ALABAMA SECURITIES COMMISSION
ADMINISTRATIVE CODE

CHAPTER 830-X-3
REGISTRATION OF DEALERS, AGENTS, INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

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830-X-3-.01 Application For Registration As A Dealer.

(1) Each dealer shall file a complete Form BD and any other documentation required by law or by rule, regulation or order of the Commission.

(2) If the information contained in any application for registration as a dealer, or in any amendment thereto, becomes inaccurate for any reason, the dealer shall file an amendment on Form BD within 30 days correcting such information in the manner provided in the General Instructions accompanying the form.

(3) Registration of all dealers shall expire on December 31st of each year unless renewed for the following year by that date.
Author:
Statutory Authority: Code of Ala. 1975, §8-6-23.
History: Filed September 30, 1982. **Readopted:** Filed November 9, 1983. **Amended:** Filed September 28, 1990.

830-X-3-.02 Application For Registration As An Agent.

(1) Application for registration as an NASD member agent shall be filed on Form U-4 and in compliance with all requirements of the NASAA/NASD Central Registration Depository System, or its successor, and in compliance with all requirements of law or by rules, regulations or orders of the Commission.

(2) Application for registration as a non-NASD agent shall be filed on Form U-4 directly with the Commission and in compliance with all requirements of law or by rules, regulations or orders of the Commission.

(3) Whenever the information contained in an agent's U-4 becomes inaccurate or incomplete for any reason, it is the responsibility of the issuer or dealer to correct such information by the filing of an amendment on Form U-4 within 30 days with the Central Registration Depository, or its successor, for NASD agents and directly with the Commission for all other agents.

(4) Whenever an agent's registration is terminated, it shall be the responsibility of the issuer or dealer to file a Form U-5 within 30 days with the Central Registration Depository, or its successor, for NASD agents and directly with the Commission for all other agents.

(5) Agent transfers from one dealer or issuer to another are accomplished by filing Form U-4 with the Central Registration Depository, or its successor, for NASD agents and directly with

the Commission for all other agents. Fees shall be incurred with each agent transfer in accordance with §§8-6-3(h).

(6) Registration of all agents shall expire on December 31st of each year unless renewals for the following year are completed by that date.

Author:
Statutory Authority: Code of Ala. 1975, §8-6-23.
History: Filed September 30, 1982. **Readopted:** Filed November 9, 1983. **Amended:** Filed September 28, 1990 (rule title changed from "Application as Salesman" to "Application as Agent.")

830-X-3-.03 Application For Registration As An Investment Adviser.

(1) Each investment adviser shall file a Form ADV and any other documentation the Commission may require.

(2) If the information contained in any application for registration, or in any amendment thereto, becomes inaccurate for any reason, the investment adviser shall within 30 days file an amendment on Form ADV correcting such information in the manner provided in the General Instructions accompanying the form.

(3) Registration of all investment advisers shall expire on December 31st of each year unless renewals for the following year are completed by that date.

Author:
Statutory Authority: Code of Ala. 1975, §8-6-23.
History: Filed September 28, 1990.

830-X-3-.04 Application For Registration As An Investment Adviser Representative.

(1) Application for registration as an investment adviser representative shall be filed on Form U-4 with the Commission, or its designee, and in compliance with all requirements and rules prescribed by the Commission.

(2) Whenever the information contained in an investment adviser representative's Form U-4 becomes inaccurate or incomplete for any reason, it shall be the responsibility of the investment adviser with whom employment has terminated to correct such information by the filing of an amendment on Form U-4 with the Commission within 30 days.

(3) Whenever an investment adviser representative's registration is terminated, it shall be the responsibility of the investment adviser with whom employment has terminated to correct such

information by filing a Form U-5 with the Commission within 30 days of the investment adviser representative's termination date.

(4) Investment adviser representatives' transfers from one investment adviser to another is accomplished by filing Form U-4 with the Commission and payment of the fee in accordance with §8-6-3(h).

(5) Registration of all investment adviser representatives shall expire on December 31st of each year unless renewals for the following year are completed by that date.

Author:
Statutory Authority: Code of Ala. 1975, §8-6-23.
History: Filed September 28, 1990.

830-X-3-.05 Statement Of Financial Condition.

(1) An applicant filing a new application for registration as a dealer or investment adviser shall file a balance sheet prepared in accordance with generally accepted accounting principles, dated not more than ninety days prior to the date of filing. Such balance sheet shall be in compliance with Rule 830-X-3-.05(4) or audited in accordance with generally accepted auditing standards accompanied by an unqualified opinion of an independent certified public accountant registered with the Alabama State Board of Public Accountancy or a similar board of the state in which the certifying accountant resides.

(2) If an applicant is registered with the United States Securities and Exchange Commission, National Association of Securities Dealers, Inc., or a recognized stock exchange, the filing with the Commission of financial reports prepared inaccordance with the rules and requirements of that organization shall satisfy the requirements of this rule; however, should such a report be submitted, it shall be accompanied by a balance sheet attested to by an officer of the applicant, unless said report contains an opinion as set forth in paragraph (1) of this rule.

(3)(a) Except as otherwise ordered by the Commission, all persons to be registered as investment advisers in this state shall file a balance sheet audited in accordance with generally accepted auditing standards accompanied by an unqualified opinion of an independent certified public accountant registered with the Alabama State Board of Public Accountancy or a similar board of the state in which the certifying accountant resides, within sixty (60) days after the close of the registrant's fiscal period.

(b) For the purpose of satisfying the provisions of Code of Ala. 1975, §8-6-3(g), relating to the filing of yearly audited financial statements of broker-dealers, the filing of financial reports with the U.S. Securities and Exchange

Commission ("SEC") pursuant to SEC Rule 17a-5 (17 C.F.R. 240.17a-5 (1991) as amended will be deemed to satisfy the provisions of the section.

