2. Audited by an independent certified public accountant;

3. Accompanied by an opinion of the accountant as to the report of financial position, and by a note stating the principles used to prepare it, the basis of included securities, and any other explanations required for clarity; and

4. Filed with the Division within ninety (90) days following the end of the investment adviser's fiscal year.

D. The Division may reasonably require additional financial documentation to assess the financial soundness of the investment adviser.

Source: *Miss. Code Ann.* § 75-71-411(b) (2016).

Rule 6.13 Investment Adviser Representative: Registration, Renewal, and Withdrawal Requirements.

A. *Examination Requirements*.

1. An investment adviser representative shall take and pass within the two (2) year period immediately preceding the date of the application:

    a. The Uniform Investment Adviser State Law Examination (S65); or

    b. The Uniform Combined State Law Examination (S66) and the General Securities Representative Examination (S7).

2. Any individual who is registered as an investment adviser representative in any jurisdiction in the United States on or before January 1, 2000, and has not had a continuous two (2) year break of registration as an investment adviser representative thereafter shall not be required to satisfy the examination requirements set forth in Subsection(A)(1) of this Rule.

3. Any individual who has been registered as an investment adviser representative in any jurisdiction in the United States requiring the licensing, registration, and qualification of investment adviser representatives within the two (2) year period immediately preceding the date of filing an application shall not be required to comply with the examination requirement set forth in Subsection (A)(1) of this Rule.

4. The examination requirements shall not apply to any individual who provides proof of holding and maintaining a current professional designation in good standing from one of the following:

    a. CERTIFIED FINANCIAL PLANNER ™/CFP ® certification awarded by the Certified Financial Planner Board of Standards, Inc.

    b. Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania.

    c. Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants.

    d. Chartered Financial Analyst (CFA) awarded by the CFA Institute.

    e. Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.

    f. Such other professional designation as the Division may by order recognize.

5. The Division may require additional examinations for any individual found to have violated the Act.

6. *Loss of Professional Designations*. An investment adviser representative exempt from examination requirements under Subsection (A)(4) above who subsequently loses or allows the lapse of such professional designation shall provide written notice to the Division immediately upon loss or lapse of such designation. Upon loss or lapse, the representative is no longer exempt and his registration may be summarily suspended.

B. *Initial Application*. The application for initial registration as an investment adviser representative pursuant to Section 75-71-404(a) of the Act shall be made by:

1. Filing Form U4 (Uniform Application for Securities Industry Registration or Transfer) electronically with IARD and paying the applicable registration fee required by Rule 4.15; and

2. Providing proof of compliance with the examination requirements of Subsection (A) of this Rule.

C. *Registration Renewal Requirements*.

1. All registrations expire on December 31 of each year.

2. The application for annual renewal registration as an investment adviser representative shall be made by filing electronically with IARD and paying the renewal fee required by Rule 4.15.

D. *Termination of Investment Adviser Representative Registration*. The application for termination of registration as an investment adviser representative shall be completed by filing Form U5 (Uniform Termination Notice for Securities Industry Registration) electronically with IARD within thirty (30) days of the date of termination.

E. *Updates and Amendments*. The Division shall be notified within thirty (30) days whenever the information contained in any application or amendment for registration as an investment adviser or representative changes in a material way or is or becomes inaccurate or incomplete in any respect.

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

2. Events requiring notification shall include, but are not limited to, those described in Rule 6.17.

3. An investment adviser representative and the investment adviser must electronically file promptly with IARD any amendments to the representative's Form U4.

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

F. *Completion of Filing*.

1. An application for initial or renewal registration is not considered filed for purposes of Section 75-71-404(a) of the Act until the required fee and all required submissions have been received by the Division.

2. The Division is not required to issue a certificate, license, or permit.

G. *Dual Registration*. An investment adviser representative, only under the conditions set forth below, may associate with two (2), but not more than two, investment adviser firms at the same time, provided:

1. The two investment adviser firms are affiliated, and both investment adviser firms agree in writing on the form prescribed by the Division ("Joint Supervisory Agreement") to assume full supervisory responsibility for the investment adviser representative; or

2. The two investment adviser firms are not affiliated, but one of the investment adviser firms is affiliated with a broker-dealer firm with which the investment adviser representative is also registered as a broker-dealer agent, and both investment adviser firms agree in writing on forms prescribed by the Secretary of State to assume full supervisory responsibility for the investment adviser representative.

3. For purposes of Subsection G of this Rule, **affiliated** means one investment adviser or broker-dealer firm controls another investment adviser or broker-dealer firm, is controlled by another investment adviser or broker-dealer firm, or is under common control with another investment adviser or broker-dealer firm.

Source: *Miss. Code Ann.* §§ 75-71-404(a)(d), 408(a), 412(e) (2016).

Rule 6.15 Notice Filing Requirements for Federal Covered Advisers.

A. *Notice Filing*. The notice filing for a federal covered investment adviser pursuant to Section 75-71-405(a) of the Act shall be filed electronically with IARD on an executed Form ADV (Uniform Application for Investment Adviser Registration). A notice filing of a federal covered investment adviser shall be deemed filed when the fee required by Rule 4.15 and the Form ADV are filed electronically with and accepted by IARD on behalf of the Division.

B. *Form ADV Part 2*. The Division may:

1. Accept a copy of Part 2 of Form ADV as filed electronically with IARD; or

2. Deem Part 2 of Form ADV filed if a federal covered investment adviser provides, within five (5) days of a request, Part 2 of Form ADV to the Division. Because the Division deems Part 2 of Form ADV to be filed, a federal covered investment

adviser is not required to submit Part 2 of Form ADV to the Division unless requested.

C. *Renewal*. The annual renewal of the notice filing for a federal covered investment adviser pursuant to Section 75-71-405(c) of the Act shall be filed electronically with IARD. The renewal of the notice filing for a federal covered investment adviser shall be deemed filed when the fee required by Rule 4.15 is filed with and accepted by IARD on behalf of the Division.

D. *Updates and Amendments*. A federal covered investment adviser must file electronically with IARD any amendments to the federal covered investment adviser's Form ADV.

E. *Terminations and Withdrawals*. Terminations and withdrawals of notice filings shall be completed by following the instructions on Form ADV-W and filing Form ADV-W with IARD.

F. A federal covered investment adviser may submit a notice filing for a successor, whether or not the successor is then in existence, for the unexpired portion of the notice filing. There shall be no filing fee.

Source: *Miss. Code Ann.* §§ 75-71-405(a), 407(a) (2016).

Rule 6.17 Change of Material Information; Amendment. The Division shall be notified within thirty (30) days whenever the information contained in any application or amendment for registration as an investment adviser or representative changes in a material way or is or becomes inaccurate or incomplete in any respect. Events requiring notification shall include, but are not limited to, the following:

A. Change in firm name, ownership, management or control of an investment adviser, or a change in any of its partners, officers, or persons in similar positions, or its business address, or the creation or termination of a branch office in this state. Notice of such change shall be filed with IARD, in accordance with the instructions in Form ADV along with a satisfactory rider or endorsement to the required surety bond.

B. Change in type of entity, general plan, or character of an investment adviser's business or method of operation.

C. Insolvency, dissolution, liquidation, or a material adverse change or impairment of working capital, or noncompliance with the minimum capital or bond requirements.

D. Termination of business or discontinuance of activities as an investment adviser.

E. The naming of an investment adviser, investment adviser representative, principal, officer, and/or employee as a defendant or respondent in one or more of the following instances:

1. Criminal allegations involving any aspect of the securities or any aspect of the securities business, or any felony;

2. Civil allegations involving a security or any aspect of the securities business, or any activity alleging a breach of a fiduciary trust, or fraud;

3. Administrative allegations involving a security or any aspect of the securities business, or any activity alleging a breach of a fiduciary trust, or fraud;

4. Arbitration proceedings with allegations involving a security or any aspect of the securities business, or any activity alleging a breach of a fiduciary trust, or fraud;

5. Any proceeding in which an adverse decision could result in:

    a. A denial, suspension, or revocation, or the equivalent of those terms, of a license, permit, certification, registration, or charter;

    b. The imposition of a fine or other penalty; or

    c. An expulsion or barring from membership in a self-regulatory association or organization; or

6. Judgments, liens, and bankruptcy filing proceedings.

Source: *Miss. Code Ann.* § 75-71-406(b) (2016).

Rule 6.19 Record Keeping Requirements for Investment Advisers.

A. Every investment adviser registered or required to be registered under the Act shall make and keep true, accurate, and current the following books, ledgers, and records:

    1. A journal or journals, including cash receipts and disbursement 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 the client concerning the purchase, sale, receipt, or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The 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 the 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 discretionary power shall be so designated.

4. All check books, bank statements, canceled checks, and cash reconciliations of the investment adviser.

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

6. All trial balances, financial statements, and internal audit working papers relating to the investment adviser's business.

7. Originals of all written communications received and copies of all written communications sent by the investment adviser relating to:

   a. Any recommendation made or proposed to be made and any advice given or proposed to be given,

   b. Any receipt, disbursement, or delivery of funds or securities, or

   c. The placing or execution of any order to purchase or sell any security, provided, however,

      i. 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

      ii. 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 ten (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 the notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular, or advertisement a memorandum describing the list and its source.

8. A list or other record of all accounts which identifies the accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.

9. A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser.

10. A copy in writing of each agreement entered into by the investment adviser with any client and all other written agreements otherwise relating to the investment adviser's business as an investment adviser.

11. A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including by electronic media, that the investment adviser circulates or distributes, directly or indirectly, to two (2) or more persons (other than persons connected with the investment adviser). If the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including by electronic media, recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation shall also be included.

12. A record of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership.

    a. The 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. The record may also contain a statement declaring that the reporting or recording of any 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 ten (10) days after the end of the calendar quarter in which the transaction was effected.

    b. The investment adviser or advisory representative shall not be required to keep records of:

        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.

    c. For purposes of Subsection (A)(12) of this Rule the following definitions will apply:

        i. The term **Advisory Representative** shall mean any partner, officer or director of the investment adviser; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations:

            (a) Any person in a control relationship to the investment adviser,

(b) Any affiliated person of a controlling person, and

(c) Any affiliated person of an affiliated person.

ii. **Control** shall mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than twenty-five percent (25%) of the voting securities of a company shall be presumed to control such company.

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

13. Notwithstanding the provisions of Subsection (A)(12) above, where the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership.

a. The investment adviser or any advisory representative shall not be required to keep records of:

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.

The 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. The record may also contain a statement declaring that the reporting or recording of any 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 ten (10) days after the end of the calendar quarter in which the transaction was effected.

b. An investment adviser is "primarily engaged in a business or businesses other than advising investment advisory clients" when, for each of its most recent three (3) fiscal years or for the period of time since organization, whichever is

lesser, the investment adviser derived, on an unconsolidated basis, more than fifty percent (50%) of:

i. Its total sales and revenues; and

ii. Its income (or loss) before income taxes and extraordinary items, from such other business or businesses.

c. For the purposes of Subsection (A)(13) of this Rule, the following definitions will apply:

i. The term **Advisory Representative**, when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, shall mean any partner, officer, director, or employee of the investment adviser who participates in any way in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations. The term shall also apply to any of the follow persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of such recommendations or of the information concerning the recommendations:

(a) Any person in a control relationship to the investment adviser;

(b) Any affiliated person of a controlling person; and

(c) Any affiliated person of an affiliated person.

ii. **Control** shall mean the power to exercise a controlling influence over the management or policies of a company unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than twenty-five percent (25%) of the voting securities of a company shall be presumed to control such company.

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

14. A copy of each written statement, amendment, or revision given or sent to any client or prospective client of the investment adviser in accordance with the provisions of Rule 6.29 and a record of the dates that each written statement, amendment, or revision was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

15. For each client that was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser:

    a. Evidence of a written agreement to which the adviser is a party related to the payment of such fee;

    b. A signed and dated acknowledgment of receipt from the client evidencing the client's receipt of the investment adviser's disclosure statement and a written disclosure statement of the solicitor; and

    c. A copy of the solicitor's written disclosure statement. The written agreement, acknowledgment, and solicitor disclosure statement will be considered in compliance if such documents are in compliance with Rule 6.31.

    For the purposes of this Rule, the term **Solicitor** is defined in Rule 6.31(A).

16. All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including but not limited to electronic media that the investment adviser circulates or distributes, directly or indirectly, to two (2) or more persons (other than persons connected with the investment adviser); provided, however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this Subsection.

17. A file containing a copy of all written communications received or sent (1) regarding any litigation involving the investment adviser or any investment adviser representative or employee and (2) regarding any written customer or client complaint.

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

19. Written procedures that supervise the activities of employees and investment adviser representatives and that are reasonably designed to achieve compliance with applicable securities laws and regulations.

20. A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self-regulatory organization and that pertains to the registrant or its investment adviser representatives as that term is defined in Subsection (A)(12)(b) of this Rule. The file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

21. Copies, with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form U-4; Each amendment to Disclosure Reporting Pages (DRPs U-4) must be retained by the investment adviser (filing on behalf of the investment adviser representative) and must be made available for inspection upon regulatory request.

22. When the adviser inadvertently held or obtained a client's securities or funds and returned them to the client within three (3) business days of receiving them or has forwarded checks drawn by clients and made payable to third parties within three (3) business days of receipt, the adviser will be considered as not having custody but shall keep the following records:

    a. For receipt of client securities or funds, a ledger or other listing of all securities or funds received and returned, including the following information:

        i. Issuer;

        ii. Type of security and series;

        iii. Date of issue;

        iv. For debt instruments, the denomination, interest rate, and maturity date;

        v. Certificate number, including alphabetical prefix or suffix;

        vi. Name in which registered;

        vii. Date received by the adviser;
        viii. Date returned to client or sender;

        ix. Form of delivery to client or sender, or copy of the form of delivery to client or sender;

        x. Mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.

    b. For checks made payable to a third party, a ledger or other listing of all checks received and forwarded, including the following information:

        i. Payor;

        ii. Type of check (personal, corporate, etc.);

        iii. Date of check;

        iv. Amount of check;

        v. Check number;

vi. Payee;

vii. Date received by the adviser;

viii. Date forwarded to the third party;

ix. Form of delivery to client or sender, or copy of the form of delivery to client or sender; and

x. Mail confirmation number, if applicable, or confirmation by the third party of the check's receipt.

xi. A copy of the check will suffice for items (b)(i)-(vi) above.

23. If an investment adviser obtains possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving any public offering that comply with the exception from custody under Rule 6.35(B)(2), the adviser shall keep the following records:

a. A record showing the issuer or current transfer agent's name, address, phone number, and other applicable contract information pertaining to the party responsible for recording client interests in the securities; and

b. A copy of any legend, shareholder agreement, or other agreement showing that those securities that are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

B. Additional recordkeeping requirements for advisers with custody

1. If an investment adviser has custody, the records required to be made and kept under Subsection (A) of this Rule shall also include:

a. A copy of any and all documents executed by the client (including a limited power of attorney) under which the adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the adviser's instruction to the custodian;

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

c. A separate ledger account for each client showing all purchases, sales, receipts, and deliveries of securities, as well as the date and price of each purchase and sale and all debits and credits;

d. Copies of confirmations of all transactions effected by or for the account of any client;

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

f. A copy of each of the client's quarterly account statements, as generated and delivered by the qualified custodian. If the adviser also generates a statement that is delivered to the client, the adviser shall also maintain copies of such statements along with the date such statements were sent to the clients;

g. If applicable to the adviser's situation, a copy of the auditor's report, as well as financial statements and a letter verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination;

h. A record of any finding by the independent certified public accountant of any material discrepancies found during the examination; and

i. If applicable, evidence of the client's designation of an independent representative.

