

## CHAPTER 1 (Reserved for future use)

## CHAPTER 2 DEFINITIONS AND FEDERAL COORDINATION

### 51-2.1 The following terms as used in these rules, unless the context otherwise requires, are defined:

- A. "Commissioner" or "Securities Commissioner" means the Colorado Securities Commissioner.
- B. "CRD" means the Central Registration Depository of the ~~National Association of Securities Dealers, Inc.~~ Financial Industry Regulatory Authority, Inc. and the North American Securities Administrators Association, Inc. The CRD address is P.O. Box 9401, Gaithersburg, MD 20898-9401.
- C. "Division" means the Colorado Division of Securities, ~~1580 Lincoln Street, Suite 420~~ 1560 Broadway, Suite 900, Denver, CO 80203~~2~~.
- D. "NASAA" means the North American Securities Administrators Association, Inc.
- E. ~~"NASD"~~ FINRA means the Financial Industry Regulatory Authority ~~National Association of Securities Dealers, Inc.~~
- F. "SEC" means the federal Securities and Exchange Commission.
- G. "33 Act" means the federal Securities Act of 1933 and the rules and regulations promulgated thereunder.
- H. "34 Act" means the federal Securities Exchange Act of 1934 and the rules and regulations promulgated thereunder.
- I. "Mortgage broker-dealer" means a "broker-dealer" other than a broker-dealer registered under the 34 Act whose business is limited exclusively to effecting transactions in notes, bonds or evidences of indebtedness secured by mortgages or deeds of trust upon real estate.
- J. "Mortgage sales representative" means a "sales representative" who represents a mortgage broker-dealer.
- K. "40 Act" means the federal Investment Advisers Act of 1940 and the rules and regulations promulgated thereunder.
- L. "IARD" means the Investment Adviser Registration Depository of the federal Securities and Exchange Commission and the North American Securities Administrators Association, Inc., as maintained ~~maintained~~ by the ~~National Association of Securities Dealers~~ Financial Industry Regulatory Authority, Inc. The IARD address is 9509 Key West Avenue, Rockville, Maryland 20850.

### 51-3.9 Transactional Securities Exemption for Non-Issuer Distribution of Outstanding Security

For the purposes of section 11-51-308(1)(b)(I), C.R.S., the following manuals are recognized:

- A. ~~Moody's Mergent~~ Industrial Manual;
- B. Moody's Mergent Municipal and Government Manual;

- C. ~~Moody's Mergent~~ Transportation Manual;
- D. ~~Moody's Mergent~~ Public Utility Manual;
- E. ~~Moody's Mergent~~ Bank and Finance Manual;
- F. ~~Moody's Mergent~~ OTC Industrial Manual;
- G. ~~Moody's Mergent~~ International Manual;

### **51-3.10 Exemption for Oil and Gas Auctions**

The offer and sale by auction of interests in or under oil, gas or mining leases, fees, or titles, including real property from which the minerals have not been severed, or contracts relating thereto, are transactions in securities exempted from the securities registration requirements of the Colorado Securities Act, provided as follows:

- B. All offers and sales by auction of the interests are conducted by a Colorado licensed broker-dealer registered with the SEC as a broker and dealer and a member of ~~the NASD~~FINRA.

### **51-4.1 Application for a Broker-Dealer License**

- B. A person applying for a license as a broker-dealer in Colorado who is registered under the 34 Act shall send such application and amendments to such application, and any applicable fee, made payable to ~~the NASD~~FINRA (or such other payee as ~~the NASD~~FINRA or CRD may designate), to the CRD with Colorado designated as a recipient state. An application or amendment shall be deemed filed with the Securities Commissioner on the date CRD enters it if CRD verification is not required, or the date CRD verifies it if CRD verification is required.