(c) All persons required to be registered as investment advisers or dealers in this state shall file with the Commission, within 15 days of a written request of the Commission staff, their most recent financial statements audited in accordance with generally accepted auditing standards accompanied by an unqualified opinion of an independent certified public accountant registered with the Alabama State Board of Public Accountancy or a similar board of the state in which the certifying accountant resides.

(d) Any financial statements submitted to the Commission staff for the purposes of satisfying a request made pursuant to subdivision (3)(c) of this rule must accurately represent the financial condition of the dealer or investment adviser as of a date within twelve months of the date of such request.

(4) Attached to every balance sheet or financial statement which may be required to be submitted to the Commission shall be an oath or affirmation that such statement is true and correct to the best knowledge, information, and belief, after a diligent inquiry, of the person making such oath or affirmation. The oath or affirmation shall be made before a person authorized to administer such oath or affirmation. If the dealer or investment adviser is a sole proprietorship, the oath or affirmation shall be made by the proprietor; if a partnership, bya general partner; if a corporation, by a duly authorized officer; and if a trust, by a trustee.

(5) Securities in which an applicant has an interest disclosed in the balance sheet or financial statement shall be listed in a separate schedule and valued at cost. Market value of such securities shall be shown parenthetically as of a date within thirty (30) days of the date of filing any application.
Author: Alabama Securities Commission
Statutory Authority: Code of Ala. 1975, §8-6-23.
History: Filed September 30, 1982. **Readopted:** Filed November 9, 1983. **Emergency rule** filed December 22, 1983. **Amended:** Filed September 28, 1990. Ed. Note: Formerly Rule 830-X-3-.03. **Amended:** Filed November 19, 2004; effective December 24, 2004.

830-X-3-.06 Net Capital Required.

(1) For the purpose of this rule, and for the purpose of initial or renewal registration pursuant to Section 3, Title 8, Code of Ala. 1975, Net Capital shall be computed as follows: Assets minus total liabilities, excluding liabilities which are subordinated to the claims of creditors pursuant to a satisfactory subordination

agreement as defined in Appendix D of Rule 15c3-1 under the Securities Exchange Act of 1934 (17 C.F.R. §240.15c3-1d) as amended.

(2) All dealers shall have and maintain net capital of not less than $50,000 as computed in (1) above.

(3) All investment advisers shall have and maintain net capital of not less than $10,000 as computed in (1) above.

(4) Except as otherwise ordered by the Commission, those dealers and investment advisers that maintain custody of customer funds or that have discretionary authority over customer accounts shall post a $50,000 surety bond in addition to maintaining the net capital required by this rule (830-X-3-.06).

(5) Any dealer or investment adviser who fails to maintain the minimum net capital required under this rule shall immediately suspend business operations and notify the Commission within three (3) business days of such fact. Such dealer or investment adviser shall not resume business operations unless and until financial statements which verify compliance with this rule have been submitted and approved by the Commission in writing.

(6) In lieu of the net capital requirements of the foregoing subsections of this rule and the provisions concerning net capital in Code of Ala. 1975, Section 8-6-3(f)(2), the Commission will accept as an alternative for licensing purposes a bond of not less than $50,000, payable, executed and conditioned as set out in (7) of this rule (830-X-3-.06).

(7) Any surety bond required under this rule shall be payable to the State of Alabama, shall be executed by the dealer or investment adviser and a corporation qualified to do business as a surety company in the State of Alabama and shall be in such form and subject to such conditions as the Commission shall from time to time designate. Any person damaged by any breach in the conditions of said bond shall have a right of action upon said bond for the damages suffered thereby. Any action to enforce liability under the bond must be brought within the period of time specified in Code of Ala. 1975, §8-6-19(f). One or more recoveries upon such bond shall not vitiate the same, but the aggregate amount of such recoveries thereon shall not exceed the amount of such bond. Any recovery on such bond shall be sufficient cause for canceling or revoking such dealer's or investment adviser's registration.

Author:

Statutory Authority: Code of Ala. 1975, §8-6-23.

History: Filed September 30, 1982. **Readopted:** Filed November 9, 1983. **Emergency rule** filed December 22, 1983. **Amended:** Filed March 15, 1984; September 28, 1990 (rule title changed from "Net Worth Required" to "Net Capital Required.") Ed. Note: Formerly

Rule No. 830-X-3-.04. **Emergency rule** filed May 9, 1991. **Amended:** Filed September 11, 1991.

830-X-3-.07 Repealed.

(REPEALED)
Author:
Statutory Authority:
History: Rule 830-X-3-.07 entitled "Salesman's Registration Card" filed September 30, 1982. **Readopted:** Filed November 9, 1983. **Repealed:** Filed September 28, 1990.

830-X-3-.08 Written Examinations.

(1) Each officer, director, partner or any person occupying a similar status or performing similar functions of a dealer applicant, or an agent applicant, who intends to engage in securities transactions must satisfy both the following exam requirements:

(a) An examination on state securities law which will be satisfied by passing the Uniform Securities Agent State Law Examination (USASLE) administered by the National Association of Securities Dealers (NASD) or the Uniform Combined State Law Examination (UCSLE or Series 66); and

(b) An examination on general or limited securities principles which will be satisfied by the applicant showing evidence of passing the appropriate examination(s) required by NASD for the activity in which the applicant will be engaged.

(2) Registration as a dealer or agent is effective only for the activity associated with the Qualification Examination which the applicant passed in satisfaction of Section (1)(b) of this Rule.

(3) The examination required under Section (1)(a) of this Rule shall not be applicable to renewal applications of persons registered prior to January 1, 1984, it being the intent of the Commission to apply this additional examination requirement prospectively. All persons currently registered should be already in compliance with the examination requirements of Section (1)(b) and should strictly observe the restriction upon registration set out in Section (2) of this Rule.

