Minnesota Statutory Information

Note that the descriptions and/or interpretations of law are explanatory in nature, and may be paraphrased, abbreviated and incomplete. You are directed to refer to the applicable statutes and rules in their entirety for information to be relied upon, or to seek the advice of counsel.

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Section 1: ADVERTISING AND MARKETING

Minn. Stat. §§ 80A.68, 80A.69 and 80A.82 and Minn. R. 2876.5023 Subp. 1.H, 1.N. and 1.O promulgated thereunder.

A. Relevant Law

Minn. Stat. §§ 80A.68, 80A.69, and 80A.82 and Minn. R. 2876.5023 promulgated thereunder, as well as Section 206 of the Investment Advisers Act of 1940 impose a fiduciary duty on investment advisers to which fraudulent, deceptive or manipulative conduct is prohibited. As such, an investment adviser has an obligation to act in the best interests of its clients and to place their interests before its own. It also has an affirmative duty to provide full and fair disclosure of all material facts to its clients.

A fact is material if there is a substantial likelihood that a reasonable investor would consider it important. Minn. R. 2876.5023 Subp. 1.N and Advisers Act Rule 206(4)-1 govern advertising by investment advisers. The Minnesota Rule incorporates by reference the requirements of Advisers Act Rule 206(4)-1.

Pursuant to Minn. R. 2876.5023 Subp. 1.H, investment advisers, as a part of their fiduciary duty to clients, are prohibited from misrepresenting to any client or prospective client the qualifications of the investment adviser or any affiliate, or from omitting to state a material fact necessary to make the statements made, regarding qualifications, not misleading, in light of the circumstances under which they are made.

B. Misleading and/or Unsupported Statements

Minn. R. 2786.5023 Subp. 1. N. prohibits investment advisers from circulating, publishing or distributing any advertisement which does not comply with Rule 206(4)-1 under the Advisers Act. Rule 206(4)-1(a)(5) makes it unlawful for an investment adviser to directly or indirectly publish, circulate, or distribute any advertisement containing an untrue statement of a material fact, or which is otherwise false or misleading.

C. SEC Marketing Rule updates 206(4)-1

Rule 206(4)-1(a)(5) under the Advisers Act states that it is unlawful for an investment adviser to directly or indirectly publish, circulate, or distribute any advertisement which contains any untrue statement of a material fact, or which is otherwise false or misleading. Rule 206(4)-1(b) defines the term advertisement, among other things, as any notice, circular, letter or other written communication addressed to more than one person which offers any investment advisory service with regard to securities.

The SEC has issued a number of no-action letters addressing the use of model or actual performance in an advertisement, in which it indicated that use of model or actual results would be false or misleading under Rule 206(4)-1(a)(5) if an advertisement implies, or a reader would

infer from it, something about the investment adviser's competence or about future investment results that would not be true had the advertisement included all material facts.

Section 2: ADVISORY CONTRACTS

Minn. Stat. §§ 80A.66(c), 80A.68 and 80A.82; Minn. Rules 2876.4114, 2876.5022 and 2876.5023; Investment Advisers Act of 1940 §§204 and 205; and Investment Adviser Rule 204-2.

A. Relevant Law

Minn. R. 2876.5022 sets out the required contents of an investment advisory contract. The contract must provide, in writing, the following:

- services to be provided;
- term of the contract;
- advisory fee;
- formula for computing the fee;
- amount of prepaid fee to be returned in the event of termination or nonperformance of the contract; and
- any grant of discretionary power to the investment adviser.

The contract must also state that no direct or indirect assignment or transfer of the contract may be made by the investment adviser without the consent of the client or other party to the contract.

Finally, the contract must provide that the investment adviser shall not 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, unless the investment adviser adheres to the provisions of Advisers Act Rule 205-3.

Minn. Stat.§ 80A.66 and Minn. R. 2876.4114 require an investment adviser to make and keep true, accurate and current all books and records required to be maintained in compliance with Rule 204-2 under the Advisers Act, including all written agreements entered into by the investment adviser with any client.

Further, pursuant to the fiduciary duty owed by an investment adviser to its clients, an investment adviser should not enter into contracts with clients, except with certain sophisticated clients, that contain terms or clauses commonly referred to as a "hedge clause."