### **51-4.3 Application for a Sales Representative License**

- B. A person affiliated with a ~~n NASD~~FINRA broker-dealer applying for a license as a sales representative in Colorado shall send the application, any amendments to such application and any applicable fee, with check made payable to ~~the NASD~~FINRA (or such other payee as ~~the NASD~~FINRA or CRD may designate), through such ~~FINRA~~NASD broker-dealer, to the CRD with Colorado designated as a recipient state. An application and amendments to such application shall be deemed filed with the Securities Commissioner on the date CRD enters it if CRD verification is not required, or the date CRD verifies it if CRD verification is required.
- C. A person who is not affiliated with a ~~n NASD~~FINRA broker-dealer who is applying for a license as a sales representative in Colorado shall send the application and amendments to such application, through the broker-dealer or issuer with which the person is affiliated, to the Securities Commissioner.
- D. Any applicant for a sales representative license must also file a Consent to Service of Process form (see Rule 51-7.1) with the Commissioner.
- E. An applicant for a license under section 11-51-403, C.R.S., as a sales representative for a broker-dealer who is not registered as a broker-dealer under the 34 Act, including a mortgage sales representative, or for an issuer shall successfully complete the Uniform Securities Agent State Law Examination (Series 63) administered ~~through by the NASD~~FINRA.
- F. In addition to the examination required by paragraph E above, an applicant for a license under section 11-51-403, C.R.S., as a sales representative for either a broker-dealer who is not registered as a broker-dealer under the 34 Act and whose securities business is limited solely to the offer and

sale of direct participation investments involving real estate related securities or an issuer whose business is equally limited, in addition to the examination required in paragraph E above, shall successfully complete the Uniform Real Estate Securities Examination (Series 64) administered ~~throughby the NASD~~FINRA. The Direct Participation Program Representative Examination (Series 22) or the Direct Participation Principal Examination (Series 39) administered ~~throughby the NASD~~FINRA may be substituted for the Series 64 at the election of the applicant.

- G. The examination requirements described in paragraphs E and F above may be satisfied upon proof that the respective examinations were successfully completed within the ~~five (5)~~two (2) year period immediately preceding the date of the application for licensing.
- H. A sales representative of an issuer that qualifies for an exemption from registration pursuant to Rule 51-3.15 is exempt from the licensing requirements of section 11-51-401(1), C.R.S. if:
1. That sales representative is an officer, director, partner, trustee, employee or other representative of the issuer; and
  2. That individual acts as a sales representative only with respect to the offer and sale of securities for and on behalf of the issuer; and
  3. That sales representative receives no commissions, fees or other special remuneration for or arising out of the offer and sale of securities.
- I. No ~~NASD~~FINRA broker-dealer or SEC registered entity shall permit any applicant for a sales representative license in Colorado to apply for such a license, or any affiliated sales representative license in Colorado to continue to perform duties as a sales representative, unless such person has complied with the requirements of subparagraph (1) hereof.
1. Any applicant or affiliated sales representative must be lawfully present in the United States. An applicant or affiliated sales representative may verify their lawful presence in the United States by producing to ~~the NASD~~FINRA broker dealer or SEC registered entity any of the following:
    - a. Federal Form I-9 Employment Eligibility Verification Form;
    - b. An executed affidavit stating that he or she is a United States citizen or legal permanent resident in a form substantially similar to Form AE;
  2. Every ~~NASD~~FINRA broker-dealer or SEC registered entity shall record, maintain, and preserve in an easily accessible place the documentation, or copies thereof, which the applicant and affiliated sales representative produced which verifies their lawful presence in the United States.
- J. A person who is not affiliated with either a ~~an NASD~~FINRA broker-dealer or SEC registered entity, who is applying for a license as a sales representative in Colorado, or continuing to perform duties as a sales representative in Colorado, shall send with their application or renewal to the Securities Commissioner the following documentation:

#### 51-4.4 Withdrawal of a Sales Representative License

- A. An application to withdraw as a sales representative in Colorado and any amendments to such application shall be made on Form U-5 (Uniform Termination Notice for Securities Industry Registration).

B. For a person affiliated with an [NASDFINRA](#) broker-dealer, an application to withdraw as a sales representative in Colorado and any amendments to such application shall be sent, through such [NASD-FINRA](#) broker-dealer, to the CRD with Colorado designated as a recipient state. An application for withdrawal and any amendments to such application shall be deemed filed with the Securities Commissioner on the date CRD enters it if CRD verification is not required, or the date CRD verifies it if CRD verification is required.

