12.205: continued

(8) Disclosure Requirements.

(a) An investment adviser must provide each client or prospective client with the following disclosures at least 48 hours before entering into a contract, or if the investment adviser gives the disclosures to the client at the time of entering into the contract, the investment adviser must give the client the option to cancel the contract within five business days:

1. A disclosure statement, which may be a copy of Part 2 of Form ADV or another written document containing the equivalent information. If the document is not Part 2 of Form ADV, then it must be filed with the Division prior to its first use;
2. A stand-alone Table of Fees for Services in a form approved by the Division and prepared pursuant to the instructions thereto;
3. Any additional information required to be disclosed under the Investment Advisers Act of 1940; and
4. A notice that the disciplinary history of the investment adviser and its representatives can be obtained from the Division.

(b) An investment adviser annually shall, without charge, deliver or offer in writing to deliver upon written request to each of its advisory clients the disclosures required by 950 CMR 12.205(8)(a). Any disclosures requested in writing by an advisory client pursuant to an offer required hereby must be sent out within seven days of the receipt of the request.

(c) If an investment adviser renders substantially different types of investment advisory services to different advisory clients, any information required by Part 2 of Form ADV may 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.

(d) The disclosure obligations required by M.G.L. c. 110A, § 203A(a) will be met if the investment adviser complies with the requirements in 950 CMR 12.205(8)(a).

(e) Disclosure obligations under M.G.L. c. 110A, § 203A(b):

1. Before the purchase or sale of a security with respect to which investment advice has been rendered, the investment adviser or investment adviser representative shall disclose to each client in Massachusetts:
   a. The total amount of sales commission or other fees, including mark-ups or mark-downs, that may reasonably be expected to be charged or deducted in connection with the purchase or sale.
   b. That the investment adviser or investment adviser representative will receive such amount or a portion of such amount, or, in the case of a transaction to be effected through a broker-dealer that is a person affiliated or under common control with the investment adviser or investment adviser representative, that the broker-dealer is affiliated with the adviser and will receive such amount or portion of such amount.
   Note: Any person who regularly receives a transactions-based fee for effecting transactions in securities is presumed to be in the business and thus must register as a broker-dealer or an agent of a broker-dealer.
   c. The existence of any compensation arrangement with an issuer of securities or other third parties, including sales incentives (*e.g.*, special bonuses, discounts, premiums or prizes) or arrangements which bestow soft-dollar or other such indirect benefits to the investment adviser or investment adviser representative.
2. The disclosure required hereunder shall be in writing if the investment advice was given in writing.
3. The disclosure required under M.G.L. c. 110A, § 203A(b) need not be given in any of the following circumstances:
   a. The investment advice is rendered pursuant to a written agreement giving discretionary authority to the investment adviser or investment adviser representative.
   b. The investment advice pertains to a security traded on a national exchange or through the NASDAQ Stock Market; the commission, mark-up or mark-down is permitted under the rules of FINRA; and, the broker-dealer effecting the transaction has no affiliation with the investment adviser or investment adviser representative.

12.205: continued

4. The client may waive, in writing, receipt of the disclosure required by 950 CMR 12.205(8)(e)1. under any of the following conditions:

a. The investment advice pertains to an investment company registered with the Division; and the client has previously received a prospectus for the investment company and a separate, clear written explanation of the information required to be disclosed in 950 CMR 12.205(8)(e)1.a. through c.

b. The investment advice pertains to a subsequent sale after the initial sale made pursuant to an agreement to invest a certain sum of money on a periodic basis.

(f) If an investment adviser maintains a website available to the public or to the investment adviser's clients, the Table of Fees for Services required by 950 CMR 12.205(8)(a)2. must be available and easily accessible on the website.

(g) The Table of Fees for Services required by 950 CMR 12.205(8)(a)2. must be updated on an annual basis as of the date on which the investment adviser is required to file any annual amendments to Form ADV.

(h) 950 CMR 12.205(8) shall be enforced as of January 1, 2020.

(9) Fraudulent Practices/Dishonest or Unethical Practices.

(a) As used in 950 CMR 12.205(9), "adviser" refers to any person, including persons registered or excluded from registration under M.G.L. c. 110A, who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase and sale, whether through the issuance of analyses or reports or otherwise. It is a rebuttable presumption that such term includes all investment advisers and investment adviser representatives, as well as other persons who charge fees based on assets under management or portfolio performance for rendering investment advice.