Minn. R. 2876.5022, subp. 3.A expressly forbids investment advisers to include clauses in contracts which require a client to waive any available right of legal action against the investment adviser, whether under federal securities laws, Minnesota law or common law. Such activity, as it relates to an investment adviser's fiduciary duty, would be applicable to an advisory contract (Minn. R. 2876.5023).

Section 3: BEST EXECUTION/ SOFT DOLLAR ARRANGEMENTS

MSA § 80A and Rule 2876.5023 thereunder/Section 206 of the Advisers Act

A. Relevant Law

MSA §80A.69 and Rule 2876.5023, thereunder, impose a fiduciary duty on investment advisers. As such, an investment adviser has an obligation to act in the best interest of its clients and to place their interests before its own. It also has a duty of full and fair disclosure of all material facts to its clients. Among the obligations that flow from an investment adviser's fiduciary duty is the responsibility to obtain the best qualitative execution of client transactions where the investment adviser is in the position to direct brokerage transactions. Commissions generated by trading in a client's account belong to the client, not the investment adviser, and therefore should not be used by the investment adviser, as a fiduciary, to benefit itself. Where the investment adviser directs brokerage pursuant to an arrangement in which the investment adviser obtains research or other products or services, other than bare execution, from the broker dealer or a third party, the arrangement is typically referred to as a "soft dollars" arrangement. Investment advisers have a duty to disclose the conflict of interests inherent in such an arrangement. Form ADV Part 1A, Item 8 G, and Part 2 Item 12 require disclosure by the investment adviser of any arrangement in which the investment adviser or any related person receives research or other products or services other than bare execution from a broker-dealer or a third party. These disclosure requirements could cover an arrangement in which the investment adviser is being sent the research by a broker with whom the investment adviser places trades, even though the investment adviser did not ask for the research and, indeed, does not even use the research. Therefore, investment advisers may inadvertently fail to answer this question correctly.

Section 28(e) of the Exchange Act provides investment advisers with a "safe harbor" from liability for causing clients to "pay up", but the investment adviser cannot expect protection unless all the parameters of the safe harbor are met. The product or service provided must be eligible; the product or service must provide lawful and appropriate assistance to the investment adviser in its responsibilities for making investment decisions; and the investment adviser must make a good faith conclusion that the commissions paid are reasonable in relation to the value of the research and brokerage products and services provided in connection with the particular transaction or the investment adviser's overall responsibilities with respect to discretionary accounts.

The SEC has issued two important releases to provide guidance for investment advisers in connection with soft dollar arrangements: Exchange Act Release No. 23170 (1986) and Exchange Act Release No. 54165 (2006). Advisers should analyze their arrangements with broker-dealers in accordance with these releases, in order to determine whether the arrangement involves soft-dollars and, if so, whether they are in compliance with the safe harbor of 28(e), and/or whether they are in compliance with their fiduciary duty to clients to obtain best execution. Investment advisers are not obligated to get the lowest possible commission cost, but rather should determine whether the transaction represents the best qualitative execution. Where a product or service obtained with soft dollars has a mixed use, an investment adviser should make a reasonable allocation between the research and non-research items with its own hard dollars. In those instances, investment advisers should keep

adequate book and records concerning allocations, in order to be able to demonstrate that they have acted in good faith.

Section 4: BOOKS AND RECORDS

Minn. Stat. §§ 80A.66 and 80A.82; Minn. R. 2876.4114; and Investment Advisers Act of 1940 §204-2.

A. Relevant Law

Minn. Stat. § 80A.66 and Minn. R. 2876.4114 require investment advisers to make and keep true, accurate and current all books and records required to be maintained in compliance with § 204-2. Section 204-2 contains a list of specific books and records that each investment adviser is required to maintain.

All of the books and records required under the federal rule are incorporated by reference into the Minnesota Rule. The books and records that you must make and keep are quite specific, and are described below in part:

Advisory business financial and accounting records, including:

- Cash receipts and disbursement journals;
- Income and expense account ledgers;
- Checkbooks;
- Bank account statements;
- Advisory business bills; and
- Financial statements.

Records that pertain to providing investment advice and transactions in client accounts with respect to such advice, including:

- Suitability records e.g., investment objectives, goals, net worth, annual income;
- Orders to trade in client accounts (referred to as "order memoranda");
- Trade confirmation statements received from broker-dealers;
- Documentation of proxy vote decisions;
- Written requests for withdrawals or documentation of deposits received from clients; and
- Written correspondence you sent to or received from clients or potential clients discussing your recommendations or suggestions.