(4) Any person, including each officer, director, partner or any other person occupying a similar status or performing similar functions, applying to be registered as an investment advisor or investment advisor representative under the Alabama Securities Act

shall provide the Commission staff with proof that he or she has obtained a passing score on the following examinations:

(a) The Uniform Investment Advisor Law Examination (Series 65 examination); or

(b) The General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination).

(5) Grandfathering:

(a) Any individual who is registered as an investment advisor or investment adviser representative in any jurisdiction in the United States on the effective date of this rule shall not be required to satisfy the examination requirements for continued registration, except that the Commission may require additional examinations for any individual found to have violated the Uniform Securities Act.

(b) An individual who has not be registered in any jurisdiction for a period of two (2) years shall be required to comply with the examination requirements of this Rule.

(6) Waivers. The examination requirement shall not apply to any individual who currently holds one of the following designations and is in good standing with the organization issuing such designations:

(a) Certified Financial Planner (CFP) issued 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) administered by the American Institute of Certified Public Accountants;

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

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

(f) Such other professional designation as the Director of the Alabama Securities Commission may by order recognize.

Author: Alabama Securities Commission
Statutory Authority: Code of Ala. 1975, §8-6-23.
History: Filed September 30, 1982. **Readopted:** Filed November 9, 1983. **Emergency rule** filed December 22, 1983. **Amended:** Filed March 15, 1984; September 28, 1990. Ed. Note: Formerly Rule No. 830-X-3-.05. **Amended:** Filed September 11, 1991. **Amended:** January 25, 1996; effective February 29, 1996. **Amended:** Filed

November 17, 1999; effective December 22, 1999. **Amended:** Filed March 20, 2000; effective April 24, 2000.

830-X-3-.09 Dual Registration.

Registration of any "associated person" simultaneously with more than one issuer, dealer, or investment advisor is prohibited, except as may be allowed on a case by case basis by the Director after a determination is made that the waiver would be in the public interest.
Author: Alabama Securities Commission
Statutory Authority: Code of Ala. 1975, §8-6-23.
History: Filed September 30, 1982. **Readopted:** Filed November 9, 1983. **Amended:** Filed September 28, 1990. **Amended:** Filed January 25, 1996; effective February 29, 1996. Ed. Note: Formerly Rule No. 830-X-3-.06. **Amended:** Filed June 21, 1999; effective July 26, 1999.

830-X-3-.10 Notice Of Civil, Criminal Or Administrative Action Required.

An applicant or registrant named as a defendant or respondent in one or more of the following actions shall notify the Commission within thirty (30) days in writing of any such action:

(a) Criminal charges punishable by imprisonment for more than six months, charges involving securities or any aspect of the securities business, or any felony;

(b) Civil charges involving a security or any aspect of the securities business or any activity alleging a breach of a fiduciary trust, or fraud;

(c) Administrative charges involving a security or any aspect of the securities business, or any activity alleging a breach of a fiduciary trust, or fraud;

(d) Any proceeding in which an adverse decision could result in:

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

2. an expulsion or bar from membership in any professional association or organization.

Author:
Statutory Authority: Code of Ala. 1975, §8-6-23.

History: Filed September 30, 1982. **Readopted:** Filed November 9, 1983. **Amended:** Filed September 28, 1990. Ed. Note: Formerly Rule No. 830-X-3-.09.

830-X-3-.11 Repealed.

(REPEALED)
Author:
Statutory Authority:
History: Rule 830-X-3-.11 entitled "Salesman's Photograph Required" filed September 30, 1982. **Readopted:** Filed November 9, 1983. **Repealed:** Filed September 28, 1990.

830-X-3-.12 Suitability Of Recommendations.

Every dealer, investment adviser and every associated person thereof who recommends to a customer the purchase, sale or exchange of any security shall have reasonable grounds to believe and shall believe that the recommendation is suitable for such customer on the basis of information furnished by such customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other information known by such dealer, investment adviser or associated person thereof.
Author:
Statutory Authority: Code of Ala. 1975, §8-6-23.
History: Filed September 30, 1982. **Readopted:** Filed November 9, 1983. **Amended:** Filed September 28, 1990. Ed. Note: Formerly Rule No. 830-X-3-.10.

830-X-3-.13 Supervision Of Associated Persons.

(1) Every dealer, issuer or investment adviser, and officers, directors and partners thereof, shall exercise diligent supervision over all the securities activities of its associated persons.

(2) Every associated person of the dealer, issuer or investment adviser shall be subject to the supervision of a supervisor designated by such dealer, issuer or investment adviser. The supervisor may be a partner, officer, director, office manager, or any other qualified associated person, or in the case of a sole proprietorship, the sole proprietor.

(3) As part of its responsibility under this rule, every dealer, issuer or investment adviser shall establish, maintain and enforce written procedures, a copy of which shall be kept in each business

office, which shall set forth the procedures adopted by the dealer, issuer or investment adviser to comply with the following duties imposed by this rule, and shall state at which business office or offices the dealer, issuer or investment adviser keeps and maintains the records required by Rules 830-X-3-.14 and 830-X-3-.16, as appropriate.

(a) The review and written approval by the designated supervisor of the opening of each new customer account;

(b) The frequent examination of all customer accounts to detect and prevent irregularities or abuses;

(c) The prompt review and written approval by the designated supervisor of all securities transactions by associated persons and all correspondence pertaining to the solicitation or execution of all securities transactions by associated persons;

(d) The review and written approval by the designated supervisor of the delegation by any customer of discretionary authority with respect to his account to a stated associated person or persons of the dealer, issuer or investment adviser and the prompt written approval by such designated supervisor of each discretionary order entered on behalf of that account; and

(e) The prompt review and written approval of the handling of all customer complaints.