C. For a person not affiliated with an [NASD-FINRA](#) broker-dealer, an application for withdrawal from licensing in Colorado as a sales representative and any amendments to such application shall be sent through the broker-dealer or issuer with which the person is affiliated to the Securities Commissioner.

D. The Securities Commissioner may deem an application for licensing as a broker-dealer or securities sales representative to be abandoned when an applicant fails to adequately respond to any request for additional information required under § 11-51-403, C.R.S. or the regulations thereunder. The Commissioner shall provide written notice of warning 30 calendar days before the applications is deemed abandoned. The applicant may, with the consent of the Commissioner, withdraw the application.

## **CHAPTER 4 (IA) NOTICE FILING FROM FEDERAL COVERED ADVISERS. LICENSING OF INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES**

### **51-4.1(IA) General Provisions**

A. Pursuant to section 11-51-403(4), C.R.S., the Securities Commissioner designates the IARD to receive and store filings and collect related fees from investment advisers and investment adviser representatives on behalf of the Securities Commissioner.

B. Unless otherwise provided, all investment adviser and investment adviser representative applications, amendments, reports, notices, related filings and fees required to be filed with the Securities Commissioner on or after July 31, 2001, shall be filed electronically with and transmitted to IARD. The following conditions relate to such electronic filings:

1. When a signature or signatures are required by the particular instructions of any filing to be made through IARD, a duly authorized officer of the applicant or the applicant him or herself, as may be, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to IARD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing.
2. Solely for the purposes of a filing made through IARD, a document is considered filed with the Securities Commissioner when all fees are received and the filing is accepted by IARD on behalf of the Securities Commissioner.

C. Notwithstanding subsection B. of this Rule, the electronic filing of any particular document and the collection of related processing fees, if any, shall not be required until such time as IARD provides for receipt of such filings and fees and 30 days notice is provided by the Securities Commissioner. The notice provided by the Securities Commissioner may set the effective date for any such electronic filing. Any documents or fees required to be filed with the Securities Commissioner that are not permitted to be filed with or cannot be accepted by IARD shall be filed directly with the Securities Commissioner.

~~D. For purposes of paragraph B. of this Rule, each investment adviser licensed or required to be licensed in Colorado must resubmit (if it has not previously done so) its Form ADV (Uniform Application for~~

~~Investment Adviser Registration), and any amendment to such Form ADV electronically with IARD, unless it has been granted a hardship exemption under paragraph F. of this Rule.~~

~~E. For purposes of paragraph B, of this Rule, each investment adviser representative licensed or required to be licensed in Colorado must resubmit (if not previously done) Form U-4 (Uniform Application for Securities Industry Registration or Transfer) and any amendments to such Form U-4, electronically with IARD, unless the investment adviser filing on behalf of the investment adviser representative has been granted a hardship exemption under paragraph F. of this Rule.~~

**FD.** Investment advisers or investment adviser representatives licensed or required to be licensed in Colorado who experience unanticipated technical difficulties that prevent submission of an electronic filing to IARD may request a temporary hardship exemption from the requirements to file electronically, upon compliance with the following conditions:

1. File Form ADV-H in paper format with the Securities Commissioner no later ~~that~~ than one business day after the filing subject to the Form ADV-H was due; and
2. Submit the filing that is the subject of the Form ADV-H in electronic format to IARD no later than seven (7) business days after the filing was due.

The hardship exemption will be deemed effective upon receipt by the Securities Commissioner of the complete Form ADV-H, and only for the period provided in this paragraph F. Multiple temporary hardship exemption requests within the same calendar year may be disallowed by the Securities Commissioner.

#### **51-4.3(IA) Application for an Investment Adviser License**

~~G. Within ninety (90) days after the end of the investment adviser's fiscal year, an investment adviser shall file with IARD an Annual Updating Amendment of Form ADV.~~

~~GH.~~ The Securities Commissioner may authorize an earlier effective date of licensing.