2. If an investment adviser has custody because it advises a pooled investment vehicle, as defined in Rule 6.35(D)(2), the adviser shall also keep the following records:

a. True, accurate, and current account statements;

b. Where the adviser complies with Rule 6.35(B)(4), the records required to be made and kept shall include:

i. The date(s) of the audit;

ii. A copy of the audited financial statements; and

iii. Evidence of the mailing of the audited financials to all limited partners, members, or other beneficial owners within one hundred twenty (120) days of the end of its fiscal year.

c. Where the adviser complies with Rule 6.35(A)(5)(b), the records required to be made and kept shall include:

i. A copy of the written agreement with the independent party reviewing all fees and expenses, indicating the responsibilities of the independent third party; and

ii. Copies of all invoices and receipts showing approval by the independent party for payment through the qualified custodian.

C. Every investment adviser subject to Subsection (A) of this Rule 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 for each separate client the securities purchased and sold as well as the date, amount, and price of each purchase and sale.

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

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

E. Every investment adviser subject to Section (A) of this Rule shall preserve the following records in the manner prescribed:

1. All books and records required to be made under the provisions of Subsections (A) through (C) of this Rule (except for books and records required to be made under the provisions of Subsections (A)(11) and (A)(16)), shall be maintained and preserved in an easily accessible place for a period of not less than five (5) years from the end of the fiscal year during which the last entry was made on record. The first two (2) years they shall be kept in the principal office of the investment adviser.

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

3. Books and records required to be made under the provisions of Subsections (A)(11) and (A)(16) of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five (5) years, the first two (2) years in an the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media.

4. Books and records required to be made under the provisions of Subsections (A)(17)-(20) of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five (5) years from the end of the fiscal year during which the last entry was made on such record or for the time period during which the investment adviser was registered or required to be registered in the state, if less. The first two (2) years they shall be kept in the principal office of the investment adviser

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

   a. Records required to be preserved under Subsections (A)(3), (7)-(10), (14)-(15), (17)-(19); (B); and (C) of this Rule, inclusive; and

   b. The records or copies required under the provision of Subsections (A)(11), (16) when such records or related records identify the name of the investment adviser representative providing investment advice from that business location, or identify the business location's physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the period described in this Subsection (E).

F. An investment adviser subject to Subsection (A), before ceasing to conduct or discontinuing business as an investment adviser, shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this Rule for the remainder of the period specified in this Rule, and it shall notify the Division in writing of the exact address where the books and records will be maintained during the period.

G. Production of records

   1. Pursuant to this Rule, the records required to be maintained and preserved may be immediately produced or reproduced, and maintained and preserved for the required time, by an investment adviser on:

      a. Paper or hard copy form, as those records are kept in their original form; or

      b. Micrographic media, including microfilm, microfiche, or any similar medium; or

      c. Electronic storage media, including any digital storage medium or system that meets the terms of this Rule.

   2. The investment adviser must:

      a. Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

      b. Provide promptly any of the following that the Division (by its examiners or other representatives) may request:

         i. A legible, true, and complete copy of the record in the medium and format in which it is stored;

         ii. A legible, true, and complete printout of the record; and

iii. Means to access, view, and print the records; and

c. Separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this Rule.

3. In the case of records created or maintained on electronic storage media, the investment adviser must establish and maintain procedures:

a. To maintain and preserve the records so as to reasonably safeguard them from loss, alteration, or destruction;

b. To limit access to the records to properly authorized personnel and the Division (including its examiners and other representatives); and

c. To reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

H. For the purposes of this Rule, **Investment Supervisory Services** means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client; and **Discretionary Power** shall 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.

I. Any book or other record made, kept, maintained and preserved in compliance with SEC Rules 17a-3 (17 C.F.R. § 240.17a-3) and 17a-4 (17 C.F.R. § 240.17a-4) under the Securities Exchange Act of 1934, which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this Rule, shall be deemed to be made, kept, maintained and preserved in compliance with this Rule.

J. Every investment adviser registered or required to be registered in this state and that has its principal place of business in a state other than this state shall be exempt from the requirements of this Rule, provided the investment adviser is licensed or registered in such state and is in compliance with such state's recordkeeping requirements.

K. Every investment adviser that exercises voting authority with respect to client securities shall make, maintain, and preserve records in compliance with SEC Rule 204-2(c)(2) relating to proxy voting (17 C.F.R. § 275.204-2(c)(2)).

Source: *Miss. Code Ann.* §75-71-411(c) (2016).

Rule 6.21 Segregated Accounts. An investment adviser shall at all times keep its customers' securities and funds in trust and segregated from its own securities and funds.

A. All financial transactions between the investment adviser and its clients are to be effected through one (1) or more bank accounts, each to be designated "special account for the exclusive benefit of clients of [name of investment adviser];" each shall be

separate from any other bank accounts of the investment adviser and shall at no time be used directly or indirectly as security for a loan to the investment adviser by the bank and shall be subject to no right, lien, or claim of any kind in favor of the bank or any persons claiming through the bank; and each shall be separate from any other bank account used by the investment adviser to pay operating and administrative expenses.

B. Immediately after accepting custody or possession of funds or securities from any client, an investment adviser must notify such client in writing of the place and manner in which such funds and securities will be maintained, and thereafter, if and when there is any change in the place or manner in which such funds or securities are being maintained, must give such client written notice thereof.

Source: *Miss. Code Ann.* §§ 75-71-411(c)(1), 411(f) (2016).

Rule 6.23 Compliance-Supervision.

A. All investment advisers shall establish and keep current a set of written compliance-supervisory procedures and a system for implementing such procedures, which may be reasonably expected to prevent and detect any violations of the Act and Rules promulgated thereunder.

   1. Procedures should include a business continuity and succession plan. The plan shall be based upon the facts and circumstances of the investment adviser's business model including the size of the firm, type(s) of services provided, and the number of locations of the investment adviser. The plan shall provide for at least the following:

      a. Protection of, backup, and recovery of books and records;

      b. Alternate means of communications with customers, key personnel, employees, vendors, service providers (including third-party custodians), and regulators, including, but not limited to, providing notice of a significant business interruption or the death or unavailability of key personnel or other disruptions or cessation of business activities;

      c. Office relocation in the event of a temporary or permanent loss of principal place of business;

      d. Assignment of duties to qualified, responsible persons in the event of the death or unavailability of key personnel; and

      e. Otherwise minimizing service disruptions and client harm that could result from a sudden significant business interruption.

   2. Procedures should also include measures reasonably designed to ensure cybersecurity.

3. A complete set of such procedures and systems shall be kept, or be immediately accessible, in all offices located in this state.

B. Every investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of Subsection (A) of this Rule, provided the investment adviser is licensed or registered in such state and is in compliance with such state's written compliance-supervisory procedures requirements.

Source: *Miss. Code Ann.* §§ 75-71-411, 412(d)(9) (2016).

Rule 6.25 Standards of Conduct. A person who is an investment adviser, an investment adviser representative, or a federal covered investment adviser is a fiduciary and has a duty to act primarily for the benefit of its clients. Acts, conduct, and practices, including, but not limited to, the following, are considered contrary to such duty and may constitute grounds for denial, suspension, revocation of registration, a bar, imposition of fines, or such other action authorized by statute:

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

B. Placing an order to purchase or sell a security for a client’s account without authority to do so.

C. Placing an order to purchase or sell a security for a client’s account upon instruction from a third party without first having obtained a written third-party trading authorization from the client.

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

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

F. Publishing, circulating, or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940 (17 C.F.R. § 206(4)-1), as now or hereafter amended.

G. Failure to enter into, extend, or renew any investment advisory contract with an investment advisory client without a written advisory contract which provides:

1. The services to be provided, the term of the contract, the investment advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of termination or non-performance of the contract, and whether any discretionary power is granted to the investment adviser or investment adviser representative;

2. That no direct or indirect assignment or transfer of the contract may be made by the investment adviser or investment adviser representative without the consent of the client or other party to the contract;

3. Whether the investment adviser or investment adviser representative will be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client; and

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

H. It is unlawful for any investment adviser or investment adviser representative to:

1. Include in an advisory contract a "hedge clause" or any other language which may lead a client to believe that legal rights have been restricted or waived;

2. Include in an advisory contract any condition, stipulation, or provisions binding any person to waive compliance with any provision of this act or of the Investment Advisers Act of 1940, or any other practice contrary to the provisions of Section 215 of the Investment Advisers Act of 1940; or

3. Enter into, extend, or renew any advisory contract contrary to the provisions of Section 205 of the Investment Advisers Act of 1940. This provision shall apply to all investment advisers and investment adviser representatives registered or required to be registered under this Act, notwithstanding whether such adviser or representative would be exempt from federal registration pursuant to Section 203(b) of the Investment Advisers Act of 1940.

I. *Performance Fees*. It is unlawful for any investment adviser or investment adviser representative to enter into, extend, or renew an investment advisory contract which provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds, or any portion of the funds, of the client unless the following conditions are met.

1. The client entering into the contract must be:

a. A natural person or a company who, immediately after entering into the contract, has at least Seven Hundred Fifty Thousand Dollars ($750,000.00) under the management of the investment adviser; or

b. A person who the investment adviser and its investment adviser representatives reasonably believe, immediately before entering into the contract, is a natural person or a company whose net worth, at the time the contract is entered into, exceeds One Million Five Hundred Thousand Dollars ($1,500,000.00). The net worth of a natural person may include assets held jointly with that person's spouse.

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

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

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

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

      ii. If the unrealized capital appreciation of the securities over the period is included, the unrealized capital depreciation of the securities over the period; and

   c. The formula must provide that any compensation paid to the investment adviser under this Rule is based on the gains less the losses (computed in accordance with Subsections (I)(2)(a) and (b) of this Rule) in the client's account for a period of not less than one (1) year.

3. Before entering into the advisory contract and in addition to the requirements of Form ADV, the investment adviser must disclose in writing to the client or the client's independent agent all material information concerning the proposed advisory arrangement, including the following:

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

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

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

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

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

4. The investment adviser (and any investment adviser representative) who enters into the contract must reasonably believe, immediately before entering into the contract, that the contract represents an arm's length arrangement between the parties and that the client (or in the case of a client which is a company as defined in Rule 6.25(L)(4), the person representing the company), alone or together with the client's independent agent, understands the proposed method of compensation and its risks. The representative of a company may be a partner, director, officer, employee of the company or the trustee, where the company is a trust, or any other person designated by the company or trustee, but must satisfy the definition of client's independent agent set forth in Rule 6.25(L)(3).

J. Any person entering into or performing an investment advisory contract under this Rule is not relieved of any obligations under Section 75-71-502(b) of the Act or any other applicable provision of the Act or any rule or order thereunder.

K. Nothing in this Rule shall relieve a client's independent agent from any obligation to the client under applicable law.

L. The following definitions apply for purposes of this Rule:

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

2. **Assignment**, as used in Subsection (G)(2) of this Rule, includes, but is not limited to, any transaction or event that results in any change to the individuals or entities with the power, directly or indirectly, to direct the management or policies of or to vote more than fifty percent (50%) of any class of voting securities of, the investment adviser or federal covered investment adviser as compared to the individuals or entities who had such power as of the date when the contract was first entered into, extended or renewed.

3. **Client's Independent Agent** means any person who agrees to act as an investment advisory client's agent in connection with the contract; the definition does not include:

    a. The investment adviser relying on this Rule;

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

    c. An interested person of the investment adviser;

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

    e. A person with any material relationship between himself (or an affiliated person of that person) and the investment adviser (or an affiliated person of the investment adviser) that exists or has existed at any time during the past two (2) years.

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

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

    b. A private investment company (for purposes of this Subsection (L)(4)(b), a private investment company is a company which would be defined as an investment company under Section 3(a) of the Investment Company Act of 1940 but for the exception from that definition provided by Section 3(c)(1) of that Act);

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

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

5. **Interested Person** means:

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

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

      i. One-tenth (1/10) of one percent (1%) of any class of outstanding securities of the investment adviser or a controlling person of the investment adviser; or

      ii. Five percent (5%) of the total assets of the person seeking to act as the client’s independent agent; or

   c. Any person or partner or employee of any person who, at any time since the beginning of the last two (2) fiscal years, has acted as legal counsel for the investment adviser.

M. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority. Discretionary power does not include a power relating solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

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

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

P. Providing a report or recommendation to any client prepared by someone other than the investment adviser, investment adviser representative, or federal covered investment adviser without disclosing that fact. This prohibition does not apply to a situation where the investment adviser, investment adviser representative, or federal covered investment adviser uses published research reports or statistical analyses to render advice or where

an investment adviser, investment adviser representative, or federal covered investment adviser orders such a report in the normal course of providing service.

Q. Charging a client an advisory fee that is unreasonable in light of the type of services to be provided, the experience and expertise of the adviser, and the sophistication and bargaining power of the client.

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

1. Compensation arrangements connected with advisory services to clients that are in addition to compensation from such clients for such services; and

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

S. Guaranteeing a client that a specific result will be achieved with advice rendered.

T. Disclosing the identity, investments, or other financial information of any client or former client to a third party unless required by law to do so or unless consented to by the client or former client.

U. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the safekeeping requirements of Subsections 6.35(A)(1) through (7).

V. Paying a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities in a manner which does not comply with Rule 6.31.

W. Failing to disclose to any client or prospective client all material facts with respect to the financial and disciplinary information required to be disclosed under Rule 206(4)-4 under the Investment Advisers Act of 1940 (17 C.F.R. § 275.206(4)-4), as now or hereafter amended.

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

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

2. The prohibitions of this Subsection shall not apply to any transaction with a customer of a broker-dealer if the broker-dealer acts as an investment adviser solely:

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

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

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

    d. Any combination of the foregoing services.

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

4. The following definitions apply for purposes of this Rule:

    a. **Publicly Distributed Written Materials** means written materials which are distributed to thirty-five (35) or more persons who pay for those materials.

    b. **Publicly Made Oral Statements** means oral statements made simultaneously to thirty-five (35) or more persons who pay for access to those statements.

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

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

    b. Before obtaining such written consent from the client, the investment adviser makes full written disclosure to the client that, with respect to agency cross transactions, the investment adviser will act as broker-dealer for, receive

commissions from, and have a potentially conflicting division of loyalties and responsibilities regarding both parties to the transactions;

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

   i. A statement of the nature of the transaction;

   ii. The date the transaction took place;

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

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

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

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

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

6. Each written disclosure and confirmation required by this Rule must include a conspicuous statement that the client may revoke the written consent required under Subsection (X)(5)(a) of this Rule at any time by providing written notice to the investment adviser.

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

8. For purposes of this Rule, **agency cross transaction for an advisory client** means a transaction in which a person acts as an investment adviser in relation to a transaction in which the investment adviser, or any person controlling, controlled

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

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

Y. 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.

Z. 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 this Act or any rule or regulation thereunder.

AA. Exercising voting authority with respect to client securities in a manner which does not comply with Rule 206(4)-6 under the Investment Advisers Act of 1940.

BB. Engaging in any act, practice, or course of business which is deceptive, unethical, dishonest, or manipulative in contravention of Section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact that such investment adviser is not registered or required to be registered under Section 203 of the Investment Advisers Act of 1940.

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

DD. Engaging in other conduct such as forgery, embezzlement, non-disclosure, incomplete disclosure, misstatement of material facts, or manipulative or deceptive practices.

Source: *Miss. Code Ann.* § 75-71-502(b) (2016).

Rule 6.27 Commingling of Accounts Prohibited. An investment adviser engaged in more than one (1) enterprise or activity shall maintain separate books of account and records relating to its advisory business. The assets of the advisory business shall not be commingled with those of such other businesses, and there shall be a clearly defined division with respect to income and expenses.