Records that document your authority to conduct business in client accounts, including:

- A list of accounts in which you have discretionary authority;
- Documentation granting you discretionary authority; and
- Written agreements with clients, such as advisory contracts.

Advertising and performance records, including:

- Newsletters; articles; and

- Computational worksheets demonstrating performance returns.

Records related to the Code of Ethics Rule, including personal securities transaction reporting by access persons.

Records regarding the maintenance and delivery of your written disclosure document and disclosure documents provided by certain solicitors who seek clients on your behalf.

Policies and procedures adopted and implemented, including any documentation prepared in the course of your annual review.

Section 5: CODE OF ETHICS

Minn. Stat. §§ 80A.66 and 80A.82 and Rule 2876.4114 thereunder; and Rules 204-2 and 204A-1 under the Advisers Act.

A. Relevant Law

Minn. R. 2876.4114 requires all investment advisers registered, or required to be registered, to make and keep true, accurate and current all books and records required to be maintained and preserved in compliance with Rule 204-2 of the Advisers Act. Pursuant to Rule 204-2, investment advisers **must have a written code of ethics**, adopted and implemented pursuant to Rule 204A-1 under the Advisers Act.

In general, an investment advisers code of ethics should include provisions that address the following:

1. Business conduct standards
2. Personal trading
3. Reporting of violations
4. Acknowledgement of the code

1. Business Conduct Standards

Investment advisers are not required to adopt a particular standard of business ethics. Rather, the standard chosen should reflect the firm's fiduciary obligations to its advisory clients and the fiduciary obligations of its supervised persons and should require compliance with the securities laws. Investment advisers are free to set higher ethical standards than the law requires.

2. Personal Trading

Holdings reports must be submitted by access persons no later than ten days after the person becomes an access person, and at least once every twelve months thereafter.

The information in the holdings reports must be current as of a date no more than forty-five days prior. Rule 204A-1(b)(2) requires access persons to submit quarterly securities transaction reports that contain the date the access person submits the report, among other things. The quarterly securities transaction reports must be submitted no later than thirty days after the end of each calendar quarter.

Rule 204A-1(c) requires that access persons obtain the investment adviser's approval before directly or indirectly acquiring beneficial ownership in any security in an initial public offering or limited offering.

3. Reporting of Violations

The code of ethics must contain provisions requiring supervised persons to report any violations of the code of ethics promptly to the CCO or other designated persons. Rule 204A-1(b)(1*)* requires **"access persons"** (as defined in the Rule) to submit **"holdings reports"** that contain the date the access person submits the report, as well as other information. Rule 204A-1(e) defines "access person," in relevant part, as any of the investment advisers supervised persons who have access to nonpublic information regarding any clients' purchase or sale of securities or who is involved in making securities recommendations to clients.

4. Acknowledgement of the Code

In addition, Rule 204A-1(a)(5) requires an investment adviser's code of ethics to contain provisions requiring investment advisers to provide supervised persons with a copy of its code of ethics including any amendments. The Rule also requires supervised persons to provide a written acknowledgment of their receipt of the code and any amendments.

Section 6: COMPLIANCE PROGRAM/INTERNAL CONTROLS

Minn. Stat. §§ 80A.66 and 80A.82; Minn. R. 2876.4114; and the Investment Advisers Act of 1940 § 204-2.

A. Relevant Law

Minn. Stat. § 80A.66 and Minn. R. 2876.4114 require investment advisers to maintain certain specified books, ledgers and records in the manner specified by § 204-2 under the Advisers Act. This includes written supervisory procedures (WSPs) reasonably designed to prevent violations by the investment adviser or any of its supervised persons, as required by § 206(4)-7.

Investment advisers must consider their fiduciary and regulatory obligations under Minnesota Statutes as well as the provisions of the Advisers Act (incorporated by reference) and formally adopt and implement policies and procedures reasonably designed to prevent violations of Minnesota Statutes and the rules promulgated thereunder.

Investment Advisers are also required to designate an individual (who is a supervised person) as a chief compliance officer to be responsible for administering the policies and procedures under the program. Investment advisers must review, no less frequently than annually, the adequacy of the policies and procedures established and the effectiveness of their implementation. Under § 204-2, incorporated by reference into Minnesota's Rules, investment advisers must maintain any records documenting such reviews.