(b) The following practices by an adviser shall be deemed to operate as a fraud or deceit upon the other person under M.G.L. c. 110A, § 102(2):

1. Any practice proscribed under the SEC rules promulgated under the Investment Advisers Act of 1940, § 206(4) (17 CFR 275.206(4)-1 *et seq.*), unless such practice meets all conditions stated within those rules.

2. Use of a business name by an investment adviser so similar as to be likely to be mistaken for it, to any other firm, association or person already carrying on business in the Commonwealth, unless the business name is the same as the personal name of one of the principals.

(c) The following practices are a nonexclusive list of practices by an adviser which shall be deemed "dishonest or unethical conduct or practices in the securities business" for purposes of M.G.L. c. 110A, § 204(a)(2)(G):

1. 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 overall portfolio, investment objectives, financial situation and needs, investment experience and any other information known or acquired by the adviser after reasonable examination of the client's records as may be provided to the adviser.

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

3. 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 trading authorization from the client.

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

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

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

12.205: continued

7. Loaning money to a client, unless the adviser is a registered broker-dealer engaged in the management of margin accounts, or a financial institution engaged in the business of loaning funds, or the client is an affiliate of the adviser or a family member.

8. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the adviser, its representatives or any employees, or misrepresenting the nature of the advisory services being offered or fees to be charged for such services, 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.

9. Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact. (950 CMR 12.205(9)(c)9. 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 services.)

10. Charging a client an advisory fee that is unreasonable in light of the fees charged by other investment advisers providing essentially the same services.

11. Failing to disclose to a client in writing before rendering investment advice any material conflict of interest relating to the adviser, its representatives or any of its employees, which could reasonably be expected to influence or impair the rendering of unbiased and objective advice including:

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

b. Charging a client an advisory fee for rendering advice without disclosing that a commission or other remuneration for executing securities transactions pursuant to such advice will be received by the adviser, its representatives or its employees or that such advisory fee is being reduced by the amount of the commission or other remuneration earned by the adviser, its representatives or employees for the sale of securities to the client.

12. Guaranteeing a client that a specific result will be achieved (gain or loss) as a result of the advice which will be rendered.

13. Disclosing the identity, affairs, or investments of any client to any third-party, unless required by law to do so, or unless consented to by the client.

14. Entering into, extending or renewing any investment advisory contract, other than a contract for impersonal advisory services, unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee or the formula for computing the fee, the amount or the manner of calculation of the amount of the prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the adviser or its representatives and that no assignment of such contract shall be made by the adviser without the consent of the client.

15. a. Using a purported credential or professional designation that indicates or implies that an investment adviser representative has special certification or training in advising or servicing senior citizens, unless such credential or professional designation has been accredited by an accreditation organization recognized by the Secretary by rule or order. For the purposes of 950 CMR 12.205(9)(c)15., the term "senior citizen" shall include a person 65 years of age or older.

b. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a purported credential or professional designation indicating or implying that an investment adviser representative has special certification or training in advising or servicing senior citizens, factors to be considered shall include:

(i) use of one or more words such as "senior", "retirement", "elder", or like words combined with one or more words such as "certified", "chartered", "adviser", "specialist", or like words in the name of the credential or professional designation;

(ii) how those words are combined; and

(iii) whether they are capitalized.

12.205: continued

950 CMR 12.205(9)(c)15. is not intended to apply to job titles provided by an investment adviser specifying one's area of specialization within an 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 that it otherwise misleads investors. It is also not intended to apply to job titles provided by an investment adviser indicating seniority within an organization.

c. There shall be a grace period commencing June 1, 2007 and running until two months after the date that at least one accreditation organization is recognized by the Secretary pursuant to 950 CMR 12.205(9)(c)15.e. In addition, there shall be a six-month grace period with respect to any credential or professional designation that has been submitted to an accreditation organization described in 950 CMR 12.205(9)(c)15.a. for accreditation, running from the date of such submission; provided, that the Secretary may, at his discretion (consistent with the public interest and protection of investors), increase such grace period by an additional period of up to 12 months upon a showing of substantial progress in the accreditation process and a showing that such additional time is needed to complete the accreditation process; however, if accreditation of such credential has been denied in a final decision of such accreditation organization, any grace period provided for in 950 CMR 12.205(9)(c)15.c. shall terminate on the date of such denial.