~~HI.~~ The license of an investment adviser is effective until terminated by revocation or withdrawal.

#### **51-4.4(IA) Application for an Investment Adviser Representative License**

~~34.~~ The Investment Adviser shall record, maintain, and preserve in an easily accessible place the documentation, or copies thereof, produced by the applicant or affiliated investment adviser representative in compliance with the subparagraphs (2) and (3) hereof.

~~45.~~ Any other information the Securities Commissioner may reasonably require.

E. Except as otherwise provided in sections F and G below, an applicant for a license under section 11-51-403, C.R.S., as an investment adviser representative shall obtain a passing score on one of the following examinations within the ~~two (2) five (5)~~ year period immediately preceding the date of the application for licensing:

1. The Uniform Investment Advisor Law Examination (Series 65 examination); or
2. ~~The General Securities Representative Examination (Series 7 examination) and the Uniform Combined Law Examination (Series 66 examination) The Uniform Combined Law Examination (Series 66 examination) and either:-~~

a. The General Securities Representative Examination (Series 7 examination), or

b. An active agent registration or license (Series 7 examination qualified) within a two (2) year period immediately preceding the date of the application.

- F. An investment adviser representative who has been licensed or registered as an ~~agent or~~ investment adviser representative, or its equivalent, under the securities act of any state or jurisdiction and whose most recent license or registration in such capacity has been terminated for not more than two years immediately before the date of the application for licensing shall not be required to satisfy the examination requirement in section (E) above.
- G. The examination requirements described in section (E) above may be satisfied upon proof of alternative qualifications or credentials in good standing including:
1. Designation of Chartered Financial Analyst (CFA) granted by the Association for Investment Management and Research;
  2. Designation of Chartered Investment Counselor (CIC) granted by the Investment Counsel Association of America;
  3. Certification as a Chartered Financial Consultant (ChFC) granted by The American College;
  4. Designation of Certified Financial Planner (CFP) by the Certified Financial Planner Board of Standards;
  - ~~5. Designation of Certified Investment Management Consultant (CIMC) by the Institute for Investment Management Consultants;~~
  - ~~6. Certified Investment Management Analyst (CIMA) of the Investment Management Consultants Association; or~~
  - ~~7. Designation of Personal Financial Specialist (PFS) granted by the American Institute of Certified Public Accountants.~~
- H. The annual license fee required by section 11-51-404, C.R.S. for an investment adviser representative shall be filed with IARD.

#### **51-4.5(IA) Withdrawal of an Investment Adviser or Investment Adviser Representative License**

- A. An application for withdrawal from licensing as an investment adviser in Colorado and any amendment to such application shall be completed by following the instructions on Form ADV-W (Notice of Withdrawal from Registration as Investment Adviser) and filed upon Form ADV-W with IARD.
- B. An application for withdrawal from licensing as an investment adviser representative for an investment adviser or federal covered adviser in Colorado and any amendment to such application shall be completed by following the instructions on Form U-5 (Uniform Termination Notice for Securities Industry Registration) and filed upon Form U-5 with IARD.
- C. The Securities Commissioner may deem an application for licensing as an investment adviser or investment adviser representative to be abandoned when an applicant fails to adequately respond to any request for additional information required under § 11-51-403, C.R.S. or the regulations thereunder. The Commissioner shall provide written notice of warning 30 calendar days before such the application is deemed abandoned. The applicant may, with the consent of the Commissioner, withdraw the application.

#### **51-4.6(IA) Books and Records Requirements for Licensed Investment Advisers**

A. Except as otherwise provided in section I for out-of-state investment advisers, every investment adviser licensed or required to be licensed under the Act shall make and keep true, accurate and current the following books, ledgers and records:

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

(c) a copy of the solicitor's written disclosure statement. The written agreement, acknowledgment and solicitor disclosure statement will be considered to be in compliance if such documents are in compliance with [Rule 51-4.9\(IA\)](#) or Rule 275.206(4)-3 of the 40 Act.