An investment adviser's failure to have adequate compliance policies and procedures in place constitutes a violation of Minnesota law independent of any other securities law violation. In developing compliance procedures, an investment adviser should identify conflicts of interest

and other factors creating risk exposure for the investment adviser and its clients in light of the firm's business operations and design procedures that address those risks.

Policies and procedures are not all required to contain specific, uniform elements. The investment adviser should tailor the policies and procedures to the operations of the firm and the risks and conflicts associated therewith. Investment Advisers should address the following elements to the extent they are relevant to the business:

- Portfolio management processes, including allocation of investment opportunities among clients and consistency of portfolios with clients' investment objectives, investment adviser's disclosures to clients, and applicable regulatory restrictions;
- The accuracy of disclosures made to investors, clients, and regulators, including account statements and advertisements;
- Proprietary trading by the firm and the personal trading activities of supervised persons;
- Safeguarding of client assets from conversion or inappropriate use by investment adviser's personnel;
- The accurate creation of required records and their maintenance in a manner that secures them from unauthorized alteration or use and protects them from untimely destruction;
- Safeguards for the privacy protection of client records and information;
- Trading practices, including procedures by which the investment adviser satisfies its best execution obligation, uses client brokerage to obtain research and other services (referred to as "soft dollar arrangements"), and allocates aggregated trades among clients;
- Marketing advisory services;
- Processes to value client holdings and assess fees based on those valuations; and
- Business continuity plans.

Section 7: CUSTODY

Minn. Stat. § 80A.66; Minn. R. 2876.4112, 2876.4113, 2876.4115, 2876.4116; and the Investment Advisers Act of 1940 § 204-2 and § 206(4)-2.

A. Relevant Law

As defined by Minn. R. 2876.4116, subp. 3, "Custody" is defined as 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 rule also describes what "custody" includes:

- Possession of client funds or securities unless received inadvertently and returned to the sender promptly (within three business days of receipt). NOTE: 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 24 hours of receipt;any arrangement, including a general power of attorney, under which the

investment adviser is authorized/permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser's instruction to the custodian; and

- 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.

  Also note that an investment adviser who has custody as defined by Minn. R. 2876.4116, Subp. 3 by having fees directly deducted from a client's account must also provide certain safeguards. These safeguards, as defined in Subp. 1. (F), include the following:
- Written authorization from the client to deduct advisory fees from the account held by a qualified custodian;
- Each time a fee is directly deducted from a client account, the investment adviser must concurrently:
  - Send the qualified custodian an invoice reflecting the fee amount to deduct
  - Send the client an invoice itemizing the fee to which the itemization must include the formula used to calculate the fee, the amount of assets under management to which the fee is based on and the time period covered by the fee
- Notification to the Administrator that the investment adviser intends to use the safeguards (notification is required on Form ADV, Part 1B.I/Custody).

B. For IAs serving as trustee per R. 4116 subp. 1. (H)

Additional safeguards apply where the Investment Adviser itself, or a related person, is retained to serve as the trustee of a trust of an advisory client. In this capacity, an Investment Adviser is considered to have custody of client funds or securities and obligated to comply with the additional safeguard requirements per Minn. Rule 2876.4116 subp. 1. (H) as briefly described below.

- Form ADV: Investment Adviser must disclose on Form ADV its intent to comply with the additional safeguards;
- Invoice: Investment Adviser must send to the grantor of the trust or if a testamentary trust, the Attorney or the co-trustee (other than the Investment Adviser or related person to the Investment Adviser) or a defined beneficiary of the trust ("Authorized person"), at the same time it sends any invoice to the qualified custodian, an invoice showing the amount of fees related to serving as a trustee (e.g., trustee's fee, investment management fee or advisory fee). The invoice should
- specifically include the value of the assets on which the fees are based, and the specific manner in which the fees are calculated;
- Written Agreement with Qualified Custodian: Investment Adviser must enter into a written agreement with a qualified custodian that

specifies, among other things, that the custodian will not deliver trust securities nor transmit funds to the Investment Adviser or related person except that the qualified custodian may pay fees per written authorization from an Authorized person provided that the agreement also includes the following: authorization to pay fees to the Investment Adviser and distribution of statements, at least on a quarterly basis, that reflects the value of the trust, all disbursements and all fees along with the manner in which the fee is calculated.