Source: *Miss. Code Ann.* § 75-71-411(c) (2016).

Rule 6.29 Brochure Rule.

A. *General Requirements*. Unless otherwise provided in this Rule, an investment adviser registered or required to be registered pursuant to Section 75-71-403 of the Act shall, in accordance with the provisions of this section, furnish each advisory client and prospective advisory client with:

1. A brochure which may be a copy of Part 2A of its Form ADV or written documents containing the information required by Part 2A of Form ADV;

2. A copy of its Part 2B brochure supplement for each individual

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

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

3. A copy of its Part 2A Appendix 1 wrap fee brochure if the investment adviser sponsors or participates in a wrap fee account;

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

5. Such other information as the Division may require.

6. The brochure must comply with the language, organizational format, and filing requirements specified in the Instructions to Form ADV Part 2.

B. Delivery.

1. Initial Delivery. An investment adviser, except as provided in Subsection (B)(3) of this Rule, shall deliver the Part 2A brochure and any brochure supplements required by this section to a prospective advisory client:

   a. Not less than forty-eight (48) hours prior to entering into any advisory contract with such client or prospective client; or

   b. At the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract.

2. Annual Delivery. An investment adviser, except as provided in Subsection (B)(3) of this Rule, must:

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

b. Deliver a summary of material changes that includes an offer to provide a copy of the updated brochure and supplements and information on how the client may obtain a copy of the brochures and supplements.

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

3. Delivery of the brochure and related brochure supplements required by Subsections (B)(1) and (2) of this Rule need not be made to:

a. Clients who receive only impersonal advice and who pay less than $500 in fees per year; or

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

c. A business development company as defined in the Investment Company Act of 1940 and whose advisory contract meets the requirements of section 15c of that Act.

4. Delivery of the brochure and related supplements may be made electronically if the investment adviser:

a. In the case of an initial delivery to a potential client, obtains a verification that a readable copy of the brochure and supplements were received by the client;

b. In the case of all other deliveries, obtains each client’s prior consent to provide the brochure and supplements electronically;

c. Prepares the electronically delivered brochure and supplements in the format prescribed in Section (A) and instructions to Form ADV Part 2;

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

e. Establishes procedures to supervise personnel transmitting the brochure and supplements and prevent violations of this Rule.

C. *Other Disclosures*. Nothing in this Rule shall relieve any investment adviser from any obligation pursuant to any provision of the Act or the rules and regulations thereunder

or other federal or state law to disclose any information to its advisory clients or prospective advisory clients not specifically required by this Rule.

D. *Definitions*. For the purpose of this Rule:

1. **Contract for impersonal advisory services** means any contract relating solely to the provision of investment advisory services:

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

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

   c. Any combination of the foregoing services.

2. **Entering into**, in reference to an advisory contract, does not include an extension or renewal without material change of any such contract that is in effect immediately prior to such extension or renewal.

Source: *Miss. Code Ann.* § 75-71-203 (2016).

Rule 6.31 Solicitor Rule.

A. The following definitions apply for purposes of this Rule:

1. **Solicitor** means any individual, person, or entity with a place of business in this state who directly or indirectly receives a cash fee or any other economic benefit for soliciting, referring, offering, or otherwise negotiating for the sale or selling of investment advisory services to clients on behalf of an investment adviser.

2. **Client** includes any prospective client.

B. It shall be unlawful for any investment adviser, registered or required to be registered, to pay a cash fee or any other economic benefit, directly or indirectly, in connection with solicitation activities unless:

1. The solicitor is registered as an investment adviser representative; and

2. The solicitor to whom a cash fee or any other economic benefit is paid for such referral is not a person:

   a. Subject to an order of the SEC issued under Section 203(f) of the Investment Advisers Act of 1940;

b. Subject to an order of the Mississippi Secretary of State, the securities administrator of any other state, the SEC, or any self-regulatory organization denying, suspending, or revoking registration as a broker-dealer, agent, investment adviser, or investment adviser representative barring the person from the securities or advisory industry or associating or affiliating with the securities or advisory industry, entered after notice and opportunity for hearing;

c. Convicted within the previous ten (10) years of any felony;

d. Convicted within the previous ten (10) years of any misdemeanor involving conduct described in Section 203(e)(2)(A) through (D) of the Investment Advisers Act of 1940;

e. Convicted within the previous ten (10) years of any misdemeanor involving conduct described in Section 75-71-412(d)(3) of the Act;

f. Found by the SEC to have engaged, or has been convicted of engaging in, any of the conduct specified in Section 203(e)(1), (5), or (6) of the Investment Advisers Act of 1940;

g. Found by the Secretary of State to have engaged, or has been convicted of engaging in, any of the conduct specified in Sections 75-71-412(d)(1), (2), and (6) of the Act;

h. Subject to an order, judgment, or decree described in Section 203(e)(4) of the Investment Advisers Act of 1940; or

i. Subject to an order, judgment, or decree described in Section 75-71-412(d)(4) of the Act; and

3. The cash fee or any other economic benefit is paid by the investment adviser with respect to solicitation activities that are impersonal in nature in that they are provided solely by means of:

   a. Written material or oral statements which do not purport to meet the objectives or needs of the specific client;

   b. Statistical information containing no expressions of opinions as to the merits of particular securities or investment advisers; or

   c. Any combination of the foregoing services; and

4. The cash fee or any other economic benefit is paid pursuant to a written agreement to which the investment adviser is a party and all of the following conditions are met:

a. The written agreement:

i. Describes the solicitation or referral activities to be engaged in by the solicitor on behalf of the investment adviser and the cash fee or any other economic benefit to be received for such activities;

ii. Contains an undertaking by the solicitor to perform its duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of the Act and Rules thereunder; and

iii. Requires that the solicitor, at the time of any solicitation or referral activities for which a cash fee or any other economic benefit is paid or to be paid by the investment adviser, provide the client with a current copy of the investment adviser's disclosure document required under Subsection (B)(4)(b) of this Rule and a separate disclosure statement as described in Subsection (C) of this Rule.

b. The investment adviser receives from the client, prior to or at the time of entering into any written investment advisory contract, a signed and dated acknowledgment of receipt of both the investment adviser's written disclosure statement and the solicitor's written disclosure document; and

c. The investment adviser makes a bona fide effort and has a reasonable basis for believing that the solicitor has complied with the agreement;

d. The foregoing requirements of Subsections (B)(4)(a), (b), and (c) of this Rule shall not apply where the solicitor is:

i. A partner, officer, director, or employee of such investment adviser; or

ii. A partner, officer, director, or employee of a person that controls, is controlled by, or is under common control with such investment adviser, provided the status of the solicitor is disclosed to the client at the time of the solicitation or referral.

C. The separate written disclosure document required to be furnished by the solicitor to the client pursuant to Subsection (B)(4)(b) of this Rule shall contain the following information:

1. The name of the solicitor;

2. The name of the investment adviser;

3. The nature of the relationship, including any affiliation, between the solicitor and the investment adviser;

4. A statement that the solicitor will be compensated for solicitation or referral services by the investment adviser;

5. The terms of the compensation arrangement, including a description of the cash fee or any other economic benefit paid or to be paid to the solicitor; and

6. The amount of compensation the client will pay, if any, in addition to the advisory fees, and whether the cash fee or any other economic benefit paid to the solicitor will be added to the advisory fee, creating a differential with respect to the amount charged to other advisory clients who are not subject to the solicitor compensation arrangement.

D. Nothing in this Rule shall be deemed to relieve any person of any fiduciary or other obligation to which such person may be subject under any law.

Source: *Miss. Code Ann.* §§ 75-71-102(16), 605 (2016).

Rule 6.33 Reserved.

Rule 6.35 Custody of Client Funds or Securities by Investment Advisers.

A. *Safekeeping required*. If an investment adviser is registered or required to be registered, it is unlawful for the investment adviser to have custody of client funds or securities unless:

1. Notice to Division. The investment adviser notifies the Division promptly in writing that the investment adviser has or may have custody. Such notification is required to be given on Form ADV.

2. Qualified custodian. A qualified custodian maintains those funds and securities either:

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

    b. In accounts that contain only the adviser's clients' funds and securities, under the adviser's name as agent or trustee for the clients.

3. Notice to clients. If an investment adviser opens an account with a qualified custodian on its client's behalf, either under the client's name or under the name of the investment adviser as agent, the investment adviser must notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information.

4. Account statements must be sent to clients, either:

a. By a qualified custodian. The investment adviser has reasonable basis for believing that the qualified custodian sends an account statement, at least quarterly, to each client for which it maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period; or

b. By the investment adviser.

   i. The investment adviser sends an account statement, at least quarterly, to each client for whom the investment adviser has custody of funds or securities, identifying the amount of funds and of each security of which the investment adviser has custody at the end of the period and setting forth all transactions during that period;

   ii. An independent certified public accountant verifies all client funds and securities by actual examination at least once during each calendar year at a time chosen by the accountant without prior notice or announcement to the adviser and that is irregular from year to year, and files a copy of the special examination report with the Division within thirty (30) days after the completion of the examination, along with a letter stating that it has examined the funds and securities and describing the nature and extent of the examination; and

   iii. The independent certified public accountant, upon finding any material discrepancies during the course of the examination, notifies the Division within one (1) business day of the finding, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the Division;

c. Special rule for limited partnerships and limited liability companies. If the adviser is a general partner of a limited partnership (or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle), the account statements required under Subsection (A)(4) of this Rule must be sent to each limited partner (or member or other beneficial owner or their independent representative).

5. Independent representatives. A client may designate an independent representative to receive, on his behalf, notices and account statements as required under Subsections (A)(3) and (A)(4) of this Rule.

6. Direct fee deduction. An adviser who has custody as defined in (C)(1)(c) of this Rule by having fees directly deducted from client accounts must, in addition to the safekeeping requirements set forth in Subsections (A)(1) through (4) of this Rule, also comply with the following additional safeguards:

   a. Written authorization. The adviser must have written authorization from the client to deduct advisory fees from the account held with the qualified custodian;

b. Notice of fee deduction. Each time a fee is directly deducted from a client account, the adviser must concurrently:

   i. Send the qualified custodian an invoice of the amount of the fee to be deducted from the client's account; and

   ii. Send the client an invoice itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under managements the fee is based on, and the time period covered by the fee.

c. Notice of safeguards. The investment adviser notifies the Division in writing that the investment adviser intends to use the additional safeguards provided above. Such notification is required to be given on Form ADV.

d. Waiver of Bonding, Net Worth, or Financial Reporting Requirements. An investment adviser having custody solely because it meets the definition of custody as defined in Rule Subsection (C)(1)(c) of this Rule and who complies with the safekeeping requirements in Subsections (A)(1) through (4) of this Rule and employs the additional safeguards of Subsections (A)(6)(a) through (c) of this Rule will not be required to meet the Bonding, Net Worth, and Financial Reporting Requirements for custodial advisers as set forth in Rules 6.07, 6.09, and 6.11.

7. Pooled investments. An investment adviser who has custody as defined in Subsection (C)(1)(d) of this Rule and who does not meet the exception provided under Subsection (B)(3) of this Rule must, in addition to the safekeeping requirements set forth in Subsections (A)(1) through (4) of this Rule, also comply with the following additional safeguards:

   a. Engage an independent party. Hire an independent party to review all fees, expenses and capital withdrawals from the pooled accounts;

   b. Review of fees. Send all invoices or receipts to the independent party, detailing the amount of the fee, expenses or capital withdrawal and the method of calculation such that the independent party can:

      i. Determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement); and

      ii. Forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment adviser.

   c. For purposes of this Rule, an **Independent Party** means a person who:

      i. Is engaged by the investment adviser to act as a gatekeeper for the payment of fees, expenses and capital withdrawals from the pooled investment;

ii. Does not control and is not controlled by and is not under common control with the investment adviser; and

iii. Does not have, and has not had within the past two (2) years, a material business relationship with the investment adviser.

d. Notice of safeguards. The investment adviser notifies the Division in writing that the investment adviser intends to use the additional safeguards provided above. Such notification is required to be given on Form ADV.

e. Waiver of bonding, net worth, or financial reporting requirements. An investment adviser having custody solely because it meets the definition of custody as defined in Subsection(C)(1)(d) of this Rule and who complies with the safekeeping requirements in Subsections (A)(1) through (4) of this Rule and the additional safeguards of Subsections (A)(7)(a) through (c) of this Rule will not be required to meet the bonding, net worth, and financial reporting requirements for custodial advisers as set forth in Rules 6.05, 6.07, and 6.09.

8. Investment adviser or investment adviser representative as trustee. When a trust retains an investment adviser, investment adviser representative, officer, or employee of the adviser as trustee and the adviser acts as investment adviser to that trust, the adviser will:

a. Notice of safeguards. The investment adviser notifies the Division in writing that the investment adviser intends to use the additional safeguards provided below. Such notification is required to be given on Form ADV.

b. Invoice requirement. The investment adviser will send to the grantor of the trust, the attorney for the trust if it is a testamentary trust, the co-trustee, (other than the investment adviser, investment adviser representative, or employee, director or owner of the investment adviser) or a defined beneficiary of the trust, at the same time that it sends any invoice to the qualified custodian, an invoice showing the amount of the trustees' fee or investment management or advisory fee, the value of the assets on which the fees were based, and the specific manner in which the fees were calculated.

c. Custodian agreement.: The investment adviser will enter into a written agreement with a qualified custodian which specifies:

i. Payment of fees. The qualified custodian will not deliver trust securities to the investment adviser, any investment adviser representative or employee, or director or owner of the investment adviser, nor will it transmit any funds to the investment adviser, any investment adviser representative, or employee, director, or owner of the investment adviser, except that the qualified custodian may pay trustees' fees to the trustee and investment management or advisory fees to investment adviser, provided that:

(a) The grantor of the trust or attorneys for the trust, if it is a testamentary trust; the co-trustee (other than the investment adviser; investment adviser representative; or employee, director or owner of the investment adviser), or a defined beneficiary of the trust has authorized the qualified custodian in writing to pay those fees;

(b) The statements for those fees show the amount of the fees for the trustee and, in the case of statements for investment management or advisory fees, show the value of the trust assets on which the fee is based and the manner in which the fee was calculated; and

(c) The qualified custodian agrees to send to the grantor of the trust, the attorneys for a testamentary trust, the co-trustee (other than an officer or employee of the adviser) (other than the investment adviser; investment adviser representative; or employee, director or owner of the investment adviser), or a defined beneficiary of the trust, at least quarterly, a statement of all disbursements from the account of the trust, including the amount of investment management fees paid to the adviser and the amount of trustees' fees paid to the trustee.

ii. Distribution of assets. Except as otherwise set forth in Subsection (A)(8)(c)(ii)(1) of this Rule below, that the qualified custodian may transfer funds or securities, or both, of the trust only upon the direction of the trustee (who may be the investment adviser; investment adviser representative; or employee, director, or owner of the investment adviser), who the investment adviser has duly accepted as an authorized signatory. The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co-trustee (other than the investment adviser; investment adviser representative; or employee, director, or owner of the investment adviser), or a defined beneficiary of the trust, must designate the authorized signatory for management of the trust. The direction to transfer funds or securities, or both, can only be made to the following:

(a) To a trust company, bank trust department, or brokerage firm independent of the adviser for the account of the trust to which the assets relate;

(b) To the named grantors or to the named beneficiaries of the trust;

(c) To a third party independent of the adviser in payment of the fees or charges of the third person, including, but not limited to, (1) attorney's, accountant's, or custodian's fees for the trust; and (2) taxes, interest, maintenance or other expenses, if there is property other than securities or cash owned by the trust;

(d) To third parties independent of the adviser for any other purpose legitimately associated with the management of the trust; or

(e) To a broker-dealer in the normal course of portfolio purchases and sales, provided that the transfer is made on payment against delivery basis or payment against trust receipt.

d. Waiver of bonding, net worth, or financial reporting requirements. An investment adviser who has custody solely because it meets the definition of custody as defined in Subsection 635 (C)(1)(d) of this Rule and who complies with the safekeeping requirements in Subsections (A)(1) through (4) of this Rule and the additional safeguards of Subsections (A)(8)(a) through (c) of this Rule will not be required to meet the bonding, net worth, and financial reporting requirements for custodial advisers as set forth in Rules 6.05, 6.07, and 6.09 of the Act.