## **51-4.8(IA) Dishonest and Unethical Conduct**

### **Introduction**

A person who is an investment adviser or an investment adviser representative 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 or investment adviser representative shall not engage in dishonest or unethical conduct including the following:

R. Entering into, extending, or renewing any investment advisory contract contrary to the provisions of Section 205 of the 40 Act. This provision shall apply to all advisers and [investment adviser representatives](#) registered or required to be registered under this Act notwithstanding whether such adviser would be exempt from federal registration pursuant to section 203(b) of the 40 Act

### **Rule 51-4.9 (IA) Regulations for Solicitation Activities ~~Payment of Cash Fees for Solicitation~~**

~~A. It shall be unlawful for any investment adviser licensed under the Act to pay a cash fee, directly or indirectly, in connection with solicitation activities unless:~~

~~1. (a) The investment adviser is licensed under the Act;~~

~~(b) The solicitor to whom a cash fee is paid for such referral is not a person:~~

~~(i) subject to an order of the SEC issued under section 203(f) of the '40 Act, or an order of the Commissioner pursuant to section 11-51-410(l)(e), C.R.S.;~~

~~(ii) convicted within the previous ten years of any felony or any misdemeanor involving conduct described in section 203(e)(2)(A) through (D) of the '40 Act, or as provided in section 11-51-410(l)(e), C.R.S., or~~

~~(iii) who has been found by the SEC to have engaged, or has been convicted of engaging, in any of the conduct specified in paragraphs (1), (5), or (6) of section 203(e) of the '40 Act, or is subject to an order issued by the Commissioner pursuant to sections 11-51-410 (l)(a), (f), or (i), C.R.S.; or~~

~~(iv) subject to an order, judgment or decree described in section 203(e)(4) of the '40 Act, or pursuant to section 11-51-410(l)(d), C.R.S.; and~~

~~(c) Such cash fee is paid pursuant to a written agreement to which the adviser is a party; and~~

~~[Note: The investment adviser shall retain a copy of each written agreement required by this paragraph as part of the records required to be kept under Rule 51-4.6(1A).A.15.]~~

~~2. The cash fee is paid to a solicitor:~~

~~(a) with respect to solicitation activities for the provision of impersonal advisory services only;~~

~~(b) who is:~~

~~(i) a partner, officer, director or employee of such investment adviser; or~~

~~(ii) a partner, officer, director or employee of a person that controls, is controlled by, or is under common control with such investment adviser: Provided, That the status of such solicitor as a partner, officer, director or employee of such investment adviser or other person, and any affiliation between the investment adviser and such other person, is disclosed to the client at the time of the solicitation or referral; or~~

~~(c) other than a solicitor specified in paragraph 2(b)(i) or (ii) of this section A, if all the following conditions are met:~~

~~(i) The written agreement required by paragraph 1 (c) of this section A:~~

~~(A) Describes the solicitation or referral activities to be engaged in by the solicitor on behalf of the investment adviser and the compensation to be received for such activities;~~

~~(B) Contains an undertaking by the solicitor to perform his or her duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of the Act and rules thereunder;~~

~~(C) Requires that the solicitor, at the time of any solicitation or referral activities for which compensation is paid or to be paid by the investment adviser, provide the client with a current copy of the investment adviser's written disclosure statement required by §11-51-409.5, C.R.S., and a separate written disclosure statement as described in section B of this rule.~~

~~(ii) The investment adviser receives from the client, prior to, or at the time of, entering into any written investment advisory contract with such client, a signed and dated acknowledgement of receipt of the investment adviser's written disclosure statement and the solicitor's written disclosure document.~~

~~[Note: The investment adviser shall retain a copy of each such acknowledgment and solicitor disclosure document as part of the records required to be kept under Rule 51-4.6.A.15.]~~

~~(iii) The investment adviser makes a bona fide effort to ascertain whether the solicitor has complied with the agreement, and has a reasonable basis for believing that the solicitor has so complied.~~