d. 950 CMR 12.205(9)(c)15. shall not apply to a degree or certificate evidencing completion of an academic program at an accredited institution of higher education unless the facts and circumstances associated with the provision or use of such degree or certificate indicate that it improperly suggests or implies certification or training beyond that which the degree holder or certificate holder possesses or that it otherwise misleads investors.

e. The Secretary may recognize any accreditation organization by rule or order. The Secretary shall consider any request for recognition by an accreditation organization. In determining whether to recognize an accreditation organization, the Secretary shall consider, among other factors that the Secretary deems appropriate in his or her discretion, whether or the extent to which the accreditation organization is nationally recognized and independent, whether it is for-profit or nonprofit, whether the primary purpose of the organization is to develop standards and implement methods for assuring competency and whether the organization has standards to address the status of designees who obtained the credential or designation prior to accreditation. The Secretary shall maintain a readily-accessible list, with contact information, of all accreditation organizations he or she recognizes.

16. a. To retain Investment Consulting Services, for compensation that is provided either directly to the consultant or indirectly through a Matching or Expert Network Service, unless the investment adviser obtains a written certification that:

i. describes all confidentiality restrictions relevant to the potential consultation which the consultant has, or reasonably expects to have;

ii. affirmatively states that the consultant will not provide any Confidential Information to the investment adviser; and

iii. is signed and dated by the consultant, and is accurate as of the date of the initial, and any subsequent, consultation(s).

b. Notwithstanding 950 CMR 12.205(9)(c)16.a., an investment adviser who comes into possession of material Confidential Information through a consultation is precluded from trading any relevant security until such time as the Confidential Information is made public.

c. Definitions. For purposes of 950 CMR 12.205(9)(c)16.:

i. Confidential Information means any non-public information, which one is bound by a confidentiality agreement or fiduciary (or similar) duty not to disclose.

ii. Matching or Expert Network Service means a firm that, for compensation, matches consultants with investment advisers.

12.205: continued

iii. Investment Consulting Services means a consultation for the purposes of assisting the investment adviser's decision as to whether to buy, sell, or abstain from buying or selling, positions in client accounts.

d. 950 CMR 12.205(9)(c)16. shall be enforced as of December 1, 2011.

17. Receiving any compensation on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of a client, unless such compensation is received in compliance with Rule 205-3 under the Investment Advisers Act of 1940 (17 CFR 275.205-3).

(10) Supervision.

(a) Each investment adviser shall establish and maintain a system to supervise the activities of each investment adviser representative and other employees that is reasonably designed to achieve compliance with M.G.L. c. 110A, 950 CMR 10.00 through 950 CMR 14.413, the Securities Act of 1933 (15 USC § 77a), 17 CFR Part 230; the Securities Exchange Act of 1934 (15 USC § 78a); 17 CFR Part 240; the Investment Company Act of 1940 (15 USC § 80a-1); 17 CFR Part 270; and the Investment Advisers Act of 1940 (15 USC § 80b-1) under 17 CFR Part 275. Final responsibility for proper supervision shall rest with the investment adviser. This supervisory system shall provide, at a minimum, for the following:

1. The establishment and maintenance of written procedures as required in 950 CMR 12.205(10)(a).

2. The designation of an appropriately registered officer or partner with authority to carry out the supervisory responsibilities of the investment adviser for each type of business in which it engages for which registration as an investment adviser is required.

3. The designation of an appropriately registered investment adviser representative in each office where the investment adviser does business in the Commonwealth with authority to carry out the supervisory responsibilities assigned to that office by the investment adviser.

4. The assignment of each registered investment adviser representative to an appropriately registered investment adviser representative who shall be responsible for supervising that person's activities.

5. Reasonable efforts to determine that all supervisory personnel are qualified by virtue of experience or training to carry out their assigned responsibilities.

6. The participation of each registered investment adviser representative, either individually or collectively, no less than annually, in an interview or meeting conducted by persons designated by the investment adviser at which compliance matters relevant to the activities of the investment adviser representatives are discussed. Such interview or meeting may occur in conjunction with the discussion of other matters and may be conducted at a central or regional location or at the representative's place of business.