B. Exceptions.

1. Shares of mutual funds. With respect to shares of an open-end company as defined in Section 5(a)(1) of the Investment Company Act of 1940 [15 U.S.C. 80a-5(a)(1)] ("mutual fund"), the investment adviser may use the mutual fund's transfer agent in lieu of a qualified custodian for purposes of complying with Subsection (A) of this Rule;

2. Certain privately offered securities.

a. The investment adviser is not required to comply with Subsection (A) of this Rule with respect to securities that are:

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

ii. Uncertificated, and ownership thereof is recorded only on books of the issuer or its transfer agent in the name of the client; and

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

b. Notwithstanding Subsection (B)(2)(i) of this Rule, the provisions of Subsection (B)(2) of this Rule are available with respect to securities held for the account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if the limited partnership is audited, the audited financial statements are distributed, as described in Subsection (B)(3) of this Rule and the investment adviser notifies the Division in writing that the investment adviser intends to provide audited financial statements, as described above. Such notification is required to be given on Form ADV.

3. Limited partnerships subject to annual audit. An investment adviser is not required to comply with Subsection (A)(3) (4) of this Rule with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) that is subject to audit at least annually and distributes

its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within one hundred twenty (120) days of the end of its fiscal year. The investment adviser must also notify the Division in writing that the investment adviser intends to employ the use of the audit safeguards described above. Such notification is required to be given on Form ADV.

4. Registered investment companies. The investment adviser is not required to comply with this Rule with respect to the account of an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 to 80a-64].

5. Beneficial trusts. The investment adviser is not required to comply with safekeeping requirements of Subsections (A)(1) through (4) of this Rule or the bonding, net worth and financial reporting requirements of Rules 6.07, 6.09, and 6.11 if the investment adviser has custody solely because the investment adviser, investment adviser representative or employee, director or owner of the investment adviser is a trustee for a beneficial trust, if all of the following conditions are met for each trust:

    a. The beneficial owner of the trust is a parent, a grandparent, a spouse, a sibling, a child, or a grandchild of the adviser. These relationships shall include "step" relationships.

    b. For each account under Subsection (B)(5)(i) of this Rule the investment adviser complies with the following:

        i. The investment adviser provides a written statement to each beneficial owner of the account setting forth a description of the requirements of Subsection (A) of this Rule and the reasons why the investment adviser will not be complying with those requirements.

        ii. The investment adviser obtains from each beneficial owner a signed and dated statement acknowledging the receipt of the written statement required under Subsection (B)(5)(i) of this Rule above.

        iii. The investment adviser maintains a copy of both documents described in Subsections (B)(5)(i) and (ii) of this Rule above until the account is closed or the investment adviser is no longer trustee.

6. Any adviser who intends to have custody of client funds or securities but is not able to utilize a qualified custodian as defined in Subsection (C)(3) of this Rule must first obtain approval from the Division and must comply with all of the applicable safekeeping requirements under Subsections (A)(1) through (4) of this Rule including taking responsibility for those provisions that are designated to be performed by a qualified custodian.

C. Definitions. The following definitions apply for purposes of this Rule:

1. **Custody** means holding directly or indirectly, client funds or securities, or having any authority to obtain possession of them or the ability to appropriate them. Custody includes:

   a. Possession of client funds or securities unless received inadvertently and returned to the sender promptly, but in any case within three (3) business days of receiving them and the investment adviser maintains the records required by Rule 6.19(A)(22);

   b. Receipt of checks drawn by clients and made payable to unrelated third parties will not meet the definition of custody if forwarded to the third party within twenty-four (24) hours three (3) business days of receipt and the adviser maintains the records required under Rule 6.19(A)(22);

   c. Any arrangement (including a general power of attorney) under which the investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser's instruction to the custodian; and

   d. Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives the investment adviser or its supervised person legal ownership of or access to client funds or securities.

2. **Independent Representative** means a person who:

   a. Acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or contract is obliged to act in the best interest of the advisory client or the limited partners (or members, or other beneficial owners);

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

   c. Does not have, and has not had within the past two (2) years, a material business relationship with the investment adviser.

3. **Qualified Custodian** means the following independent institutions or entities that are not affiliated with the investment adviser by any direct or indirect common control and have not had a material business relationship with the investment adviser in the previous two (2) years:

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

b. A registered broker-dealer holding the client assets in customer accounts;

c. A registered futures commission merchant register under Section 4f(a) of the Commodity Exchange Act, holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and

d. A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

Source: *Miss. Code Ann.* § 75-71-411(f) (2016).

Part 14 Chapter 6: INVESTMENT ADVISERS

Rule 6.01 Definitions.

A. ~~Custody: For purposes of Part 14 Chapter 6 of these RulesArticle 6, the Division adopts the definition of custody as contained in Rule 6.35(C)(1).~~ **Custody** means holding directly or indirectly, client funds or securities, or having any authority to obtain possession of them (or having the ability to appropriate them). The investment adviser has custody if a related person holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of them, in connection with advisory services the investment adviser provides to clients.

B. **Cybersecurity** means the protection of investor and firm information from compromise through the use, in whole or in part, of electronic digital media, (e.g., computers, mobile devices, or Internet protocol-based telephony systems). "Compromise" refers to a loss of data confidentiality, integrity, or availability.

C. **Investment Adviser:** In order to provide uniform interpretation of the application of federal and state adviser laws to financial planners and other persons, the Division hereby expressly adopts S.E.C. Release No. IA-1092 (17 C.F.R. § 276.1092), as it relates to the definition of Investment Adviser set forth in Section 75-71-102(15) of the Act.

D. **Investment Adviser Representative:** Notwithstanding Section 75-71-102(16) of the Act, the term investment adviser representative as it applies to a person who is employed by or associated with a federal covered investment adviser only includes an individual who has a place of business in this jurisdiction, as that term is defined in Subsection (E) ~~Rule 601(E)~~ below, and who either:

1. Is a supervised person of a federal covered adviser, as defined in Subsection ~~Rule 601~~(F) below; or

2. Is not a supervised person as defined in Subsection (F) ~~Rule 601(D)~~ below,but solicits, offers, or negotiates for the sale of or sells investment advisory services on behalf of a federal covered investment adviser.

E. **Place of Business** means:

1. An office at which the investment adviser representative regularly provides investment advisory services, solicits, meets with, or otherwise communicates with clients; or

2. Any other location that is held out to the general public as a location at which the investment adviser representative provides investment advisory services, solicits, meets with, or otherwise communicates with clients.

F. **Supervised Person** means any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.

Source: *Miss. Code Ann.* § 75-71-605 (~~Rev. 2009~~ 2016).

Rule 6.03 Electronic Filing with Designated Entity.

A. Pursuant to the Act, the Division designates the web-based IARD operated by FINRA to receive and store filings and collect related fees from investment advisers and investment adviser representatives on behalf of the Division.

B. Unless otherwise provided, all investment adviser and investment adviser representative applications, amendments, notices, related filings, and fees required to be filed with the Division pursuant to the ~~r~~Rules promulgated under this Act, shall be filed electronically with and transmitted to IARD. The following additional conditions relate to such electronic filings:

1. 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 himself ~~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. Solely for purposes of a filing made through IARD, a document is considered filed with the Division when all fees are received and the filing is accepted by IARD on behalf of the Division.

C. Notwithstanding ~~Rule~~ Subsection ~~603~~(B) above, the electronic filing of any particular document and the collection of related processing fees shall not be required until such time as IARD provides for receipt of such filings and fees. Any documents or fees

required to be filed with the Division that are not permitted to be filed with or cannot be accepted electronically by IARD shall be filed directly with the Division.

D. An investment adviser shall be deemed to have fulfilled the requirement of filing a consent to service of process with the Division upon completing and filing the relevant portion of the revised Form ADV.

E. Investment advisers registered under the Act, or required to be registered under the Act, who experience unanticipated technical difficulties that prevent submission of an electronic filing to IARD may request a temporary hardship exemption from filing electronically with IARD. To request a temporary hardship extension, the investment adviser must:

   1. File Form ADV-H in paper format with the Division no later than one (1) business day after the filing that is subject of Form ADV-H was due; and

   2. Submit the filing that is the subject of Form ADV-H in electronic form to IARD no later than seven (7) business days after the filing was due.

F. The temporary hardship exemption will be deemed effective upon receipt by the Division of the complete Form ADV-H. Multiple temporary hardship exemption requests within the same calendar year are discouraged, and may be disallowed by the Division.

G. A continuing hardship exemption will be granted only if the investment adviser is able to demonstrate that the electronic filing requirements of this Rule are prohibitively burdensome. To apply for a continuing hardship exemption, the investment adviser must:

   1. File Form ADV-H in paper format with the Division at least twenty (20) business days before a filing is due; and

   2. If a filing is due to more than one state, the Form ADV-H must be filed with the state where the investment adviser's principal place of business is located. The state who receives the application will grant or deny the application within ten (10) business days after the filing of Form ADV-H.

H. The exemption is effective upon approval by the Division. The time period of the exemption may be no longer than one (1) year after the date on which the Form ADV-H is filed. If the Division approves the application, the investment adviser must, no later than five (5) business days after the exemption approval date, submit filings to IARD in paper format (along with the appropriate processing fees) for the period of time for which the exemption is granted.

I. The decision to grant or deny a request for a hardship exemption will be made by the state where the investment adviser's principal place of business is located, which decision will be conformed to by the other state(s) where the investment adviser is registered.

Source: *Miss. Code Ann.* § 75-71-406(e) (~~Rev. 2009~~ 2016).

Rule 6.05 Application for Investment Adviser Registration.

A. *Initial Application*. The application for initial registration as an investment adviser pursuant to Section 75-71-~~403(a)~~ 406 of the Act shall be made by filing Form ADV Parts ~~I~~ 1and ~~II~~ 2 (Uniform Application for Investment Adviser Registration) electronically with IARD and paying the applicable fee. The application for initial registration shall also include the following filed directly with the Division:

1. A copy of the ~~articles of incorporation or articles of limited partnership~~ entity's formation documents currently in effect, certified by the governmental agency where filed;

2. Where the adviser does not have custody of client funds or securities or does not require payment of advisory fees six (6) months or more in advance and in excess of ~~Five Hundred Dollars ($500.00)~~ Twelve Hundred Dollars ($1,200.00), a balance sheet as of the end of the investment adviser's most recent fiscal year. Each balance sheet filed pursuant to this Rule must be:

    a. Prepared in conformity with generally accepted accounting principles;

    b. Certified with an original notarized signature by an officer of the adviser as true, accurate, and prepared in conformity with generally accepted accounting principles; and

    c. Dated no more than forty-five (45) days prior to submission of Form ADV.

3. Where the adviser has custody of client funds or securities or requires payment of advisory fees six (6) months or more in advance and in excess of ~~Five Hundred Dollars ($500.00)~~ Twelve Hundred Dollars ($1,200.00), each balance sheet filed pursuant to this Rule must be:

    a. Audited in accordance with~~to~~ Rule 6.11(C)(1)-(3);

    b. Dated no more than forty-five (45) days prior to submission of FORM ADV; and

    c. If the audited balance sheet is dated more than forty-five (45) days prior to submission of FORM ADV, a current certified unaudited balance sheet must also be submitted.

    d. An adviser in existence less than a year at the time of initial filing must submit a current certified unaudited balance sheet accompanied by a designation of the accountant who will perform the applicant's first annual audit.

4. A copy of the surety bond required by Rule 6.0~~5~~7, if applicable;

5. Copies of all standard advisory contracts;

6. A list of persons, including CRD numbers, whom the adviser intends to register as investment adviser representatives in this state; ~~Mississippi~~, and

7. Any other information the Division may reasonably require.

8. ~~For purposes of this Rule, **custody** is defined in Rule 6.35(C)(1).~~

B. *Annual Renewal*. The application for annual renewal registration as an investment adviser shall be filed electronically with IARD and shall include the fee required by Rule 4.15. The application for annual renewal registration shall also include, if applicable, a copy of the surety bond required by Rule 6.07 and financial statements required by Rule 6.11 to be filed directly with the Division.

C. *Updates and Amendments*. The Division shall be notified within thirty (30) days whenever the information contained in any application or amendment for registration as an investment adviser or representative changes in a material way or is or becomes inaccurate or incomplete in any respect.

1. Events requiring notification shall include, but are not limited to, those described in Rule 6.~~15~~ 17.

2. An investment adviser must file electronically with IARD any amendments to the investment adviser's Form ADV.

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

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

D. *Withdrawal of Investment Adviser Registration.*

1. Withdrawal of registration as an investment adviser shall be completed by filing Form ADV-W electronically with IARD.

2. Any investment adviser who is no longer in existence or is not engaged in business as an investment adviser shall, within thirty (30) days of such cessation, file Form ADV-W electronically with IARD.

E. Completion of Filing.

1. An application for initial or renewal registration is not considered filed for purposes of Section 75-71-403(a) of the Act until the required fee and all required submissions have been received by the Division.

2. The Division is not required to issue a certificate, license, or permit.

Source: *Miss. Code Ann.* §§ 75-71-403(a), 406 (~~Rev. 2009~~ 2016).

Rule 6.07 Bonding Requirements for Investment Advisers.

A. Every investment adviser registered or required to be registered under the Act having custody of or discretionary authority over client funds or securities shall be bonded in an amount determined by the Division based upon the number of clients and the total assets under management of the investment adviser and which shall be at a minimum of Thirty Thousand Dollars ($30,000.00) for investment advisers having custody of client funds, or requiring payment of advisory fees six (6) months or more in advance and in excess of Twelve Hundred Dollars ($1,200.00), and Ten Thousand Dollars ($10,000.00) for investment advisers with discretionary authority over client funds.

B. Any bond required by this Rule shall be issued by a company qualified to do business in this state in the form determined by the Division and shall be subject to the claims of all clients of such investment adviser regardless of the client's state of residence.

C. The requirements of this Rule shall not apply to those applicants or registrants who comply with the minimum financial requirements of Rule 6.09.

D. An investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of Subsection ~~Rule 607~~(A) of this Rule, provided that the investment adviser is registered or licensed as an investment adviser in the state where it has its principal place of business and is in compliance with such state's requirements relating to bonding and/or minimum financial requirements.

E. ~~For purposes of this Rule, custody is defined in Rule 6.35(C)(1).~~

Source: *Miss. Code Ann.* § 75-71-411(e) (~~Rev. 2009~~ 2016).

Rule 6.09 Minimum Financial Requirements for Investment Advisers.

A. An investment adviser registered or required to be registered under the Act who has custody of client funds or securities or requires payment of advisory fees six (6) months or more in advance and in excess of Twelve Hundred Dollars ($1,200.00) shall maintain at all times a minimum net worth of Thirty-F~~f~~ive Thousand Dollars ($35,000.00) except:

   1. An investment adviser posts a bond pursuant to Rule 6.07~~605~~.

   2. Pursuant to these Rules, an investment adviser is otherwise exempted from complying with the bonding and net worth requirements.

B. An investment adviser registered or required to be registered under the Act 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 Ten Thousand Dollars ($10,000.00) except:

1. An investment adviser posts a bond pursuant to Rule 6.07~~605~~.

2. Pursuant to these Rules, an investment adviser is otherwise exempted from complying with the bonding and net worth requirements.