(4) Every dealer, issuer or investment adviser who has designated more than one supervisor pursuant to paragraph (2) of this rule shall designate from among his partners, officers, directors or other qualified associated persons, a person or group of persons who shall:

(a) Supervise and periodically review the activities of the supervisors designated pursuant to paragraph (2) of this rule; and

(b) Periodically inspect each business office of the dealer, issuer or investment adviser to ensure that the written procedures are enforced.

Author:
Statutory Authority: Code of Ala. 1975, §8-6-23.
History: Filed September 30, 1982. **Readopted:** Filed November 9, 1983. **Amended:** Filed September 28, 1990. Ed. Note: Formerly Rule No. 830-X-3-.18.

830-X-3-.14 Records Required Of Registered Dealers.

(1) Every dealer registered in this state, except as otherwise provided by this rule, shall make and keep current the following books and records relating to its business as provided herein:

(a) Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. Such records shall show the account for which each such transaction was effected, the nameand amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered.

(b) Ledgers (or other records) reflecting all assets and liabilities, income and expenses and capital accounts.

(c) Ledger accounts (or other records) itemizing separately as to each cash and margin account of every customer and of such dealer and partners thereof, all purchases, sales, receipts, and deliveries of securities for such account and all other debits and credits to such account.

(d) Ledgers (or other records) reflecting the following:

1. Securities in transfer;

2. Dividends and interest received;

3. Securities borrowed and securities loaned;

4. Monies borrowed and monies loaned (together with a record of the collateral therefor and any substitutions in such collateral);

5. Securities failed to receive and failed to deliver.

(e) A securities record or ledger reflecting separately for each security as of the clearance dates all "long" or "short" positions (including securities in safekeeping) carried by such dealer for its account or for the account of its customers or partners showing the location of all securities "long" and the offsetting position to all securities "short" and in all cases the name and designation of the account in which each position is carried.

(f) A memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. Such memorandum shall show the terms and conditions of the order or instructions and of any modification or cancellation thereof, the account for which entered, the time of entry, the price at which executed and, to the extent feasible, the time of execution or cancellation. Orders entered pursuant to the exercise of discretionary power by such dealer, or any employee thereof, shall be so designated. The term "instruction" shall be deemed to include instructions between partners and employees of adealer. The term "time of entry" shall be deemed to mean the time when such dealer transmits the order or instruction for execution or, if it is not so transmitted, the time when it is received.

(g) A memorandum of each purchase and sale of securities for the account of such dealer showing the price and, to the extent feasible, the time of execution; and, in addition, where such purchase or sale is with a customer other than a dealer, a memorandum of each order received, showing the time of receipt, the terms and conditions of the order, and the account in which it was entered.

(h) Copies of confirmation of all purchases and sales of securities and copies of notices of all other debits and credits for securities, cash, and other items for the accounts of customers and partners of such dealers.

(i) A record in respect to each cash and margin account with such dealer containing the name and address of the beneficial owner of such account and, in the case of a margin account, the signature of such owner; provided, that in the case of a joint account or an account of a corporation, such records are required only in respect to the person or persons authorized to transact business for such account.

(j) A record of all puts, calls, spreads, straddles, and other options which such dealer has granted or guaranteed, containing at least an identification of the security and the number of units involved.

(k) A record of the proof of money balances of all ledger accounts in the form of trial balances. Such trial balances shall be prepared currently at least once a month.

(l) An application for employment executed by each associated person of such dealer, which application shall be approved in writing by an authorized representative of such dealer and shall contain at least the following information with respect to such person:

1. Name, address, social security number and the starting date of employment or other association with the dealer;

2. Date of birth;

3. The educational institutions attended and whether or not graduated therefrom;

4. A complete consecutive statement of all business connections for at least the preceding seven (7) years, including reasons for leaving each prior employment, and whether the employment was part-time or full-time;

5. A record of any denial of membership of registration, and of any disciplinary action taken or sanction imposed, upon such associated person by any federal or state agency, or by any national securities exchange or national securities association, including any finding that such associated person was a cause of any disciplinary action or had violated any law;

6. A record of any denial, suspension, expulsion or revocation: of membership in any national securities association, securities exchange, or registration with any state, federal or governmental agency, with which such associated person was associated in any capacity when such action was taken;

7. A record of any permanent or temporary injunction entered against him or any member of a national securities association or stock exchange, or dealer with which such associated person was associated in any capacity at the time such injunction was entered;

8. A record of any arrests, indictments or convictions for any felony or any misdemeanor, except minor traffic offenses, of which such associated person has been the subject;

9. A record of any other name or names by which such associated person has been known or has used; provided, however, that if such associated person has been registered as a registered representative of such dealer with, or such associated person's employment has been approved by the National Association of Securities Dealers, Inc., or the American Stock Exchange, the Boston Stock Exchange, the Midwest Stock Exchange, the New York Stock Exchange, the Pacific Coast Stock Exchange, or the Philadelphia-Baltimore-Washington Stock Exchange, then retention of a full, correct, and complete copy of any and all applications for such registration or approval shall be deemed to satisfy the requirements of this subparagraph (1).

(m) Unless otherwise provided by order of the Commission, each registered dealer shall make, maintain and preserve books and records in compliance with U.S. Securities and Exchange Commission Rules 17a-3 (17 C.F.R., 240.17a-3 (1991)), 17a-4 (17 C.F.R. 240.17a-4 (1991)), 15c2-6 (17 C.F.R. 240.15c2-6 (1991)) and 15c2-11 (17 C.F.R. 240.15c2-11 (1991)) as amended,and specifically, but without limiting the foregoing, all filings dealing with fingerprint cards and criminal records.

(2) This rule shall not be deemed to require a member of a national securities exchange to make or keep such records of transactions cleared for a member by another member as are customarily made and kept by the clearing member.