~~B. The separate written disclosure document required to be furnished by the solicitor to the client pursuant to section A.2(c)(i)(C) shall contain the following information:~~

- ~~1. The name of the solicitor;~~
- ~~2. The name of the investment adviser;~~
- ~~3. The nature of the relationship, including any affiliation, between the solicitor and the investment adviser;~~
- ~~4. A statement that the solicitor will be compensated for his or her solicitation or referral services by the investment adviser;~~
- ~~5. The terms of such compensation arrangement, including a description of the compensation paid or to be paid to the solicitor; and~~
- ~~6. The amount, if any, for the cost of obtaining his or her account the client will be charged in addition to the advisory fee, and the differential, if any, among clients with respect to the amount or level of advisory fees charged by the investment adviser if such differential is attributable to the existence of any arrangement pursuant to which the investment adviser has agreed to compensate the solicitor for soliciting clients for, or referring clients to, the investment adviser.~~

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

~~D. For purposes of this rule:~~

- ~~1. "Solicitor" means any individual, person or entity who, for compensation, acts as an agent for an investment adviser in referring potential clients.~~
- ~~2. "Client" includes any prospective client.~~
- ~~3. "Impersonal advisory services" means investment advisory services provided solely by means of:
  - ~~(a) Written materials or oral statements which do not purport to meet the objectives or needs of the specific client;~~
  - ~~(b) Statistical information containing no expressions of opinions as to the investment merits of particular securities; or~~
  - ~~(c) Any combination of the foregoing services.~~~~

A. Definitions for purposes of this rule:

1. "Solicitor" means any individual, person, or entity who, directly or indirectly, receives a cash fee or any other economic benefit for soliciting, referring, offering or otherwise negotiating for the sale or selling of investment advisory services to clients on behalf of an investment advisor.
2. "Client" includes any prospective client.

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

1. the solicitor is licensed under the Act as an investment adviser representative or is exempt from licensure as provided for in subsection (6); and

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

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

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

c. any combination of foregoing services; and

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

a. the written agreement;

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

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

iii. requires that the solicitor, at the time of any solicitation or referral activities for which a cash fee or any other economic benefits is paid or to be paid by the investment adviser, provide the client with a current copy of the investment adviser's disclosure document required under § 11-51-409.5 and Rule 51-4.7(IA) and a separate disclosure statement as described in subsection 4 of this rule, either in paper or electronic format; and

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

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

d. the foregoing requirements in subparagraphs 3(a), (b), and (c) shall not apply where the solicitor is:

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

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

4. The separate written disclosure document required to be furnished by the solicitor to the client pursuant to B(3)(a)(iii) shall contain the following information:

a. the name of the solicitor;

b. the name of the investment adviser;

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

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

e. the terms of the compensation arrangement including a descriptions of the cash fee or any other economic benefit paid or to be paid to the solicitor; and

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

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

6. A solicitor is not required to be registered as an investment adviser or as an investment adviser representative if the solicitor is in compliance with all requirements of subsections (2) and (3), and the solicitor either:

a. provides solicitation activities that are impersonal in nature as set forth in subsection B(2) above and the solicitor to whom a cash fee or any other economic benefit is paid for such referral is not a person:

i. subject to an order of the Commissioner, the securities administrator of any other state, the U.S. Securities & Exchange Commission, or any self regulatory organization denying, suspending, or revoking license as a broker-dealer, agent, investment adviser, or investment adviser representative barring the person from the securities or advisory industry or associating or affiliating with the securities or advisory industry, entered after notice and opportunity for hearing;

ii. subject to an order of the SEC issued under section 203(f) of the '40 Act, or an order of the Commissioner pursuant to section 11-51-410(l)(e), C.R.S.;

iii. convicted within the previous ten years of any felony or any misdemeanor involving conduct described in section 203(e)(2)(A) through (D) of the '40 Act, or as provided in section 11-51-410(l)(c), C.R.S., or

iv. who has been found by the SEC to have engaged, or has been convicted of engaging, in any of the conduct specified in paragraphs (1), (5), or (6) of section 203(e) of the '40 Act, or is subject to an order issued by the Commissioner pursuant to sections 11-51-410 (l)(a),(f),or(i),C.R.S.; or

vi. subject to an order, judgment or decree described in section 203(e)(4) of the '40 Act, or pursuant to section 11-51-410(l)(d), C.R.S.; or

b. receives an order of the Commissioner waiving the licensing requirement.