C. An investment adviser registered or required to be registered under the Act ~~who accepts prepayment of more than Five Hundred Dollars ($500.00) Twelve Hundred Dollars ($1,200) and six (6) or more months in advance for any client~~ shall maintain at all times a positive net worth.

D. Unless otherwise exempted, as a condition of the right to transact business in this state, every investment adviser registered or required to be registered under the Act shall by the close of business on the next business day notify the Division if such investment adviser's net worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next business day a report with the Division 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.

E. **Net Worth**, for the purposes of this Rule, 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 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.

F. ~~**Custody**, for purposes of this Rule, is defined in Rule 6.35(C)(1).~~

G. **Discretionary Authority**, for the purposes of this Rule, shall 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.

H. For the 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. ~~t~~The investment adviser has executed a separate investment adviser contract exclusively with its client which acknowledges that a third party trading agreement will be executed to allow the investment adviser to effect securities transactions for the client in the client's broker-dealer account;~~ and~~

2. T~~t~~he investment adviser contract specifically states that the client does not grant discretionary authority to the investment adviser and the investment adviser in fact does not exercise discretion with respect to the account; and

3. A~~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.

I. The Division may require that a current appraisal be submitted in order to establish the worth of any asset.

J. Every investment adviser that has its principal place of business in a state other than this s~~S~~tate shall maintain only such minimum net worth as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is registered or licensed in such state and is in compliance with such state's minimum capital requirements.

Source: *Miss. Code Ann.* § 75-71-411(a) (~~Rev. 2009~~ 2016).

Rule 6.11 Financial Reporting for Investment Advisers.

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

B. Unless ~~pursuant to these Rules,~~ an investment adviser is otherwise exempted from complying with the financial reporting requirements of this Rule, every registered investment adviser who has custody of client funds or securities or requires payment of advisory fees six (6) months or more in advance and in excess of ~~Five Hundred Dollars ($500.00)~~ Twelve Hundred Dollars ($1,200.00) for any client shall annually

file with the Division an audited balance sheet as of the end of the investment adviser's most recent fiscal year.

C. The audited balance sheet filed pursuant to this Rule must be:
   1. Examined ~~in accordance with generally accepted auditing standards~~ and prepared in conformity with generally accepted accounting principles;

   2. Audited by an independent certified public accountant;~~and~~

   3. Accompanied by an opinion of the accountant as to the report of financial position, and by a note stating the principles used to prepare it, the basis of included securities, and any other explanations required for clarity; and~~.~~

   4. ~~Be f~~Filed with the Division within ninety (90) days following the end of the investment adviser's fiscal year.

D. ~~For purposes of this Rule, **Custody** is defined in Rule 6.35(C)(1).~~

E. The Division may reasonably require additional financial documentation to assess the financial soundness of the investment adviser.

Source: *Miss. Code Ann.* § 75-71-411(b) (~~Rev. 2009~~ 2016).

Rule 6.13 Investment Adviser Representative: Registration, Renewal, and Withdrawal Requirements.

A. *Examination Requirements*.

   1. An investment adviser representative shall take and pass within the two (2) year period immediately preceding the date of the application:

      a. The Uniform Investment Adviser State Law Examination (S65); or

      b. The Uniform Combined State Law Examination (S66) and the General Securities Representative Examination (S7).

   2. Any individual who is registered as an investment adviser representative in any jurisdiction in the United States on or before January 1, 2000, and has not had a continuous two (2) year break of registration as an investment adviser representative thereafter shall not be required to satisfy the examination requirements set forth in Subsection ~~Rule 613~~(A)(1) of this Rule.

   3. Any individual who has been registered as an investment adviser representative in any jurisdiction in the United States requiring the licensing, registration, and qualification of investment adviser representatives within the two (2) year period immediately preceding the date of filing an application shall not be required to

comply with the examination requirement set forth in Subsection ~~Rule 613~~(A)(1) of this Rule.

4. The examination requirements shall not apply to any individual who provides proof of holding and maintaining a current professional designation in good standing from one of the following:

   a. CERTIFIED FINANCIAL PLANNER ™/CFP ® certification awarded by the Certified Financial Planner Board of Standards, Inc.

   b. Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania.

   c. Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants.

   d. Chartered Financial Analyst (CFA) awarded by the ~~Association of Investment Management and Research (AIMR~~ CFA Institute~~)~~.

   e. Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.

   f. Such other professional designation as the Division may by order recognize.

5. The Division may require additional examinations for any individual found to have violated the ~~Mississippi Securities~~Act.

6. *Loss of Professional Designations*. An investment adviser representative exempt from examination requirements under Subsection (A)(4) above who subsequently loses or allows the lapse of such professional designation shall provide written notice to the Division immediately upon loss or lapse of such designation. Upon loss or lapse, the representative is no longer exempt and his registration may be summarily suspended.

B. *Initial Application.* The application for initial registration as an investment adviser representative pursuant to Section 75-71-404(a) of the Act shall be made by:

1. Filing Form U4 (Uniform Application for Securities Industry Registration or Transfer) electronically with IARD and paying the applicable registration fee required by Rule 4.15; and~~.~~

2. Providing proof of compliance with the examination requirements of Subsection ~~Rule 613~~(A) of this Rule.~~;~~

C. *Registration Renewal Requirements.*

1. All registrations expire on December 31 of each year.

2. The application for annual renewal registration as an investment adviser representative shall be made by filing electronically with IARD and paying the renewal fee required by Rule 4.15.

D. *Termination of Investment Adviser Representative Registration*. The application for termination of registration as an investment adviser representative shall be completed by filing Form U5 (Uniform Termination Notice for Securities Industry Registration) electronically with IARD within thirty (30) days of the date of termination.

E. *Updates and Amendments*. The Division shall be notified within thirty (30) days whenever the information contained in any application or amendment for registration as an investment adviser or representative changes in a material way or is or becomes inaccurate or incomplete in any respect.

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

2. Events requiring notification shall include, but are not limited to, those described in Rule ~~6.15~~ 6.17.

3. An investment adviser representative and the investment adviser must electronically file promptly with IARD any amendments to the representative's Form U4.

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

F. *Completion of Filing*.

1. An application for initial or renewal registration is not considered filed for purposes of Section 75-71-404(a) of the Act until the required fee and all required submissions have been received by the Division.

2. The Division is not required to issue a certificate, license, or permit.

G. ~~Dual Registration. An investment adviser representative may associate with only one (1) investment adviser at one time.~~ *Dual Registration*. An investment adviser representative, only under the conditions set forth below, may associate with two (2), but not more than two, investment adviser firms at the same time, provided:

1. The two investment adviser firms are affiliated, and both investment adviser firms agree in writing on the form prescribed by the ~~Secretary of State~~ Division ("Joint Supervisory Agreement") to assume full supervisory responsibility for the investment adviser representative; or

2. The two investment adviser firms are not affiliated, but one of the investment adviser firms is affiliated with a broker-dealer firm with which the investment adviser representative is also registered as a broker-dealer agent, and both

investment adviser firms agree in writing on forms prescribed by the Secretary of State to assume full supervisory responsibility for the investment adviser representative.

3. For purposes of Subsection G of this Rule, **affiliated** means one investment adviser or broker-dealer firm controls another investment adviser or broker-dealer firm, is controlled by another investment adviser or broker-dealer firm, or is under common control with another investment adviser or broker-dealer firm.

Source: *Miss. Code Ann.* §§ 75-71-404(a)(d), 408(a), 412(e) (~~Rev. 2009~~ 2016).

Rule 6.15 Notice Filing Requirements for Federal Covered Advisers.

A. *Notice Filing*. The notice filing for a federal covered investment adviser pursuant to Section 75-71-405(a) of the Act shall be filed electronically with IARD on an executed Form ADV (Uniform Application for Investment Adviser Registration). A notice filing of a federal covered investment adviser shall be deemed filed when the fee required by Rule 4.15 and the Form ADV are filed electronically with and accepted by IARD on behalf of the Division.

B. *Form ADV Part ~~II~~ 2*. The ~~Administrator~~ Division may:

1. Accept a copy of Part ~~II~~ 2 of Form ADV as filed electronically with IARD; or

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

C. *Renewal*. The annual renewal of the notice filing for a federal covered investment adviser pursuant to Section 75-71-405(c) of the Act shall be filed electronically with IARD. The renewal of the notice filing for a federal covered investment adviser shall be deemed filed when the fee required by Rule 4.15 is filed with and accepted by IARD on behalf of the Division.

D. *Updates and Amendments*. A federal covered investment adviser must file electronically with IARD any amendments to the federal covered investment adviser's Form ADV.

E. *Terminations and Withdrawals*. Terminations and withdrawals of notice filings shall be completed by following the instructions on Form ADV-W and filing Form ADV-W with IARD.

F. A federal covered investment adviser may submit a notice filing for a successor, whether or not the successor is then in existence, for the unexpired portion of the notice filing. There shall be no filing fee.

Source: *Miss. Code Ann.* §§ 75-71-405(a), 407(a) (~~Rev. 2009~~ 2016).

Rule 6.17 Change of Material Information; Amendment. The Division shall be notified within thirty (30) days whenever the information contained in any application or amendment for registration as an investment adviser or representative changes in a material way or is or becomes inaccurate or incomplete in any respect. Events requiring notification shall include, but are not limited to, the following:

A. Change in firm name, ownership, management or control of an investment adviser, or a change in any of its partners, officers, or persons in similar positions, or its business address, or the creation or termination of a branch office in this state ~~Mississippi~~. Notice of such change shall be filed with IARD, in accordance with the instructions in Form ADV along with a satisfactory rider or endorsement to the required surety bond.

B. Change in type of entity, general plan, or character of an investment adviser's business or method of operation.

C. Insolvency, dissolution, liquidation, or a material adverse change or impairment of working capital, or noncompliance with the minimum capital or bond requirements.

D. Termination of business or discontinuance of activities as an investment adviser.

E. The naming of an investment adviser, investment adviser representative, principal, officer, and/or employee as a defendant or respondent in one ~~of~~ or more of the following instances:

   1. Criminal allegations involving any aspect of the securities or any aspect of the securities business, or any felony;

   2. Civil allegations involving a security or any aspect of the securities business, or any activity alleging a breach of a fiduciary trust, or fraud;

   3. Administrative allegations involving a security or any aspect of the securities business, or any activity alleging a breach of a fiduciary trust, or fraud;

   4. Arbitration proceedings with allegations involving a security or any aspect of the securities business, or any activity alleging a breach of a fiduciary trust, or fraud;

   5. Any proceeding in which an adverse decision could result in:

      a. A denial, suspension, or revocation, or the equivalent of those terms, of a license, permit, certification, registration, or charter;

      b. The imposition of a fine or other penalty; or

c. An expulsion or barring from membership in a self-regulatory association or organization; or

6. Judgments, liens, and bankruptcy filing proceedings.

Source: *Miss. Code Ann.* § 75-71-406(b) (~~Rev. 2009~~ 2016).

Rule 6.19 Record Keeping Requirements for Investment Advisers.

A. Every investment adviser registered or required to be registered under the Act shall make and keep true, accurate, and current the following books, ledgers, and records:

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 the client concerning the purchase, sale, receipt, or delivery of a particular security, and of any modification, or cancellation of any such order or instruction. The 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 the 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 discretionary power shall be so designated.

4. All check books, bank statements, canceled checks, and cash reconciliations of the investment adviser.

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

6. All trial balances, financial statements, and internal audit working papers relating to the investment adviser's business.

7. Originals of all written communications received and copies of all written communications sent by the investment adviser relating to:

   a. Aany recommendation made or proposed to be made and any advice given or proposed to be given,

   b. aAny receipt, disbursement, or delivery of funds or securities, or

c. tThe placing or execution of any order to purchase or sell any security, provided, however,

   i. Tthat 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

   ii. Tthat if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than ten (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 the notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular, or advertisement a memorandum describing the list and its source.

8. A list or other record of all accounts which identifies the accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.

9. A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser.

10. A copy in writing of each agreement entered into by the investment adviser with any client, and all other written agreements otherwise relating to the investment adviser's business as an investment adviser.

11. A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including by electronic media, that the investment adviser circulates or distributes, directly or indirectly, to two (2) or more persons (other than persons connected with the investment adviser);. and iIf the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including by electronic media, recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation. shall also be included.

12. A record of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except:.

   a. The 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. The record

may also contain a statement declaring that the reporting or recording of any 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 ten (10) days after the end of the calendar quarter in which the transaction was effected.

b. The investment adviser or advisory representative shall not be required to keep records of:

   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. ~~The 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. The record may also contain a statement declaring that the reporting or recording of any 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 ten (10) days after the end of the calendar quarter in which the transaction was effected.~~

c. For purposes of Subsection ~~Rule 619~~(A)(12) of this Rule the following definitions will apply:

   i. The term **Advisory Representative** shall mean any partner, officer or director of the investment adviser; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations:

      (1) Any person in a control relationship to the investment adviser,

      (2) Any affiliated person of a controlling person, and

      (3) Any affiliated person of an affiliated person.

ii. **Control** shall mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than twenty-five percent (25%) of the voting securities of a company shall be presumed to control such company.

d. An investment adviser shall not be deemed to have violated the provisions of Subsection ~~Rule 619~~(A)(12) of this Rule because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that it instituted adequate procedures and used reasonable diligence to promptly obtain ~~promptly~~ reports of all transactions required to be recorded.

13. Notwithstanding the provisions of Subsection ~~Rule 619~~(A)(12) above, where the investment adviser is primarily engaged in a business or businesses other than advising investment 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 the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership~~, except:~~.

a. The investment adviser or any advisory representative shall not be required to keep records of:

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.

The 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. The record may also contain a statement declaring that the reporting or recording of any 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 ten (10) days after the end of the calendar quarter in which the transaction was effected.

b. An investment adviser is “~~"~~primarily engaged in a business or businesses other than advising investment advisory clients~~"~~” when, for each of its

most recent three (3) fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived, on an unconsolidated basis, more than fifty percent (50%) of:

i. Its total sales and revenues~~,~~; and

ii. Its income (or loss) before income taxes and extraordinary items, from such other business or businesses.

c. For the purposes of Subsection ~~Rule 619~~(A)(13) of this Rule, the following definitions will apply:

i. The term **Advisory Representative**, when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, shall mean any partner, officer, director, or employee of the investment adviser who participates in any way in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations~~; and any of the following persons,~~ The term shall also apply to any of the follow persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of such recommendations or of the information concerning the recommendations:

(1) Any person in a control relationship to the investment adviser~~,~~;

(2) Any affiliated person of a controlling person; and

(3) Any affiliated person of an affiliated person.

ii. **Control** shall mean the power to exercise a controlling influence over the management or policies of a company~~,~~ unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than twenty-five percent (25%) of the voting securities of a company shall be presumed to control such company.

d. An investment adviser shall not be deemed to have violated the provisions of Subsection ~~Rule 619~~(A)(13) of this Rule because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that it instituted adequate procedures and used reasonable diligence to promptly obtain ~~promptly~~ reports of all transactions required to be recorded.

14. A copy of each written statement, ~~and each~~ amendment, or revision~~,~~ given or sent to any client or prospective client of the investment adviser in accordance with the provisions of Rule 6.29~~,~~ and a record of the dates that each written statement, ~~and each~~ amendment, or revision~~,~~ was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

15. For each client that was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser:

    a. Evidence of a written agreement to which the adviser is a party related to the payment of such fee;

    b. A signed and dated acknowledgment of receipt from the client evidencing the client's receipt of the investment adviser's disclosure statement and a written disclosure statement of the solicitor; and~~,~~

    c. A copy of the solicitor's written disclosure statement. The written agreement, acknowledgment, and solicitor disclosure statement will be considered ~~to be~~ in compliance if such documents are in compliance with Rule 6.31.