(3) Every issuer selling its own securities shall make and keep current the following books and records relating to his business:

(a) Ledger, journals (or other records) reflecting all assets and liabilities, income and expenses, and capital accounts properly maintained in accordance with general accounting principles.

(b) Stock Certificate books.

(c) Stockholders ledger or other record reflecting alphabetically the names and addresses of all stockholders, stock certificates issued to each, dates paid, and full details as to transfers or cancellations.

(d) Copies of all promotional and/or sales materials used in connection with the sales of all securities as distributed.

(e) Copies of all confirmations of sales of securities.

(f) A record of any arrests, indictments, or convictions for any felony or any misdemeanor, except minor traffic offenses, of which any of its principal officers has been the subject.

(4) A dealer registered in this state who maintains and preserves records in accordance with the provisions of the Securities Exchange Act of 1934, as amended, shall not be subject to the requirements of paragraphs (1) and (3) of this rule.

(5) All registered issuers or dealers shall maintain in this state the books and records referred to in this rule unless otherwise approved by the Commission. Any issuers or dealers who are approved to keep such records physically outside this state shall make such records available to the Commission, at a time and place designated by the Commission, for inspection upon request.

(6) All records required to be kept hereunder shall be in such form as may conveniently be examined by the Commission or its

staff without the necessity of employing mechanical methods of reproduction or inspection.
Author: Alabama Securities Commission
Statutory Authority: Code of Ala. 1975, §8-6-23.
History: Filed September 30, 1982. **Readopted:** Filed November 9, 1983. **Amended:** Filed September 28, 1990. Ed. Note: Formerly Rule No. 830-X-3-.12. **Amended:** Filed November 19, 2004; effective December 24, 2004.

830-X-3-.15 Records To Be Preserved By Registered Dealers.

Except as otherwise provided by this rule, every dealer shall preserve the following records for a period of not less than three (3) years, during the first two (2) years of which such records shall be kept in an easily accessible place:

(a) All checkbooks, bank statements, cancelled checks and cash reconciliations;

(b) All bills receivable or payable (or copies thereof), paid or unpaid, relating to the dealer;

(c) Originals of all communications received and copies of all communications sent by such dealer (including interoffice memoranda and communications) relating to the business of the dealer;

(d) All trial balances, financial statements, branch office reconciliations and internal audit working papers relating to the business of the dealer;

(e) All guarantees of accounts and all powers of attorney and other evidence of the granting of any discretionary authority given in respect of any accounts, and copies of resolutions empowering an agent to act on behalf of a corporation;

(f) All written agreements (or copies thereof) entered into by a dealer relating to its business, including agreements with respect to any account;

(g) Every dealer shall preserve for a period of not less than three (3) years after the closing of any customer's account any account cards or records which relate to the terms and conditions with respect to the opening and maintenance of such account;

(h) Every dealer shall preserve during the life of the enterprise and of any successor enterprise all partnership articles or, in the case of a corporation, all articles of incorporation or charter, minute books, and stock certificate books;

(i) Every dealer shall maintain and preserve in an easily accessible place all records required under paragraph (1)(1) of Rule 830-X-3-.14 for at least three (3) years after the "associated person" has terminated his employment and any other connection with the dealer;

(j) After a record or other document has been preserved for two (2) years, unless a shorter period of time is permitted the registrant by the United States Securities and Exchange Commission, a microfilm or microfiche record may be substituted for the balance of the required time;

(k) A dealer subject to Rule 830-X-3-.14 ceasing to transact a business in securities, or ceasing to be registered in this state, shall continue to preserve the records which it is required to preserve pursuant to this rule; and

(l) The records (or a copy thereof) required by paragraph (1), subparagraphs (a), (f) and (h) of Rule 830-X-3-.14, shall be maintained in each office in this state, if any, from which transactions with respect to such records occurred, except as otherwise provided in paragraph (5) of Rule 830-X-3-.14.

(m) All records required to be preserved hereunder shall be in such form as may conveniently be examined by the Commission or its staff.

Author:
Statutory Authority: Code of Ala. 1975, §8-6-23.
History: Filed September 30, 1982. **Readopted:** Filed November 9, 1983. **Amended:** Filed September 28, 1990.

Ed. Note: Formerly Rule No. 830-X-3-.13.

830-X-3-.16 Record-Keeping Requirements For Investment Advisers.

(1) Every investment adviser registered or required to be registered under the Act shall make and keep current the following books, ledgers and records:

(a) 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.

(b) General and auxiliary ledgers (or other comparable records) reflecting assets, liabilities, reserves, capital, income and expense accounts.

(c) 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. Such memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed such order; and shall show the account for which entered, the date of entry, and the bank, or dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall also be designated.

(d) All checkbooks, bank statements, cancelled checks and cash reconciliations of the investment adviser.

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

(f) All trial balances, financial statements, and internal audit working papers relating to the business of such investment adviser.

(g) Originals of all written communications received and copies of all written communications sent by such investment adviser relating to:

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

2. Any receipt, disbursement or delivery of funds or securities, and

3. 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 similarcommunications 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 10 persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if such notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with a copy of such notice, circular or advertisement a memorandum describing the list and the source thereof.

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

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

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

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

(l) All of their advertisements and all records, worksheets, and calculations necessary to form the basis for performance data in their advertisements.

(m) A record of every transaction in a security in which the investment adviser or any investment adviser representative of such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership as determined by 17 C.F.R. §240.13d-3. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale, orother acquisition or disposition); the price at which it was effected; and the name of the dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or investment adviser representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected. The exemptions are as follows:

1. Transactions effected in any account over which neither the investment adviser nor any investment adviser representative of the investment adviser has any direct or indirect influence or control; and

2. Transactions in securities which are direct obligations of the United States.

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

(o) A copy of each written statement and each amendment or revision thereof, given or sent to any client or prospective client of such investment adviser in accordance with the provision of Rule 830-X-3-.17 and a record of the date that each written statement, and each amendment or revision thereof, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

(2) If an investment adviser subject to (1) of this rule has custody or possession of securities or funds of any client, the records required to be made and kept under (1) above shall include:

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

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

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

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

(3) Every investment adviser subject to (1) of this rule who renders any investment advisory 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:

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

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

(4) 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 such investment adviser renders investment advisory services is indicated by numerical or alphabetical code or some similar designation.