- Restricted Authority: Except as otherwise agreed upon, the qualified custodian may transfer funds or securities only upon the direction of the trustee (who may be the Investment Adviser or related person) to only the following: trust company, bank trust department or brokerage firm independent of the investment adviser; named grantors or beneficiaries of the trust; a third-party independent of the Investment Adviser in payment of fees or charges of the third-party with the written permission of the client and name of the account; third-parties independent of the Investment Adviser for any other purpose legitimately associated with the management of the trust; or Broker-Dealer in the normal course of portfolio purchases and sales.

Section 8: DISCLOSURE TO CLIENTS OF MATERIAL INFORMATION

Minn. Stat. § 80A.68, § 80A.69 and § 80A.82; and Minn. R. 2876.5023.

A. Relevant Law

Minn. Stat. § 80A.68 prohibits the making of material misrepresentations and omissions of fact in connection with the purchase and sale of securities. As it applies to investment advisers in particular, Minnesota Statute §80A.69 provides that a rule adopted pursuant to Chapter 80A may define an act, practice or course of business of an investment adviser as fraudulent, deceptive or manipulative, and may prescribe means reasonably designed to prevent investment advisers from engaging in such acts, practices and courses of business. Minn. R. 2876.5023 prohibits investment advisers from engaging in fraudulent, deceptive, or manipulative conduct that contravenes the investment adviser's fiduciary duty to its clients including, but not limited to, in the solicitation of clients, omitting to state a material fact necessary in order to make statements made, in light of the circumstances, not misleading.

When the firm discloses how it addresses a conflict of interest, simply stating that associates are required to put clients' interests ahead of their own is insufficient mitigation. An investment adviser's fiduciary duty includes an obligation to place the clients' interests first. The problem, however, is that an investment adviser's objectivity is compromised by the conflict of interest. Mitigation requires additional action by the firm to reduce the impact of such conflict of interest on this pre-existing fiduciary duty. If the firm opts not take action to address such conflict, that, in and of itself, could constitute a material fact requiring disclosure.

Section 9: FORM ADV

Minn. Stat. §§ 80A.58, 80A.61, 80A.67, and 80A.82 and Minn. R. 2876.4061 and 2876.4117 promulgated thereunder.

A. Relevant Law

Pursuant to Minnesota law, registered investment advisers are required to file Form ADV with the Investment Adviser Registration Depository ("IARD") in order to apply for registration. The Form ADV must be prepared in accordance with Form ADV instructions. Thereafter, an updating amendment to Form ADV must be filed annually within 90 days of the end of the investment adviser's fiscal year, and more frequently if required by the instructions to Form ADV. In addition to making annual filings, investment advisers must promptly file a correcting amendment if the information or record contained in the form is or becomes inaccurate or incomplete in a material respect.

Minn. R. 2876.4061 also requires Minnesota investment adviser applicants to file Part 2 of Form ADV (the "Brochure and Brochure Supplement") with the IARD. Investment advisers are required by Minn. R. 2876.4117 to provide new and prospective clients with a Brochure, as well as Brochure Supplements for each "supervised person" doing business in Minnesota. The Brochure and supplement must be written in plain English and, each year, the investment adviser must deliver (or offer to deliver) Part 2 or a summary of material changes to each client, without charge**.** The investment adviser must also keep a copy of each such brochure or amendment, along with a record reflecting the dates on which it was offered to any client or prospective client.

Pursuant to Minn. Stat. § 80A.67, it is unlawful to file an application for registration in this state which is incomplete in any material respect or contains a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact.

The Form ADV Part 2 instructions can be found by clicking the following link www.sec.gov/about/forms/formadv-part2.pdf

Section 10: INVESTMENT ADVISOR REPRESENTATIVE: CONTINUING EDUCATION

A. Relevant Order-

Order Pursuant to Minn Stat. § 80A.61 (e)

IAR CE Requirements

Section 11: MINIMUM FINANCIAL REQUIREMENTS

Minn. Stat. § 80A.66 and Minn. Rules 2876.4112, 2876.4114, 2876.4115, 2876.4116; and §§204 and 206 of the Advisers Act and Rule 204-2 promulgated thereunder.