For the purposes of this Rule, the term **Solicitor** is defined in Rule 6.31(A).

16. All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including but not limited to electronic media that the investment adviser circulates or distributes, directly or indirectly, to two (2) or more persons (other than persons connected with the investment adviser); provided, however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this Subsection ~~paragraph~~.

17. A file containing a copy of all written communications received or sent (1) regarding any litigation involving the investment adviser or any investment adviser representative or employee~~,~~ and (2) regarding any written customer or client complaint.

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

19. Written procedures ~~to~~ that supervise the activities of employees and investment adviser representatives~~,~~ and that are reasonably designed to achieve compliance with applicable securities laws and regulations.

20. A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self-regulatory organization and that pertains to the registrant or its investment adviser representatives as that term is defined in Subsection ~~Rule 619~~ (A)(12)(b) of this Rule. ~~which~~ The file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

21. Copies, with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form U-4; ~~and e~~Each amendment to Disclosure Reporting Pages (DRPs U-4) must be retained by the investment adviser (filing on behalf of the investment adviser representative) and must be made available for inspection upon regulatory request.

22. ~~Where~~ When the adviser inadvertently held or obtained a client's securities or funds and returned them to the client within three (3) business days of receiving them or has forwarded ~~third party~~ checks drawn by clients and made payable to third parties within three (3) business days of receipt, ~~within twenty-four (24) hours~~ the adviser will be considered as not having custody but shall keep the following records ~~relating to the inadvertent custody~~:

    a. For receipt of client securities or funds, a ledger or other listing of all securities or funds received and returned, including the following information:

        i. Issuer;

        ii. Type of security and series;

        iii. Date of issue;

        iv. For debt instruments, the denomination, interest rate, and maturity date;

        v. Certificate number, including alphabetical prefix or suffix;

        vi. Name in which the securities or funds were registered;

        vii. Date ~~given to~~ received by the adviser;

        viii. Date ~~sent~~ returned to client or sender;

        ix. Form of delivery to client or sender, or copy of the form of delivery to client or sender; ~~and~~

        x. Mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return. ~~and~~

    b. For checks made payable to a third party, a ledger or other listing of all checks received and forwarded, including the following information:

i. Payor;

ii. Type of check (personal, corporate, etc.);

iii. Date of check;

iv. Amount of check;

v. Check number;

vi. Payee;

vii. Date received by the adviser;

viii. Date forwarded to the third party;

ix. Form of delivery to client or sender, or copy of the form of delivery to client or sender; and

x. Mail confirmation number, if applicable, or confirmation by the third party of the check's receipt.

xi. A copy of the check will suffice for items (b)(~~1~~i)-(~~6~~vi) above.

~~Date each check was received by the adviser.~~

23. If an investment adviser obtains possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving any public offering that comply with the exception from custody under Rule 6.35(B)(2), the adviser shall keep the following records:

    a. A record showing the issuer or current transfer agent's name, address, phone number, and other applicable contract information pertaining to the party responsible for recording client interests in the securities; and

    b. A copy of any legend, shareholder agreement, or other agreement showing that those securities that are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

B. Additional recordkeeping requirements for advisers with custody

1. If an investment adviser has ~~C~~custody~~, as that term is defined in Rule 6.35(C)~~, the records required to be made and kept under Subsection ~~Rule 619~~(A) of this Rule shall also include:

    a. A copy of any and all documents executed by the client (including a limited power of attorney) under which the adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the adviser's instruction to the custodian;

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

c. A separate ledger account for each client showing all purchases, sales, receipts, and deliveries of securities, as well as the date and price of each purchase and sale~~,~~ and all debits and credits;

d. Copies of confirmations of all transactions effected by or for the account of any client;

e. A record for each security in which any client has a position~~,~~; ~~which~~ such record shall show the name of each client having any interest in each security, the amount or interest of each client, and the location of each security;

f. A copy of each of the client's quarterly account statements, as generated and delivered by the qualified custodian. If the adviser also generates a statement that is delivered to the client, the adviser shall also maintain copies of such statements along with the date such statements were sent to the clients;

g. If applicable to the adviser's situation, a copy of the auditor's report~~, and~~ as well as financial statements and letter verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination;

h. A record of any finding by the independent certified public accountant of any material discrepancies found during the examination; and

i. If applicable, evidence of the client's designation of an independent representative.

2. If an investment adviser has custody because it advises a pooled investment vehicle, as defined in Rule 6.35~~(C)(1)(d)~~ (D)(2), the adviser shall also keep the following records:

   a. True, accurate, and current account statements;

   b. Where the adviser complies with Rule 6.35(B)(~~3~~ 4), the records required to be made and kept shall include:

      i. The date(s) of the audit;

      ii. A copy of the audited financial statements; and

iii. Evidence of the mailing of the audited financials to all limited partners, members, or other beneficial owners within one hundred twenty (120) days of the end of its fiscal year.

c. Where the adviser complies with Rule 6.35(A)(~~7~~ 5)(b), the records required to be made and kept shall include:

i. A copy of the written agreement with the independent party reviewing all fees and expenses, indicating the responsibilities of the independent third party; and

ii. Copies of all invoices and receipts showing approval by the independent party for payment through the qualified custodian.

~~3. If an investment adviser has custody because it is acting as the trustee for a beneficial trust as it is described in Rule 6.35(B)(5) the investment adviser shall also keep the following records until the account is closed or the adviser is no longer acting as trustee.~~

~~a. A copy of the written statement given to each beneficial owner setting forth a description of the requirements of SectionRule 635(A) above and the reason why the adviser will not be complying with those requirements; and~~

~~b. A written acknowledgment signed and dated by each beneficial owner, and evidencing receipt of the statement required under SectionRule 619(A) above.~~

C. Every investment adviser subject to Subsection ~~Rule 619~~(A) of this Rule 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 client~~ for each separate client the securities purchased and sold ~~, and~~ as well as the date, amount, and price of each purchase and sale.

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

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

E. Every investment adviser subject to Subsection ~~Rule 619~~(A) of this Rule shall

preserve the following records in the manner prescribed:

1. All books and records required to be made under the provisions of Subsections ~~Rule 619~~(A) through (C) of this Rule~~, inclusive,~~ (except for books and records required to be made under the provisions of Subsections ~~Rule 619~~(A)(11) and (A)(16)), shall be maintained and preserved in an easily accessible place for a period of not less than five (5) years from the end of the fiscal year during which the last entry was made on record.~~, t~~The first two (2) years they shall be kept in the principal office of the investment adviser.

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

3. Books and records required to be made under the provisions of Subsections ~~Rule 619~~(A)(11) and (A)(16) of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five (5) years~~, the first two (2) years in an the principal office of the investment adviser,~~ from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media. The first two (2) years they shall be kept in the principal office of the investment adviser.

4. Books and records required to be made under the provisions of Subsections ~~Rule 619~~(A) (17)-(20) of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five (5) years from the end of the fiscal year during which the last entry was made on such record~~, the first two (2) years in the principal office of the investment adviser,~~ or for the time period during which the investment adviser was registered or required to be registered in the state, if less. The first two (2) years they shall be kept in the principal office of the investment adviser.

5. Notwithstanding other record preservation requirements of this Rule, the following records or copies shall be ~~required to be~~ maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:

    a. ~~r~~Records required to be preserved under Subsections~~Rule 619~~(A)(3), (7)-(10), (14)-(15), (17)-(19); ~~Rule 619~~(B); and ~~Rule 617~~(C) of this Rule~~, inclusive;~~ and

    b. T~~t~~he records or copies required under the provision of Subsections~~Rule 619~~ (A)(11), (16) ~~which~~ when such records or related records identify the name of the investment adviser representative providing investment advice from that business location, or ~~which~~ identify the business location's

physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the period described in this Subsection ~~Rule 619~~(E).

F. An investment adviser subject to Subsection ~~Rule 619~~(A), before ceasing to conduct or discontinuing business as an investment adviser, shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this Rule for the remainder of the period specified in this Rule, and it shall notify the Division in writing of the exact address where the books and records will be maintained during the period.

G. Production of records

1. Pursuant to this Rule ~~Rule 619~~, the records required to be maintained and preserved may be immediately produced or reproduced, and maintained and preserved for the required time, by an investment adviser on:

    a. Paper or hard copy form, as those records are kept in their original form; or

    b. Micrographic media, including microfilm, microfiche, or any similar medium; or

    c. Electronic storage media, including any digital storage medium or system that meets the terms of this Rule.

2. The investment adviser must:

    a. Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

    b. Provide promptly any of the following that the Division (by its examiners or other representatives) may request:

        i. A legible, true, and complete copy of the record in the medium and format in which it is stored;

        ii. A legible, true, and complete printout of the record; and

        iii. Means to access, view, and print the records; and

    c. Separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this Rule.

3. In the case of records created or maintained on electronic storage media, the investment adviser must establish and maintain procedures:

a. To maintain and preserve the records~~,~~ so as to reasonably safeguard them from loss, alteration, or destruction;

b. To limit access to the records to properly authorized personnel and the Division (including its examiners and other representatives); and

c. To reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

H. For the purposes of this Rule, **Investment Supervisory Services** means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client; and **Discretionary Power** shall 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.

I. Any book or other record made, kept, maintained, and preserved in compliance with SEC Rules 17a-3 (17 C.F.R. § 240.17a-3) and 17a-4 (17 C.F.R. § 240.17a-4) under the Securities Exchange Act of 1934, which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this Rule, shall be deemed to be made, kept, maintained and preserved in compliance with this Rule.

J. Every investment adviser registered or required to be registered in this state and that has its principal place of business in a state other than this state ~~Mississippi~~ shall be exempt from the requirements of this Rule, provided the investment adviser is licensed or registered in such state and is in compliance with such state's recordkeeping requirements.

K. Every investment adviser that exercises voting authority with respect to client securities shall make, maintain, and preserve records in compliance with SEC Rule 204-2(c)(2) relating to proxy voting (17 C.F.R. § 275.204-2(c)(2)).

Source: *Miss. Code Ann.* §75-71-411(c) (~~Rev. 2009~~ 2016).

Rule 6.21 Segregated Accounts. An investment adviser shall at all times keep its customers' securities and funds in trust and segregated from its own securities and funds.

A. All financial transactions between the investment adviser and ~~his~~ its clients are to be effected through one (1) or more bank accounts, each to be designated "special account for the exclusive benefit of clients of [name of investment adviser];"~~;~~ each shall be separate from any other bank accounts of the investment adviser and shall at no time be used directly or indirectly as security for a loan to the investment adviser by the bank and shall be subject to no right, lien, or claim of any kind in favor of the bank or any persons claiming through the bank; and each shall be separate from any

other bank account used by the investment adviser to pay operating and administrative expenses.

B. Immediately after accepting custody or possession of funds or securities from any client, an investment adviser must notify such client in writing of the place and manner in which such funds and securities will be maintained, and thereafter, if and when there is any change in the place or manner in which such funds or securities are being maintained, must give such client written notice thereof.

Source: *Miss. Code Ann.* §§ 75-71-411(c)(1), 411(f) (~~Rev. 2009~~ 2016).

Rule 6.23 Compliance-Supervision.

A. All investment advisers shall establish and keep current a set of written compliance-supervisory procedures~~,~~ and a system for implementing such procedures, which may be reasonably expected to prevent and detect any violations of the Act and ~~r~~Rules promulgated thereunder.

1. Procedures should include a business continuity and succession plan. ~~generally providing for, but not limited to~~ The plan shall be based upon the facts and circumstances of the investment adviser's business model including the size of the firm, type(s) of services provided, and the number of locations of the investment adviser. The plan shall provide for at least the following:

    a. Protection of, backup, and recovery of books and records;

    b. Alternate means of communications with customers, key personnel, employees, vendors, service providers (including third-party custodians), and regulators, including, but not limited to, providing notice of a significant business interruption or the death or unavailability of key personnel or other disruptions or cessation of business activities;

    c. Office relocation in the event of a temporary or permanent loss of principal place of business;

    d. Assignment of duties to qualified, responsible persons in the event of the death or unavailability of key personnel; and

    e. Otherwise minimizing service disruptions and client harm that could result from a sudden significant business interruption;

2. Procedures should also include measures reasonably designed to ensure cybersecurity.

3. A complete set of such procedures and systems shall be kept, or be immediately accessible, in all offices located in this state.

B. Every investment adviser that has its principal place of business in a state other than this state ~~Mississippi~~ shall be exempt from the requirements of Subsection ~~Rule 623~~(A) of this Rule, provided the investment adviser is licensed or registered in such state and is in compliance with such state's written compliance-supervisory procedures requirements.

Source: *Miss. Code Ann.* §§ 75-71-411, 412(d)(9) (~~Rev. 2009~~ 2016).

Rule 6.25 Standards of Conduct. A person who is an investment adviser, an investment adviser representative, or a federal covered investment adviser is a fiduciary and has a duty to act primarily for the benefit of its clients. Acts, conduct, and practices, including, but not limited to, the following, are considered contrary to such duty and may constitute grounds for denial, suspension, ~~or~~ revocation of registration, a bar, imposition of fines, or such other action authorized by statute:

A. Recommending to a client to whom investment advisory, supervisory, management, or consulting services are provided~~,~~ the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, risk tolerance, financial situation, and needs, and any other information known or acquired by the investment adviser **i**nvestment adviser representative or federal covered investment adviser.

B. Placing an order to purchase or sell a security for ~~the account of a client~~ a client’s account without authority to do so.

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

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

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

F. Publishing, circulating, or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940~~,~~ (17 C.F.R. § 206(4)-1), as now or hereafter amended.

G. Failure to enter into, extend, or renew any investment advisory contract with an investment advisory client without a written advisory contract which provides:

1. The services to be provided, the term of the contract, the investment advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of termination or non-performance of the contract, and ~~any grant of~~ whether

~~or not~~ any discretionary power is granted to the investment adviser~~,~~ or investment adviser representative~~, or federal covered investment adviser~~;

2. That no direct or indirect assignment or transfer of the contract may be made by the investment adviser or investment adviser representative~~ or federal covered investment adviser~~ without the consent of the client or other party to the contract;

3. Whether ~~That~~ the investment adviser or investment adviser representative~~, investment adviser representative or federal covered investment adviser shall not~~ will be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client; and

4. That the investment adviser,~~ investment adviser representative or federal covered investment adviser,~~ if a partnership, shall notify the client or other party to the investment contract of any change in the membership of the partnership within a reasonable time after the change.

H. It is unlawful for any investment adviser~~,~~ or investment adviser representative~~, or federal covered investment adviser~~ to:

1. Include in an advisory contract~~,~~ a "hedge clause~~,~~" or any other language which may lead a client to believe that legal rights have been restricted or waived;

2. Include in an advisory contract~~,~~ any condition, stipulation, or provisions binding any person to waive compliance with any provision of this act or of the Investment Advisers Act of 1940, or any other practice contrary to the provisions of Section 215 of the Investment Advisers Act of 1940; or

3. Enter into, extend, or renew any advisory contract contrary to the provisions of Section 205 of the Investment Advisers Act of 1940. This provision shall apply to all investment advisers and investment adviser representatives registered or required to be registered under this Act, notwithstanding whether such adviser or representative would be exempt from federal registration pursuant to Section 203(b) of the Investment Advisers Act of 1940.

I. ~~Notwithstanding SubsectionRule 625(G)(3) of this Rule,~~ *Performance Fees*. It is unlawful for any investment adviser or investment adviser representative ~~an investment adviser may~~ to enter into, extend, or renew an investment advisory contract which provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds, or any portion of the funds, of the client ~~if~~ unless the following conditions ~~in SubsectionsRule 625(I)(1) through I(4)~~ are met.