(5) All books and records required to be made under the provisions of (1) and (3)(a) of this rule shall be preserved for a period of not less than three (3) years, the first two (2) years of which shall be kept in an easily accessible place.

(6) Partnership articles and any amendments thereto, 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 years after termination of the enterprise.

(7) An investment adviser subject to (1) of this rule, 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 shall notify the Commission inwriting of the exact address where such books and records will be maintained during such period.

(8) All books, records or other documents required to be maintained and preserved under this rule may be stored on microfilm, microfiche, or an electronic data processing system or similar system utilizing an internal memory device provided a printed copy of any such record is immediately accessible.

(9) Any book or 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.

Author:

Statutory Authority: Code of Ala. 1975, §8-6-23.

History: Filed September 28, 1990.

830-X-3-.17 Disclosure Requirements For Investment Advisers.

(1) A copy of Part II of Form ADV must be given to clients of investment advisers, or a brochure containing such information may be utilized.

(2) The investment adviser or its registered representatives shall deliver the disclosure information required by this section to an advisory client or prospective advisory client:

(a) Not less than 48 hours prior to entering into any investment 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 calendar days after entering into the contract.

(3) A copy of Part II of Form ADV or the brochure to be given to clients must be filed with the Commission not later than the time of its use.

(4) If an investment adviser renders substantially different types of investment advisory services to different advisory clients, any information required by Part II of Form ADVmay be omitted from the statement furnished to an advisory client or prospective advisory client if such information is applicable only to a type of investment advisory service or fee which is not rendered or charged, or proposed to be rendered or charged to that client or prospective client.

Author:
Statutory Authority: Code of Ala. 1975, §8-6-23.
History: Filed September 28, 1990.

830-X-3-.18 "Twisting" Or "Churning" Prohibited.

(1) No dealer, investment adviser, agent or investment adviser representative, or officer, partner, director, or agent of any thereof, shall effect or induce or attempt to induce any transaction in any insurance or securities portfolio of a prospective investor or customer for the purpose of sale or purchase of securities, mutual funds or insurance, or any other investment, by "twisting" or "churning." "Twisting" and "churning" are prohibited and shall be grounds for revocation, suspension, denial, censure, bar, administrative assessment, fine or any other penalty that may be imposed by the Commission.

(2) "Twisting" shall mean the making of any false or misleading representation pertaining to, or any incomplete or fraudulent comparison with respect to, any life insurance policy, insurer, security, mutual fund, or other investment or issuer for the purpose of inducing or tending to induce any person to cash in or convert any security or to lapse, forfeit, surrender or terminate any life insurance policy and substitute any security therefor.

(3) "Churning" shall mean any action of a dealer, investment adviser, agent or investment adviser representative, or officer, partner, director or agent of any thereof, acting in its own interest and against the interest of its customer, which effects or induces transactions in the customer's account which are excessive in size and frequency in the light of the nature of the account and the financial resources and investment needs and objectives of the customer.

Author:

Statutory Authority: Code of Ala. 1975, §8-6-23.

History: Filed September 30, 1982. **Readopted:** Filed November 9, 1983. **Amended:** Filed September 28, 1990. Ed. Note: Formerly Rule No. 830-X-3-.08.

830-X-3-.19 Custody Of Client Funds Or Securities By Investment Advisers.

An investment adviser who takes or has custody of any securities or funds of any client must comply with the following:

(a) The investment adviser shall notify the Commission that it has or may have custody. Such notification may be given on Form ADV.

(b) The securities of each client must be segregated, marked to identify the particular client having the beneficial interest therein and held in some place reasonably free from risk of safekeeping destruction or other loss.

(c) All client funds must be deposited in one or more bank accounts containing only clients' funds.

1. Such account or accounts must be maintained in the name of the investment adviser or agent or trustee for such clients, and

2. The investment adviser must maintain a separate record for each such account showing the name and address of the bank where the account is maintained, the dates and amounts of deposits in and withdrawals from the account, and the exact amount of each client's beneficial interest in the account.

(d) Immediately after accepting custody or possession of funds or securities from any client, the investment adviser must notify the client in writing of the place where and the manner in which the funds and securities will be maintained and subsequently, if and when there is a change in the place where or the manner in which the funds or securities are maintained, the investment adviser must give written notice thereof to the client.

(e) At least once every three months, the investment adviser must send each client an itemized statement showing the funds and securities in the investment adviser's custody at the end of such period and all debits, credits and transactions in the client's account during such period.

(f) At least once every calendar year, an independent certified public accountant must verify all client funds and securities by actual examination at a time chosen by the accountant without prior notice to the investment adviser. A certificate of such accountant stating that he or she has made an examination of such funds and securities, and describing the nature and extent of the examination, shall be filed with the Commission promptly after each such examination.

(g) This rule shall not apply to an investment adviser also registered as a dealer under Section 15 of the Securities and Exchange Act of 1934 if the dealer is:

1. Subject to and in compliance with SEC Rule 15c3-1 (Net Capital Requirements for Brokers or Dealers) [17 C.F.R. §240.15c3-1] under the Securities Exchange Act of 1934, or

2. A member of an exchange whose members are exempt from SEC Rule 15c3-1, [17 C.F.R. §240.15c3-1] under the provisions of paragraph (b)(2) thereof, and the dealer is in compliance with all rules and settled practices of the exchange imposing requirements with respect to financial responsibility and the segregation of funds or securities carried for the account of customers.