A. Relevant Law- **Custody**

Minn. Stat. § 80A.66 and Minn. R. 2876.4112 require Investment Advisers registered or required to be registered under the Minnesota Securities Act having custody of client funds or securities as defined in Minn. R. 2876.4116 to maintain a net worth of $35,000 at all times. Net worth is defined in Minn. R. 2876.4112 subp. 5 as an 'excess of assets over liabilities', as determined by generally accepted accounting principles (GAAP). The rule further defines assets to exclude from the definition the following:

- Prepaid expenses (except as to items properly classified as assets under GAAP;
- Deferred charges;,
- Goodwill;
- Franchise rights;
- Organizational expenses;
- Patents or copyrights;
- Unamortized debt discount and expense;
- All other assets of intangible nature;
- Home, home furnishings, automobiles, 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.

If the net worth of the Investment Adviser registered or required to be registered falls below the $35,000 minimum, a notice of deficiency, unless otherwise exempted, must be filed with the Administrator. After transmitting the notice, the Investment Adviser must file; by close of business on the next business day, a report with the Administrator of its financial condition that includes the following:

- A trial balance of all ledger accounts;
- A statement of all client funds or securities which are not segregated;
- A computation of the aggregate amount of client ledger debit balances; and
- A statement as to the number of client accounts.

B. Relevant Law- **Discretion**

Minn. Stat. § 80A.66 and Minn. R. 2876.4112 require Investment Advisers registered or required to be registered under the Minnesota Securities Act having discretionary authority of client funds or securities as defined in Minn. R. 2876.4116 to maintain a net worth of $10,000 at all times. Net worth is defined in Minn. R. 2876.4112 subp. 5 as an 'excess of assets over liabilities',

as determined by generally accepted accounting principles (GAAP). The rule further defines assets to exclude from the definition the following:

- Prepaid expenses (except as to items properly classified as assets under GAAP;

- Deferred charges;,
- Goodwill;
- Franchise rights;
- Organizational expenses;
- Patents or copyrights;
- Unamortized debt discount and expense;
- All other assets of intangible nature;
- Home, home furnishings, automobiles, 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.

If the net worth of the Investment Adviser registered or required to be registered falls below the $10,000 minimum, a notice of deficiency, unless otherwise exempted, must be filed with the Administrator. After transmitting the notice, the Investment Adviser must file; by close of business on the next business day, a report with the Administrator of its financial condition that includes the following:

- A trial balance of all ledger accounts;
- A statement of all client funds or securities which are not segregated;
- A computation of the aggregate amount of client ledger debit balances; and
- A statement as to the number of client accounts.

C. Relevant Law- **Prepayment Plans**

Minn. Stat. § 80A.66 and Minn. R. 2876.4112 require Investment Advisers registered or required to be registered under the Minnesota Securities Act to continuously maintain a positive net worth when accepting prepayment of more than $500 per client six or more months in advance. Net worth is defined in Minn. R. 2876.4112 subp. 5 as an 'excess of assets over liabilities', as determined by generally accepted accounting principles (GAAP). The rule further defines assets to exclude from the definition the following:

- Prepaid expenses (except as to items properly classified as assets under GAAP;
- Deferred charges;,
- Goodwill;
- Franchise rights;
- Organizational expenses;
- Patents or copyrights;
- Unamortized debt discount and expense;
- All other assets of intangible nature;
- Home, home furnishings, automobiles, 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.

If the net worth of the Investment Adviser registered or required to be registered falls below a positive net worth, a notice of deficiency, unless otherwise exempted, must be filed with the Administrator. After transmitting the notice, the Investment Adviser must file; by close of business on the next business day, a report with the Administrator of its financial condition that includes the following:

- A trial balance of all ledger accounts;
- A statement of all client funds or securities which are not segregated;
- A computation of the aggregate amount of client ledger debit balances; and
- A statement as to the number of client accounts.

Section 12: PERFORMANCE ADVERTISING

Minn. Stat. § 80A.68, 80A.69 and 80A.82; Minn. R. 2876.5023 Subp. 1. N. and O.