(b) Establishment of Written Procedures.

1. Each investment adviser shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of its investment adviser representatives and other employees that are reasonably designed to achieve compliance with applicable state and federal securities laws and regulations.

2. The investment adviser's written supervisory procedures shall set forth the supervisory system established by the investment adviser pursuant to 950 CMR 12.205(10)(a), and shall include the titles, registration status and locations of the required supervisory personnel and the responsibilities of each supervisory person as these relate to the types of business engaged in, and applicable state and federal securities laws and regulations. The investment adviser shall maintain on an internal record the names of all persons who are designated as supervisory personnel and the dates for which such designation is or was effective.

3. A copy of an investment adviser's written supervisory procedures, or the relevant portions thereof, shall be kept at each location where activities are conducted on behalf of the investment advisers with persons located in the Commonwealth. The written supervisory procedures shall be amended to reflect any change in state and federal securities laws and regulations.

12.205: continued

4. Except as provided in 950 CMR 12.205(6)(c), investment advisers with five or fewer investment adviser representatives are excused from the requirements of 950 CMR 12.205(10)(b).

(c) Each investment adviser shall conduct a review, at least annually or more often if circumstances warrant, to determine that it is in compliance with the written supervisory procedures. A record of such review shall be maintained by the investment adviser for five years after the review is conducted.

(d) Each investment adviser shall establish procedures for review and endorsement by supervisory personnel in writing, on an internal record, of all transactions and all correspondence of its investment adviser representatives pertaining to the rendering of investment advice to individual clients.

(e) Each investment adviser shall have the responsibility and duty to ascertain by investigation the good character, business repute, qualifications, and experience of any person prior to making a certification in the application of such person for registration. Where an applicant for registration has previously been registered, the investment adviser shall obtain from the applicant a copy of the Uniform Termination Notice of Securities Industry Registration (Form U-5) filed with the Division by such person's most recent investment adviser employer. The investment adviser shall obtain the Form U-5 as required by 950 CMR 12.205 no later than 60 days following the filing of the application. An investment adviser receiving a Form U-5 pursuant to 950 CMR 12.205 shall review the Form U-5 and any amendments thereto and shall take such action as may be deemed appropriate.

(f) Any applicant for registration who receives a request for a copy of his or her Form U-5 from an investment adviser pursuant to 950 CMR 12.205 shall provide such copy to the investment adviser within two business days from the request if the Form U-5 has been provided to such person by his or her former employer. If a former employer has failed to provide the Form U-5 to the applicant for registration, such person shall promptly request the Form U-5, and shall provide it to the requesting investment adviser within two business days of receipt thereof. The applicant shall promptly provide any subsequent amendments to a Form U-5 he or she receives to the requesting investment adviser.

12.206: Funding Portal Notice Filing

(1) Definition. Funding Portal shall have the same meaning as defined in the Securities Exchange Act of 1934, § 3(a)(80).

(2) Conditions for Notice Filing by Funding Portals. Each notice filer shall:

(a) Have a principal place of business in the Commonwealth; and

(b) Be a Funding Portal Member of a national securities association registered under the Securities Exchange Act of 1934, § 15A.

(3) Notice Filing Procedures for Funding Portals. Notice for a Funding Portal in the Commonwealth shall be made by promptly filing with the Division a copy of the Form Funding Portal (FP) as filed with the SEC.

(4) Amendments. Each notice filer shall promptly notify the Division of any amendments made to Form Funding Portal (FP) as filed with the SEC by filing a copy of such amendment with the Division.

(5) Withdrawals by Funding Portals.

(a) Funding Portals withdrawing from Funding Portal Membership of a national securities association registered under the Securities Exchange Act of 1934, § 15A and SEC registration shall file with the Division a copy of the Form Funding Portal (FP) as filed with the SEC.

(b) Funding Portals no longer with a principal place of business in Massachusetts shall provide the Division with written notice of such fact.

12.206: continued

(6) Enforcement Date. 950 CMR 12.206 shall be enforced as of June 1, 2019.

REGULATORY AUTHORITY

950 CMR 12.200: M.G.L. c. 110A, § 412(a).

NON-TEXT PAGE