Author:
Statutory Authority: Code of Ala. 1975, §8-6-23.
History: Filed September 28, 1990.

830-X-3-.20 Agency Cross Transactions.

(1) For purposes of this rule, **agency cross transaction** means a transaction in which an investment adviser, or any person controlled by, or under common control with such investment adviser, including an investment adviser representative, acts as a

dealer for both the advisory client and the person on the other side of the transaction.

(2) An investment adviser effecting an agency cross transaction for an advisory client shall comply with the following conditions:

(a) Obtain from the advisory client 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, disclose to the client in writing that, with respect to agency cross transactions, the investment adviser will act as dealer for, receive commission 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, send the client a written confirmation. The written confirmation shall include a statement of the nature of the transaction, the date the transaction took place, an offer tofurnish, upon request, the time when the transaction took place and 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 to the client the source and amount of such remuneration 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, send each client a written disclosure statement identifying:

1. The total number of agency cross transactions during the period since the date of the last such statement or summary, and

2. The total amount of all commission or other remuneration the investment adviser received or will receive in connection with agency cross transactions during the period.

(e) 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 (2)(a) of this rule at any time by providing written notice of revocation to the investment adviser.

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

(3) 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.

Author:

Statutory Authority: Code of Ala. 1975, §8-6-23.

History: Filed September 28, 1990.

830-X-3-.21 Dishonest Or Unethical Practices By Investment Advisers.

(1) An investment adviser is a fiduciary and has a duty to act primarily for the benefit of its clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment adviser and its clients and the circumstances of each case, an investment adviser shall not engage in unethical practices, including but not limited to the following:

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

(b) Placing an order to purchase or sell a security for the account of a client without written authority to do so.

(c) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third party authorization from the client.

(d) 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 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at

which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

(e) 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.

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

(g) 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.

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

(i) Providing a report or recommendation to any advisory client prepared by someone other than the investment adviser without disclosing that fact. This prohibition does not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service.

(j) Charging a client an unreasonable advisory fee in light of the fees charged by other investment advisers providing essentially the same services.

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

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

2. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees.

(l) Guaranteeing a client that a specific result will be achieved as a result of the advice which will be rendered.

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

(n) Disclosing the identity, affairs, or investments of any client to any third party unless required by law or an order of a court or a regulatory agency to do so, or unless consented to by the client.

(o) 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 orpossession of such securities or funds, when the investment adviser's action is subject to and does not comply with the safekeeping requirements of Rule 830-X-3-.19.

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

(q) Engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices.

(2) An investment adviser representative is a fiduciary and has a duty to act primarily for the benefit of his clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment adviser representative and his clients and the circumstances of each case, an investment adviser representative shall not engage in unethical practices, including but not limited to the following:

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

(b) Placing an order to purchase or sell a security for the account of a client without written authority to do so.

(c) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third party authorization from the client.

(d) 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 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or thetime when, an order involving a definite amount of a specified security shall be executed, or both.

(e) 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.

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

(g) Loaning money to a client unless the investment adviser representative is engaged in the business of loaning funds or the client is an affiliate of the investment adviser representative.

(h) Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser representative, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omission 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.

(i) Providing a report or recommendation to any advisory client prepared by someone other than the investment adviser who the investment adviser representative is employed by or associated with without disclosing that fact. This prohibition does not apply to a situation where the investment adviser uses published research reports or statistical analyses to render advice or where an investment adviser orders such a report in the normal course of providing service.

(j) Charging a client an unreasonable advisory fee in light of the fees charged by other investment adviser representatives providing essentially the same services.

(k) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment adviser representative which could

reasonably be expected to impair the rendering of unbiased and objective advice including:

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

2. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the investment adviser representative.

(l) Guaranteeing a client that a specific result will be achieved as a result of the advice which will be rendered.

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

(n) Disclosing the identity, affairs, or investments of any client to any third party unless required by law or an order of a court or a regulatory agency to do so, or unless consented to by the client.

(o) 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 representative has custody or possession of such securities or funds, when the investment adviser representative's action is subject to and does not comply with the safekeeping requirement of Rule 830-X-3-.19.

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

(q) Engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices.

Author:
Statutory Authority: Code of Ala. 1975, §8-6-23.
History: Filed September 28, 1990.

830-X-3-.22 Advertisements By Investment Advisers.

(1) It is a fraudulent, deceptive or manipulative act, practice or course of business, within the meaning of the state securities act, for an investment adviser, directly or indirectly, to publish, circulate or distribute any advertisement which:

(a) Refers, directly or indirectly, to any testimonial of any kind concerning the investment adviser or concerning any advice, analysis, report or other service rendered by such investment adviser;

(b) Refers, directly or indirectly, to past specific recommendations made by the investment adviser which were, or would have been, profitable to any person. This clause does not, however, prohibit an advertisement which sets out or offers to furnish a list of all recommendations made by such investment adviser within the immediately preceding period of not less than one year. The advertisement (or list if it is offered separately) must state the name of each such security recommended, the date and nature of each such recommendation (i.e., whether to buy, sell or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each such security as of the most recent practicable date. It must also contain the following cautionary legend on the first page in print or type as large as the largest print or type used in the body or text thereof: "It should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list.";

(c) Represents, directly or indirectly, that any graph, chart, formula or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents directly or indirectly, that any graph, chart, formula or other device being offered will assist any person in making his own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in such advertisement the limitations thereof and any difficulties with respect to its use;

(d) Contains any statement to the effect that any report, analysis, or other service will be furnished free of charge, unless such report, analysis or other service actually is or will be furnished entirely free and without any condition or obligation, directly or indirectly; or

(e) Contains any untrue statement of a material fact, or omits to state a material fact necessary in order to make the

statements made, in light of the circumstances under which they are made, not misleading, or which is otherwise false or misleading.