A. Relevant Law

Sections 80A.68 and 80.69 of the Minnesota statutes and Minn. Rule 2876.5023 thereunder, as well as Section 206 of the Investment Advisers Act of 1940 impose a fiduciary duty on investment advisers to which fraudulent, deceptive or manipulative conduct is prohibited. As such, an investment adviser has an obligation to act in the best interests of its clients and to place their interests before its own. It also has an affirmative duty to provide full and fair disclosure of all material facts to its clients.

A fact is material if there is a substantial likelihood that a reasonable investor would consider it important. Minn. Rule 2786.5023 Subp. 1.N and Advisers Act Rule 206(4)-1 govern advertising by investment advisers. The Minnesota Rule incorporates by reference the requirements of Advisers Act Rule 206(4)-1.

Rule 206(4)-1 states that it is unlawful for an investment adviser to directly or indirectly publish, circulate or distribute any advertisement which contains any untrue statement of a material fact, or which is otherwise false or misleading. Rule 206(4)-1(b) defines the term "advertisement," among other things, as any notice, circular, letter or other written communication addressed to more than one person that offers any investment advisory service with regard to securities.

Section 13: PRICING

MSA §§ 80A.66, 80A.69 and 80A.82 and Rules 2876.4114 Subp. 3. D. (1) and 2876.5023 Subp. 1., thereunder.

A. Relevant Law

MSA §§ 80A.66 and 80A.82 and Rule 2876.5023 prohibit investment advisers, as fiduciaries, from conduct which is fraudulent, deceptive or manipulative. As fiduciaries, investment advisers have an affirmative obligation of utmost good faith and full and fair disclosure of all

material facts to clients, including a duty to avoid misleading them. A fact is material if there is a substantial likelihood that a reasonable investor would consider it important. Disclosures of material facts are necessary so that a client can make an informed decision as to whether to enter into or continue an advisory relationship. Rule 2876.4114 requires advisers to maintain the books and records demanded under federal Adviser's Act Rule 204-2, which in turn commands advisers to maintain those records required under federal Adviser's Act Rule 206(4)-7. Rule 206(4)-7 makes it unlawful for an adviser to provide investment advice to clients unless it: (1) adopts and implements written policies and procedures reasonably designed to prevent violation by the adviser and its supervised persons; (2) reviews, at least annually, the adequacy of the policies and procedures and the effectiveness of their implementation; and (3) designates an individual responsible for administering the written policies and procedures. Rule 2876.4114 Subp. 1. D. also requires maintenance of written supervisory policies and procedures.

Section 14: PRIVACY POLICY

Minn. Stat.§§ 80A.68, 80A.69 and 80A.82 and Minn. Rule 2876.5023 promulgated thereunder.

A. Relevant Law

Rule 2876.5023 prohibits certain conduct in providing investment advice. Specifically, Subpart 1.Q. prohibits disclosing, without the client's consent, the identity, investments or other financial information of any client or former client, unless required to do so by law. Advisers should, therefore, adopt privacy policies and procedures specific to the handling of clients' nonpublic personal information (NPI) and distribute such to its clients accordingly. The procedures must be reasonably designed to ensure, at a minimum, the following:

- The security and confidentiality of client records and information;
- The protection against any anticipated threats or hazards to the security or integrity of client information; and
- The protection against unauthorized access to or use of client records or information.

Further, the Privacy Rule adopted by the Federal Trade Commission in compliance with the federal Gramm-Leach-Bliley Act addresses concerns related to consumer financial privacy. This Privacy Rule applies to certain state-regulated investment advisers. **It is the responsibility of every Minnesota-registered investment adviser to determine whether it is required to comply with the Privacy Rule.** [1]

In general, the rule applies to businesses "significantly engaged" in financial, investment or economic advisory services, including financial planners and investment advisers. However, if the advisers' only clients primarily obtain products or services for business and commercial purposes, rather than primarily for personal, family or household purposes, the Privacy Rule would not apply.