1. The client entering into the contract must be:

    a. A natural person or a company who, immediately after entering into the contract, has at least Seven Hundred Fifty Thousand Dollars ($750,000.00) under the management of the investment adviser; or

    b. A person who the investment adviser and its investment adviser representatives reasonably believe, immediately before entering into the contract, is a natural person or a company whose net worth, at the time the contract is entered into, exceeds One Million Five Hundred Thousand Dollars ($1,500,000.00). The net worth of a natural person may include assets held jointly with that person's spouse.

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

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

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

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

        ii. If the unrealized capital appreciation of the securities over the period is included, the unrealized capital depreciation of the securities over the period; and

    c. The formula must provide that any compensation paid to the investment adviser under this Rule is based on the gains less the losses (computed in accordance with Subsections~~Rule 625~~(I)(2)(a) and (b) of this Rule) in the client's account for a period of not less than one (1) year.

3. Before entering into the advisory contract and in addition to the requirements of Form ADV, the investment adviser must disclose in writing to the client or the client's independent agent all material information concerning the proposed advisory arrangement, including the following:

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

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

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

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

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

4. The investment adviser (and any investment adviser representative) who enters into the contract must reasonably believe, immediately before entering into the contract, that the contract represents an arm's length arrangement between the parties and that the client (or in the case of a client ~~which~~ that is a company as defined in Rule 6.25(~~F~~L)(4), the person representing the company), alone or together with the client's independent agent, understands the proposed method of compensation and its risks. The representative of a company may be a partner, director, officer, ~~or an~~ employee of the company or the trustee, where the company is a trust, or any other person designated by the company or trustee, but must satisfy the definition of client's independent agent set forth in Rule 6.25(L)(3).

J. Any person entering into or performing an investment advisory contract under this Rule is not relieved of any obligations under Section 75-71-502(b) of the Act~~Rule 502(b)~~ or any other applicable provision of the Act or any rule or order thereunder.

K. Nothing in this Rule shall relieve a client's independent agent from any obligation to the client under applicable law.

L. The following definitions apply for purposes of this Rule:

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

2. **Assignment**, as used in Subsection ~~Rule 625~~(G)(2) of this Rule, includes, but is not limited to, any transaction or event that results in any change to the individuals or entities with the power, directly or indirectly, to direct the management or policies of~~,~~ or to vote more than fifty percent (50%) of any class of voting securities of, the investment adviser or federal covered investment adviser as

compared to the individuals or entities who had such power as of the date when the contract was first entered into, extended or renewed.

3. **Client's Independent Agent** means any person who agrees to act as an investment advisory client's agent in connection with the contract~~,~~; ~~but~~ the definition does not include:

   a. The investment adviser relying on this Rule;

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

   c. An interested person of the investment adviser;

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

   e. A person with any material relationship between himself (or an affiliated person of that person) and the investment adviser (or an affiliated person of the investment adviser) that exists~~,~~ or has existed at any time during the past two (2) years.

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

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

   b. A private investment company (for purposes of this Subsection ~~subparagraph~~ (L)(4)(b), a private investment company is a company which would be defined as an investment company under Section 3(a) of the Investment Company Act of 1940 but for the exception from that definition provided by Section 3(c)(1) of that Act);

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

   d. A business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940, unless each of the equity owners of any

such company, other than the investment adviser entering into the contract, is a natural person or a company within the meaning of SubsectionRule 625(L)(4) of this Rule.

5. **Interested Person** means:

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

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

      i. oOne-tenth (1/10) of one percent (1%) of any class of outstanding securities of the investment adviser or a controlling person of the investment adviser; or

      ii. fFive percent (5%) of the total assets of the person seeking to act as the client's independent agent; or

   c. Any person or partner or employee of any person who, at any time since the beginning of the last two (2) fiscal years, has acted as legal counsel for the investment adviser.

M. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority. Discretionary power does not include a power relating solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

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

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

P. Providing a report or recommendation to any client prepared by someone other than the investment adviser, investment adviser representative, or federal covered

investment adviser without disclosing that fact. This prohibition does not apply to a situation where the investment adviser, investment adviser representative, or federal covered investment adviser uses published research reports or statistical analyses to render advice or where an investment adviser, investment adviser representative, or federal covered investment adviser orders such a report in the normal course of providing service.

Q. Charging a client an advisory fee that is unreasonable in light of the type of services to be provided, the experience and expertise of the adviser, and the sophistication and bargaining power of the client.

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

1. Compensation arrangements connected with advisory services to clients ~~which~~ that are in addition to compensation from such clients for such services; and
2. Charging a client an investment advisory fee for rendering investment advice when compensation for effecting securities transactions pursuant to such advice will be received by the investment adviser, investment adviser representative, or federal covered investment adviser, or its employees, or affiliated persons.

S. Guaranteeing a client that a specific result will be achieved with advice rendered.

T. Disclosing the identity, investments, or other financial information of any client or former client to a third party unless required by law to do so~~,~~ or unless consented to by the client or former client.

U. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the safekeeping requirements of Subsections~~Rule~~ 6.35(A)(1) through (7) ~~of this Rule~~.

V. Paying a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities in a manner which does not comply with Rule 6.31.

W. Failing to disclose to any client or prospective client all material facts with respect to the financial and disciplinary information required to be disclosed under Rule 206(4)-4 under the Investment Advisers Act of 1940 (17 C.F.R. § 275.206(4)-4), as now or hereafter amended.

X. While acting as principal for its own advisory account, to knowingly sell any security to or purchase any security from a client, or while acting as broker-dealer for a person other than the client, to knowingly effect any sale or purchase of any security for the

account of the client, without disclosing to the client in writing before the completion of the transaction the capacity in which it is acting and obtaining the client's consent ~~of the client~~ to the transaction.

1. The prohibitions of this ~~s~~Subsection shall not apply to any transaction with a customer of a broker-dealer if the broker-dealer is not acting as an investment adviser in relation to the transaction.

2. The prohibitions of this ~~s~~Subsection shall not apply to any transaction with a customer of a broker-dealer if the broker-dealer acts as an investment adviser solely:

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

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

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

    d. Any combination of the foregoing services.

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

4. The following definitions apply for purposes of this Rule:

    a. **Publicly Distributed Written Materials** means written materials which are distributed to thirty-five (35) or more persons who pay for those materials.

    b. **Publicly Made Oral Statements** means oral statements made simultaneously to thirty-five (35) or more persons who pay for access to those statements.

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

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

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

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

   i. A statement of the nature of the transaction;

   ii. The date the transaction took place;

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

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

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

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

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

6. Each written disclosure and confirmation required by this R~~r~~ule must include a conspicuous statement that the client may revoke the written consent required under Subsection~~Rule 625~~(X)(5)(a) of this Rule at any time by providing written notice to the investment adviser.

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

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

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

Y. 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.

Z. 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 this ~~a~~Act or any rule or regulation thereunder.

AA. Exercising voting authority with respect to client securities in a manner which does not comply with Rule 206(4)-6 under the Investment Advisers Act of 1940 ~~(17 C.F.R. § 275.206(4)-6), as now or hereinafter amended~~.

BB. Engaging in any act, practice, or course of business which is deceptive, unethical, dishonest, or manipulative in contravention of Section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact that such investment adviser is not registered or required to be registered under ~~s~~Section 203 of the Investment Advisers Act of 1940.

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

DD. ~~The conduct set forth in the Rules above is not inclusive~~ Engaging in other conduct such as forgery, embezzlement, non-disclosure, incomplete disclosure, ~~or~~ misstatement of material facts, or manipulative or deceptive practices~~ hall also be grounds for denial, suspension, or revocation of registration, or imposition of fines.~~ .

Source: *Miss. Code Ann.* § 75-71-502(b) (~~Rev. 2009~~ 2016).

Rule 6.27 Commingling of Accounts Prohibited. An investment adviser engaged in more than one (1) enterprise or activity shall maintain separate books of account and records relating to its ~~securities~~ advisory business. The assets of the ~~securities~~ advisory business shall not be commingled with those of such other businesses, and there shall be a clearly defined division with respect to income and expenses.

Source: *Miss. Code Ann.* § 75-71-411(c) (~~Rev. 2009~~ 2016).

Rule 6.29 Brochure Rule.

~~A. Every investment adviser shall furnish each client with a written disclosure statement which may be either a copy of Part II of its Form ADV or a written document containing at least the information so required by Part II of Form ADV. An acknowledgment of receipt of the disclosure statement must be signed by the client and kept in the client's file during the period in which services are provided the client.~~

~~B. An investment adviser shall deliver the statement required by this Rule to a client:~~

~~1. Not less than forty-eight (48) hours prior to entering into any written or oral investment advisory contract with such client; or~~

~~2. At the time of entering into any such contract, if the client has a right to terminate the contract without penalty within five (5) business days after entering into the contract.~~

~~C. The client shall be notified within ten (10) days of any material change in the information supplied pursuant to SectionRule 629(A) of this Rule.~~

~~D. An investment adviser shall annually, without charge, deliver or offer in writing to deliver upon written request to each of its advisory clients the statement required by this rRule. Any statement requested in writing by an advisory client pursuant to such offer must be mailed or delivered within seven (7) days of the receipt of the request.~~

~~E. An investment adviser who is exempt from registration pursuant to Section 75-71-403(b) of the Act and who is not a member of FINRA shall comply with the requirements of this Rule.~~

~~F. Nothing in this Rule shall relieve any investment adviser from any obligation pursuant to any provision of the Act or the rRules and regulations thereunder or other federal or state law to disclose any information to its clients or prospective clients not specifically required by this Rule.~~

~~Source: *Miss. Code Ann.* § 75-71-411(g) (Rev. 2009).~~

A. General Requirements. Unless otherwise provided in this Rule, an investment adviser registered or required to be registered pursuant to Section 75-71-403 of the Act shall, in accordance with the provisions of this section, furnish each advisory client and prospective advisory client with:

1. A brochure which may be a copy of Part 2A of its Form ADV or written documents containing the information required by Part 2A of Form ADV;

2. A copy of its Part 2B brochure supplement for each individual

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

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

3. A copy of its Part 2A Appendix 1 wrap fee brochure if the investment adviser sponsors or participates in a wrap fee account;

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

5. Such other information as the Division may require.

6. The brochure must comply with the language, organizational format, and filing requirements specified in the Instructions to Form ADV Part 2.

B. Delivery.

1. Initial Delivery. An investment adviser, except as provided in Subsection (B)(3) of this Rule, shall deliver the Part 2A brochure and any brochure supplements required by this section to a prospective advisory client:

    a. Not less than forty-eight (48) hours prior to entering into any advisory contract with such client or prospective client; or

    b. At the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract.

2. Annual Delivery. An investment adviser, except as provided in Subsection (B)(3) of this Rule, must:

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

b. Deliver a summary of material changes that includes an offer to provide a copy of the updated brochure and supplements and information on how the client may obtain a copy of the brochures and supplements.

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

3. Delivery of the brochure and related brochure supplements required by Subsections (B)(1) and (2) of this Rule need not be made to:

   a. Clients who receive only impersonal advice and who pay less than $500 in fees per year; or

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

   c. A business development company as defined in the Investment Company Act of 1940 and whose advisory contract meets the requirements of section 15c of that Act.

4. Delivery of the brochure and related supplements may be made electronically if the investment adviser:

   a. In the case of an initial delivery to a potential client, obtains a verification that a readable copy of the brochure and supplements were received by the client;

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

   c. Prepares the electronically delivered brochure and supplements in the format prescribed in Section (A) and instructions to Form ADV Part 2;

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

   e. Establishes procedures to supervise personnel transmitting the brochure and supplements and prevent violations of this Rule.

C. *Other Disclosures*. Nothing in this Rule shall relieve any investment adviser from any obligation pursuant to any provision of the Act or the rules and regulations thereunder or other federal or state law to disclose any information to its advisory clients or prospective advisory clients not specifically required by this Rule.

D. *Definitions*. For the purpose of this Rule:

1. **Contract for impersonal advisory services** means any contract relating solely to the provision of investment advisory services:

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

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

    c. Any combination of the foregoing services.

2. **Entering into**, in reference to an advisory contract, does not include an extension or renewal without material change of any such contract that is in effect immediately prior to such extension or renewal.

Source: *Miss. Code Ann.* § 75-71-203 (~~Rev. 2009~~ 2016).

Rule 6.31 Solicitor Rule.

A. The following definitions apply for purposes of this Rule:

1. ~~“~~**Solicitor**~~”~~ means any individual, person, or entity with a place of business in this state who directly or indirectly receives a cash fee or any other economic benefit for soliciting, referring, offering, or otherwise negotiating for the sale or selling of investment advisory services to clients on behalf of an investment adviser.

2. ~~“~~**Client**~~”~~ includes any prospective client.

B. It shall be unlawful for any investment adviser, registered or required to be registered, to pay a cash fee or any other economic benefit, directly or indirectly, in connection with solicitation activities unless:~~.~~

1. The solicitor is registered as an investment adviser representative; and

2. The solicitor to whom a cash fee or any other economic benefit is paid for such referral is not a person:

    a. Subject to an order of the SEC~~U.S. Securities & Exchange Commission~~ issued under ~~s~~Section 203(f) of the Investment Advisers Act of 1940;

    b. Subject to an order of the Mississippi Secretary of State, the securities administrator of any other state, the SEC~~U.S. Securities and Exchange Commission~~, or any self-regulatory organization denying, suspending, or revoking registration as a broker-dealer, agent, investment adviser, or

investment adviser representative barring the person from the securities or advisory industry or associating or affiliating with the securities or advisory industry, entered after notice and opportunity for hearing;

c. Convicted within the previous ten (10) years of any felony;

d. Convicted within the previous ten (10) years of any misdemeanor involving conduct described in ~~s~~Section 203(e)(2)(A) through (D) of the Investment Advisers Act of 1940;

e. Convicted within the previous ten (10) years of any misdemeanor involving conduct described in Section 75-71-412(d)(3) of the Act;

f. Found by the SEC to have engaged, or has been convicted of engaging in, any of the conduct specified in ~~s~~Sections 203(e)(1), (5), or (6) of the Investment Advisers Act of 1940;

g. Found by the ~~Mississippi~~ Secretary of State to have engaged, or has been convicted of engaging in, any of the conduct specified in Sections 75-71-412(d)(1), (2), and (6) of the Act;

h. Subject to an order, judgment, or decree described in S~~s~~ection 203(e)(4) of the Investment Advisers Act of 1940; or

i. Subject to an order, judgment, or decree described in Section 75-71-412(d)(4) of the Act; and

3. The cash fee or any other economic benefit is paid by the investment adviser with respect to solicitation activities that are impersonal in nature in that they are provided solely by means of:

   a. Written material or oral statements which do not purport to meet the objectives or needs of the specific client;

   b. Statistical information containing no expressions of opinions as to the merits of particular securities or investment advisers; or

   c. Any combination of the foregoing services; and

4. The ~~a~~ cash fee or any other economic benefit is paid pursuant to a written agreement to which the investment adviser is a party and all of the following conditions are met~~;~~:

   a. The written agreement:~~;~~

i. ~~d~~Describes the solicitation or referral activities to be engaged in by the solicitor on behalf of the investment adviser and the cash fee or any other economic benefit to be received for such activities; ~~and~~

ii. C~~c~~ontains an undertaking by the solicitor to perform its duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of the Act and R~~r~~ules thereunder; and

iii. R~~r~~equires that the solicitor, at the time of any solicitation or referral activities for which a cash fee or any other economic benefit is paid or to be paid by the investment adviser, provide the client with a current copy of the investment adviser's disclosure document required under Subsection ~~Rule 631~~(B)(4)(b) of this Rule and a separate disclosure statement as described in Subsection ~~Rule 631~~(C) of this Rule.

b. The investment adviser receives from the client, prior to or at the time of entering into any written investment advisory contract, a signed and dated acknowledgment of receipt of both the investment adviser's written disclosure statement and the solicitor's written disclosure document; and

c. The investment adviser makes a bona fide effort and has a reasonable basis for believing that the solicitor has complied with the agreement.~~; and~~

d. The foregoing requirements of ~~Rule~~ Subsections~~631~~(B)(4)(a), (b), and (c) of this Rule shall not apply where the solicitor is~~;~~:

i. A partner, officer, director, or employee of such investment adviser; or

ii. A partner, officer, director, or employee of a person that controls, is controlled by, or is under common control with such investment adviser, provided the status of the solicitor is disclosed to the client at the time of the solicitation or referral.