(2) For the purposes of these requirements the term "advertisement" shall include any notice, circular, letter or other written communication addressed to more than one person, orany notice or other announcement in any publication or by radio or television which offers any of the following:

(a) Any analysis, report, or publication concerning securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell;

(b) Any graph, chart, formula or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or

(c) Any other investment advisory service.

Author:
Statutory Authority: Code of Ala. 1975, §8-6-23.
History: Filed September 28, 1990.

830-X-3-.23 Change In Name Or Legal Entity.

(1) Where only a change in name of an applicant or registrant occurs, notice of such fact shall be promptly filed on Form BD or Form ADV, as appropriate and as provided therein, and the following exhibits shall be filed within thirty (30) days:

(a) Any amendments of organizational documents, and

(b) Satisfactory rider or endorsement to the registrant's bond by surety agreeing to the change in name, if a surety bond was required and currently on file.

(2) If a change in legal entity of a registrant occurs, the new entity shall file with the Commission a new application for registration with all exhibits required.

Author:
Statutory Authority: Code of Ala. 1975, §8-6-23.
History: Filed September 30, 1982. **Readopted:** Filed November 9, 1983. **Amended:** Filed September 28, 1990. Ed. Note: Formerly Rule No. 830-X-3-.14.

830-X-3-.24 Notice Of Changes Of Officers, Partners, Directors Or Controlling Persons.

In the event of a change of the officers, partners, directors or controlling persons, as defined by these rules, of any applicant or registrant, written notice of such fact or change shall be filed with the Commission, or its designee, within thirty (30) days, as provided by Form BD or Form ADV.
Author:
Statutory Authority: Code of Ala. 1975, §8-6-23.
History: Filed September 30, 1982. **Readopted:** Filed November 9, 1983. **Amended:** Filed September 28, 1990. Ed. Note: Formerly Rule No. 830-X-3-.15.

830-X-3-.25 Branch Offices.

(1) Every dealer or investment adviser registered in Alabama shall notify the Commission of the establishment of any office in Alabama, as well as its address, and the name or names of the branch managers and the method of compensation for those branch managers.

(2) Such notification of the establishment of or any change in the location of the office or the identity of the branch manager must be filed in the form prescribed by the Commission within thirty (30) days from the date of the establishment or change.
Author:
Statutory Authority: Code of Ala. 1975, §8-6-23.
History: Filed September 30, 1982. **Readopted:** Filed November 9, 1983. **Amended:** Filed September 28, 1990. Ed. Note: Formerly Rule No. 830-X-3-.16.

830-X-3-.26 Termination Of Registration As Dealer, Investment Adviser, Agent, Or Investment Adviser Representative.

(1) In the event a registrant should terminate registration or be terminated for any reason, notice of such fact in the forms prescribed by either the Commission, the National Association of Securities Dealers, or the United States Securities and Exchange Commission shall be filed within thirty (30) days with the Commission or its designee.

(2) A dealer and investment adviser shall be responsible for the acts of all executive officers, directors, partners, other associated persons, agents, and investment adviser representatives

until such time as they have been properly terminated as provided in this rule.
Author:
Statutory Authority: Code of Ala. 1975, §8-6-23.
History: Filed September 30, 1982. **Readopted:** Filed November 9, 1983. **Amended:** Filed September 28, 1990. Ed. Note: Formerly Rule No. 830-X-3-.17.

830-X-3-.27 Use Of Certain Names Prohibited.

An applicant for registration as a dealer or investment adviser shall not use a name so similar to that of another dealer or investment adviser whether registered in this state or not, or a bank, insurance company, trust company, or other entity, so as to be misleading or confusing to the public, unless the applicant is affiliated with the similarly named entity and submits documentation of same to the Commission or the applicant has obtained a written release from the similarly named entity and furnishes an original of said release to the Commission.
Author:
Statutory Authority: Code of Ala. 1975, §8-6-23.
History: Filed September 30, 1982. **Readopted:** Filed November 9, 1983. **Amended:** Filed September 28, 1990.

Ed. Note: Formerly Rule No. 830-X-3-.19.

830-X-3-.28 The Use Of Senior-Specific Certifications And Professional Designations.

(1) The use of a senior-specific certification or professional designation by any person in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person shall be a dishonest and unethical practice in the securities business within the meaning of Code of Ala. 1975, §8-6-17(b)(4). The prohibited use of such certifications or professional designation includes, but is not limited to, the following:

(a) use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(b) use of a nonexistent or self-conferred certification or professional designation;

(c) use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that theperson using the certification or professional designation does not have; and

(d) use of a certification or professional designation that was obtained from a designating or certifying organization that: is primarily engaged in the business of instruction in sales or marketing;

(i) does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(ii) does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(iii) does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

(2)(a) There is a rebuttable presumption that a designating or certifying organization is qualified solely for purposes of paragraph 1(d) above when the organization has been accredited by:

(i) The American National Standards Institute; or

(ii) The National Commission for Certifying Agencies; or

(iii) an organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales or marketing; or

(iv) any other nationally-recognized accreditation organization designated by the director by rule or order.

(b) In any action brought under this rule, the burden of proof is on the party using a certification or professional designation to show that such use complies with this rule.

(3) In determining whether a combination of words, or an acronym standing for a combination of words, constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

(a) use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(b) the manner in which those words are combined.

(4)(a) For purposes of this rule, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

(i) indicates seniority or standing within the organization; or

(ii) specifies an individual's area of specialization within the organization unless the facts and circumstances associated with the provision or use of a job title indicate that it improperly suggests or implies certification or training beyond that which the titleholder possesses, or otherwise misleads investors.

(b) For purposes of this section, financial services regulatory agency includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

(5) Nothing in this rule shall limit the director's authority to enforce existing provisions of law.

Author: Joseph P. Borg, Esq.
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