[1] Even if an adviser's business is not subject to the Privacy Rule, the Rule may limit use of nonpublic personal information obtained from third parties. For complete information, go to the FTC website, and review 16 C.F.R. Part 313 et.seq (https://www.ftc.gov/tips-advice/business-center/guidance/how-comply-privacy-consumer-financial-information-rule-gramm) as well as amendments (e.g., Annual Notice Exception- https://www.congress.gov/bill/114th-congress/house-bill/22/text#toc-H2067E3B6C0E447C0B6EFF908339ADFAD)

If a client falls within the latter category, the Privacy Rule applies as long as the client has a 'continuing relationship" with the adviser, rather than a relationship consisting of occasional, non-periodic, isolated transactions. If the Privacy Rule applies to an adviser's business, it must comply with privacy requirements and restrictions outlined in the Gramm-Leach-Bliley Act and the Privacy Rule. The following represents a synopsis of these requirements:

- The adviser must disclose, in a clear and conspicuous written notice to clients, an accurate description of its current policies regarding the use of NPI;
- The Notice should include the uses of NPI, subject to certain exceptions (e.g. only sharing information to process and service transactions, or to prevent fraud), and how an individual may avoid ("opt out") having his/her information shared;
- The disclosure must include both an explanation of the categories of NPI the institution collects, as well as a list of the types of entities with whom the institution shares such information;
- The adviser must adopt and maintain adequate policies and procedures for the safekeeping of NPI;
- The adviser must give its clients an annual privacy notice for as long as the client relationship is in effect UNLESS the adviser has not[2] -
- Changed its policies and procedures; or
- Disclosed NPI to non-affiliated third parties in a manner that triggers an opt-out right.

Section 15: REFERRAL ARRANGEMENTS AND SOLICITATION AGREEMENTS

Investment Adviser Act Rule 275.206(4)-3 (2014) Cash payments for client solicitations

A. Relevant Law

If an investment adviser pays an independent third party solicitor, whether direct or indirect, it must adhere to Adviser's Act Rule 206(4)-3, which is incorporated by reference into Minnesota law. That rule requires a written solicitation agreement, and requires the investment adviser to prescreen the solicitor, including its disciplinary history.

The Rule also requires any independent third party solicitor to provide the client with a current copy of the investment adviser's brochure and a separate written disclosure document at the time of any solicitation activities. The disclosure document must contain certain required information such as –

- the nature of the relationship including any affiliation between the solicitor and the investment adviser;
- how the solicitor will be compensated;
- the terms of the compensation arrangement; and the amount, if any, for the cost of obtaining his account the client will be charged in addition to the advisory fee.

[2] See page 476 "Exception to the Annual Privacy Notice Requirement under Gramm-Leach-Bliley (https://www.congress.gov/114/bills/hr22/BILLS-114hr22enr.pdf)

Section 16: REGISTRATION AND POST REGISTRATION REQUIREMENTS

Minn. Stat. §§ 80A.41, 80A.58, 80A.66, 80A.69 and Minn. R. 2876.4061 and 2876.4120 promulgated thereunder.

A. Relevant Law

It is unlawful for a person to transact business in this state as an investment adviser or investment adviser representative unless the person is registered or exempted from registration (MN Stat. 80A.58). Further, Minn. Rule 2876.4061 requires a person that provides investment advisory services to apply by electronically filing Form ADV (Uniform Application for Investment Adviser Registration) through IARD in accordance with the Form's instructions. The person is also required to annually renew its registration within 90 days of its fiscal year end through the IARD.

Likewise, Minn. Rule 2876.4120 requires certain qualifications for individuals employed by or associated with an Investment Adviser who, among other things, make any recommendations or otherwise give investment advice regarding securities, manage accounts or portfolios of clients, hold herself or himself out as providing investment advice, or supervise employees who perform any of the foregoing. Unless otherwise waived by the Administrator, such persons must qualify by either passing a required examination (Series 66 or 65) or hold an approved professional designation (Certified Financial Planner, Chartered Financial Consultant, Chartered Financial Analyst, Personal Financial Specialist or Chartered Investment Counselor). Professional designations also require an update to an individual's Form U4 in the CRD system as filed electronically through IARD.

Section 17: SUITABILITY

Minn. Stat. §§ 80A.66 and 80A.69; Minn. R. 2876.4114 and 2876.5023; Rule 206(4)-2 under the Investment Advisers Act of 1940.

A. Relevant Law

Minnesota statutes and rules prohibit investment advisers, as fiduciaries, from conduct which is fraudulent, deceptive or manipulative. As fiduciaries, investment advisers have an affirmative obligation to act in their clients' best interest and never to put their own interests ahead of their clients. This includes the obligation to recommend only those investments that are suitable for a client, based on the client's investment objectives, financial situation, particular circumstances and situation and any other information known by the investment adviser.