C. The separate written disclosure document required to be furnished by the solicitor to the client pursuant to Subsection~~Rule 631~~(B)(4)(b) of this Rule shall contain the following information:

1. The name of the solicitor;

2. The name of the investment adviser;

3. The nature of the relationship, including any affiliation, between the solicitor and the investment adviser;

4. A statement that the solicitor will be compensated for solicitation or referral services by the investment adviser;

5. The terms of the compensation arrangement, including a description of the cash fee or any other economic benefit paid or to be paid to the solicitor; and

6. The amount of compensation the client will pay, if any, in addition to the advisory fees, and whether the cash fee or any other economic benefit paid to the solicitor will be added to the advisory fee, creating a differential with respect to the amount charged to other advisory clients who are not subject to the solicitor compensation arrangement.

D. Nothing in this ~~r~~Rule shall be deemed to relieve any person of any fiduciary or other obligation to which such person may be subject under any law.

Source: *Miss. Code Ann.* §§ 75-71-102(16), 605 (~~Rev. 2009~~ 2016).

Rule 6.33 Reserved.

Rule 6.35 Custody of Client Funds or Securities by Investment Advisers.

A. *Safekeeping required.* If an investment adviser is registered or required to be registered, it is unlawful for the investment adviser to have custody of client funds or securities unless:

1. Notice to Division. The investment adviser notifies the Division promptly in writing that the investment adviser has or may have custody. Such notification is required to be given on Form ADV~~;~~.

2. Qualified custodian. A qualified custodian maintains those funds and securities either:

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

   b. In accounts that contain only the adviser's clients' funds and securities, under the adviser's name as agent or trustee for the clients.

3. Notice to clients. If an investment adviser opens an account with a qualified custodian on its client's behalf, either under the client's name or under the name of the investment adviser as agent, the investment adviser must notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information.

4. Account statements must be sent to clients, either:

   a. By a qualified custodian. The investment adviser has reasonable basis for believing that the qualified custodian sends an account statement, at least

quarterly, to each client for which it maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period; or

b. By the investment adviser.

   i. The investment adviser sends an account statement, at least quarterly, to each client for whom the investment adviser has custody of funds or securities, identifying the amount of funds and of each security of which the investment adviser has custody at the end of the period and setting forth all transactions during that period;

   ii. An independent certified public accountant verifies all client funds and securities by actual examination at least once during each calendar year at a time chosen by the accountant without prior notice or announcement to the adviser and that is irregular from year to year, and files a copy of the special examination report with the Division within thirty (30) days after the completion of the examination, along with a letter stating that it has examined the funds and securities and describing the nature and extent of the examination; and

   iii. The independent certified public accountant, upon finding any material discrepancies during the course of the examination, notifies the Division within one (1) business day of the finding, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the Division;

c. Special rule for limited partnerships and limited liability companies. If the adviser is a general partner of a limited partnership (or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle), the account statements required under Subsection (A)(4) of this Rule must be sent to each limited partner (or member or other beneficial owner or their independent representative).

5. Independent representatives. A client may designate an independent representative to receive, on his behalf, notices and account statements as required under Subsections (A)(3) and (A)(4) of this Rule.

6. Direct fFee dDeduction. An adviser who has custody as defined in (C)(1)(c) of this Rule by having fees directly deducted from client accounts must, in addition to the safekeeping requirements set forth in Subsections (A)(1) through (4) of this Rule, also comply with the following additional safeguards:

   a. Written aAuthorization. The adviser must have written authorization from the client to deduct advisory fees from the account held with the qualified custodian;

   b. Notice of fee deduction. Each time a fee is directly deducted from a client account, the adviser must concurrently:

i. Send the qualified custodian an invoice of the amount of the fee to be deducted from the client's account; and

ii. Send the client an invoice itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under managements the fee is based on, and the time period covered by the fee.

c. Notice of sSafeguards. The investment adviser notifies the Division in writing that the investment adviser intends to use the additional safeguards provided above. Such notification is required to be given on Form ADV.

d. Waiver of bBonding, nNet wWorth, or fFinancial rReporting rRequirements. An investment adviser having custody solely because it meets the definition of custody as defined in Rule Subsection (C)(1)(c) of this Rule and who complies with the safekeeping requirements in Subsections (A)(1) through (4) of this Rule and employs the additional safeguards of Subsections (A)(6)(a) through (c) of this Rule will not be required to meet the bBonding, nNet wWorth, or fFinancial rReporting rRequirements for custodial advisers as set forth in Rules 6.07, 6.09, and 6.11.

7. Pooled iInvestments. An investment adviser who has custody as defined in Subsection (C)(1)(d) of this Rule and who does not meet the exception provided under Subsection (B)(3) of this Rule must, in addition to the safekeeping requirements set forth in Subsections (A)(1) through (4) of this Rule, also comply with the following additional safeguards:

a. Engage an iIndependent pParty. Hire an independent party to review all fees, expenses and capital withdrawals from the pooled accounts;

b. Review of fFees. Send all invoices or receipts to the independent party, detailing the amount of the fee, expenses or capital withdrawal and the method of calculation such that the independent party can:

i. Determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement); and

ii. Forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment adviser.

c. For purposes of this Rule, an i**Independent** p**Party** means a person who:

i. Is engaged by the investment adviser to act as a gatekeeper for the payment of fees, expenses and capital withdrawals from the pooled investment;

ii. Does not control and is not controlled by and is not under common control with the investment adviser; and

iii. Does not have, and has not had within the past two (2) years, a material business relationship with the investment adviser.

d. Notice of Safeguards. The investment adviser notifies the Division in writing that the investment adviser intends to use the additional safeguards provided above. Such notification is required to be given on Form ADV.

e. Waiver of b~~B~~onding, n~~N~~et w~~W~~orth, or f~~F~~inancial r~~R~~eporting r~~R~~equirements. An investment adviser having custody solely because it meets the definition of custody as defined in Subsection(C)(1)(d) of this Rule and who complies with the safekeeping requirements in Subsections (A)(1) through (4) of this Rule and the additional safeguards of Subsections (A)(7)(a) through (c) of this Rule will not be required to meet the b~~B~~onding, n~~N~~et w~~W~~orth, or f~~F~~inancial r~~R~~eporting r~~R~~equirements for custodial advisers as set forth in Rules 6.05, 6.07, and 6.09.

8. Investment a~~A~~dviser or i~~I~~nvestment a~~A~~dviser r~~R~~epresentative as t~~T~~rustee. When a trust retains an investment adviser, investment adviser representative, officer, or employee of the adviser as trustee and the adviser acts as investment adviser to that trust, the adviser will:

a. Notice of s~~S~~afeguards. The investment adviser notifies the Division in writing that the investment adviser intends to use the additional safeguards provided below. Such notification is required to be given on Form ADV.

b. Invoice r~~R~~equirement. The investment adviser will send to the grantor of the trust, the attorney for the trust if it is a testamentary trust, the co-trustee (other than the investment adviser~~;~~, investment adviser representative~~;~~, or employee, director, or owner of the investment adviser)~~;~~, or a defined beneficiary of the trust, at the same time that it sends any invoice to the qualified custodian, an invoice showing the amount of the trustees' fee or investment management or advisory fee, the value of the assets on which the fees were based, and the specific manner in which the fees were calculated.

c. Custodian a~~A~~greement.: The investment adviser will enter into a written agreement with a qualified custodian which specifies:

i. Payment of f~~F~~ees. The qualified custodian will not deliver trust securities to the investment adviser, any investment adviser representative or employee, or director or owner of the investment adviser, nor will it transmit any funds to the investment adviser~~;~~, any investment adviser representative, or employee~~;~~, director, or owner of the investment adviser, except that the qualified custodian may pay trustees' fees to the trustee and investment management or advisory fees to investment adviser, provided that:

(a) The grantor of the trust or attorneys for the trust, if it is a testamentary trust~~,~~; the co-trustee (other than the investment adviser; investment adviser representative; or employee, director or owner of the

investment adviser), or a defined beneficiary of the trust has authorized the qualified custodian in writing to pay those fees;

(b) The statements for those fees show the amount of the fees for the trustee and, in the case of statements for investment management or advisory fees, show the value of the trust assets on which the fee is based and the manner in which the fee was calculated; and

(c) The qualified custodian agrees to send to the grantor of the trust, the attorneys for a testamentary trust, the co-trustee (other than an officer or employee of the adviser) (other than the investment adviser; investment adviser representative; or employee, director or owner of the investment adviser), or a defined beneficiary of the trust, at least quarterly, a statement of all disbursements from the account of the trust, including the amount of investment management fees paid to the adviser and the amount of trustees' fees paid to the trustee.

ii. Distribution of a~~A~~ssets. Except as otherwise set forth in Subsection (A)(8)(c)(ii)(1) of this Rule below, that the qualified custodian may transfer funds or securities, or both, of the trust only upon the direction of the trustee (who may be the investment adviser; investment adviser representative; or employee, director, or owner of the investment adviser), who the investment adviser has duly accepted as an authorized signatory. The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co-trustee (other than the investment adviser; investment adviser representative; or employee, director, or owner of the investment adviser)~~;~~, or a defined beneficiary of the trust, must designate the authorized signatory for management of the trust. The direction to transfer funds or securities, or both, can only be made to the following:

(a) To a trust company, bank trust department, or brokerage firm independent of the adviser for the account of the trust to which the assets relate;

(b) To the named grantors or to the named beneficiaries of the trust;

(c) To a third party independent of the adviser in payment of the fees or charges of the third person, including, but not limited to, (1) attorney's, accountant's, or custodian's fees for the trust; and (2) taxes, interest, maintenance or other expenses, if there is property other than securities or cash owned by the trust;

(d) To third parties independent of the adviser for any other purpose legitimately associated with the management of the trust; or

(e) To a broker-dealer in the normal course of portfolio purchases and sales, provided that the transfer is made on payment against delivery basis or payment against trust receipt.

d. Waiver of Bonding, Net Worth, or Financial Reporting Requirements. An investment adviser who has custody solely because it meets the definition of custody as defined in Subsection 635 (C)(1)(d) of this Rule and who complies with the safekeeping requirements in Subsections (A)(1) through (4) of this Rule and the additional safeguards of Subsections (A)(8)(a) through (c) of this Rule will not be required to meet the bonding, net worth, and financial reporting requirements for custodial advisers as set forth in Rules 6.05, 6.07, and 6.09 of the Act.

B. Exceptions.

1. Shares of mutual funds. With respect to shares of an open-end company as defined in Section 5(a)(1) of the Investment Company Act of 1940 [15 U.S.C. 80a-5(a)(1)] ("mutual fund"), the investment adviser may use the mutual fund's transfer agent in lieu of a qualified custodian for purposes of complying with Subsection (A) of this Rule;

2. Certain privately offered securities.

a. The investment adviser is not required to comply with Subsection (A) of this Rule with respect to securities that are:

i. aAcquired from the issuer in a transaction or chain of transactions not involving any public offering;

ii. Uuncertificated, and ownership thereof is recorded only on books of the issuer or its transfer agent in the name of the client; and

iii. Ttransferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

b. Notwithstanding Subsection (B)(2)(i) of this Rule, the provisions of Subsection (B)(2) of this Rule are available with respect to securities held for the account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if the limited partnership is audited, the audited financial statements are distributed, as described in Subsection (B)(3) of this Rule and the investment adviser notifies the Division in writing that the investment adviser intends to provide audited financial statements, as described above. Such notification is required to be given on Form ADV.

3. Limited partnerships subject to annual audit. An investment adviser is not required to comply with Subsection (A)(3) (4) of this Rule with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) that is subject to audit at least annually and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within one hundred twenty (120) days of the end of its fiscal year. The investment adviser must also notify the Division in writing that the investment

adviser intends to employ the use of the audit safeguards described above. Such notification is required to be given on Form ADV.

4. Registered investment companies. The investment adviser is not required to comply with this rRule with respect to the account of an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 to 80a-64].

5. Beneficial Trusts. The investment adviser is not required to comply with safekeeping requirements of Subsections (A)(1) through (4) of this Rule or the Bonding, Net Worth and Financial Reporting Requirements of Rules 6.07, 6.09, and 6.11 if the investment adviser has custody solely because the investment adviser, investment adviser representative or employee, director or owner of the investment adviser is a trustee for a beneficial trust, if all of the following conditions are met for each trust:

   a. The beneficial owner of the trust is a parent, a grandparent, a spouse, a sibling, a child, or a grandchild of the adviser. These relationships shall include "step" relationships.

   b. For each account under Rule Subsection (B)(5)(i) of this Rule the investment adviser complies with the following:

      i. The investment adviser provides a written statement to each beneficial owner of the account setting forth a description of the requirements of Subsection (A) of this Rule and the reasons why the investment adviser will not be complying with those requirements.

      ii. The investment adviser obtains from each beneficial owner a signed and dated statement acknowledging the receipt of the written statement required under Subsection (B)(5)(i) of this Rule above.

      iii. The investment adviser maintains a copy of both documents described in Subsections (B)(5)(i) and (ii) of this Rule above until the account is closed or the investment adviser is no longer trustee.

6. Any adviser who intends to have custody of client funds or securities but is not able to utilize a qQualified cCustodian as defined in Subsection (C)(3) of this Rule must first obtain approval from the Division and must comply with all of the applicable safekeeping requirements under Subsections (A)(1) through (4) of this Rule including taking responsibility for those provisions that are designated to be performed by a qualified custodian.

C. Definitions. The following definitions apply for purposes of this Rule:

1. **Custody** means holding directly or indirectly, client funds or securities, or having any authority to obtain possession of them or the ability to appropriate them. Custody includes:

   a. Possession of client funds or securities unless received inadvertently and returned to the sender promptly, but in any case within three (3) business days of receiving them and the investment adviser maintains the records required by Rule 6.19(A)(22);

   b. Receipt of checks drawn by clients and made payable to unrelated third parties will not meet the definition of custody if forwarded to the third party within twenty-four (24) hours three (3) business days of receipt and the adviser maintains the records required under Rule 6.19(A)(22);

   c. Any arrangement (including a general power of attorney) under which the investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser's instruction to the custodian; and

   d. Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives the investment adviser or its supervised person legal ownership of or access to client funds or securities.

2. **Independent Representative** means a person who:

   a. Acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or contract is obliged to act in the best interest of the advisory client or the limited partners (or members, or other beneficial owners);

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

   c. Does not have, and has not had within the past two (2) years, a material business relationship with the investment adviser.

3. **Qualified Custodian** means the following independent institutions or entities that are not affiliated with the investment adviser by any direct or indirect common control and have not had a material business relationship with the investment adviser in the previous two (2) years:

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

b. A registered broker-dealer holding the client assets in customer accounts;

c. A registered futures commission merchant register under Section 4f(a) of the Commodity Exchange Act, holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and

d. A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

Source: *Miss. Code Ann.* § 75-71-411(f) (~~Rev. 2009~~ 2016).