#### **51-4.10(IA) Custody and Safekeeping Requirements**

A. Definitions. For purposes of this section:

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

a. Custody includes:

i. Any arrangement (including a general power of attorney) under which you are authorized or permitted to withdraw client funds or securities maintained with a custodian upon your instruction to the custodian; and

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

2. "Independent representative" means a certified public accountant or attorney who:

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

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

c. Does not control, is not controlled by, and is not under common control with the investment adviser, investment adviser representative, or any related entity; and

d. Does not have, and has not had within the past two years, a material business relationship with the investment adviser, investment adviser representative, or any related entity.

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

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

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

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

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

B. No investment adviser or investment adviser representative, licensed or required to be licensed in this state shall take or maintain custody or possession of any funds or securities in which any client of such person has any beneficial interest unless:

1. The investment adviser or investment adviser representative complies with § 11-51-407 (5)(a)-(f), or
2. If the investment adviser or investment adviser representative has custody as defined in Rule 51-4.10(IA).A.1 due solely by having fees directly deducted from the client accounts and complies and provides the following safeguard requirements:
  - a. Written Authorization. The investment adviser must have written authorization from the client to deduct fees from the account held with the qualified custodian;
  - b. Notice of fee deduction. Each time a fee is directly deducted from a client account, the investment adviser must concurrently:
    - i. Send the qualified custodian an invoice specifying the amount of the fee to be deducted from the client's account; and
    - ii. Send the client an invoice specifying and itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee;
3. The qualified custodian sends statements to the clients showing all disbursements for the custodian account, including the amount of the advisory fee. Statements should coincide with the investment adviser or investment adviser representative billing period.
4. The investment adviser notifies the Commissioner in writing that the investment adviser intends to use the safeguards provided above. Such notification is required to be given on Form ADV, or

C. If the investment adviser or investment adviser representative has custody as defined in Rule 51-4.10(IA).A.1 by having an association or an affiliation with a Pooled Investment Vehicle and complies and provides the following safeguard requirements:

1. Engage an Independent Representative. Hire an independent representative to review all fees, expenses and capital withdrawals from the pooled accounts;
2. Review of Fees. Send all invoices or receipts to the independent representative, detailing the amount of the fee, expenses or capital withdrawal and the method of calculation such that the independent representative can:
  - a. Determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement); and
  - b. Forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment adviser.
3. Notice of Safeguards. The investment adviser notifies the Commissioner in writing that the investment adviser intends to use the safeguards provided above. Such notification is required to be given on Form ADV.

### **51-7.1 Consent to Service of Process**

- A. An applicant who files Form BD, ADV, or U-4, pursuant to Chapter 4 or Chapter 4 (IA) of these rules, shall file the required Consent to Service of Process by completing the relevant portion of Form BD, ADV or U-4.
- B. An applicant who is registered or registering with ~~the~~ [NASD-FINRA](#) or who is affiliated with a [NASD-FINRA](#) broker-dealer shall file the Consent to Service of Process, through such [NASD-FINRA](#) broker-dealer, with the CRD. The Consent to Service of Process shall be deemed to be filed with the Securities Commissioner on the date CRD enters it if CRD verification is not required, or the date CRD verifies it if CRD verification is required.
- C. An applicant who is registered or registering with the SEC, or is licensed or licensing with the Securities Commissioner as an investment adviser, or who is affiliated with an investment adviser or federal covered adviser shall file the Consent to Service of Process, through such investment adviser, with the IARD. The Consent to Service of Process shall be deemed to be filed with the Securities Commissioner on the date all fees are received and the filing is accepted by IARD on behalf of the Securities Commissioner.
- D. The Consent to Service of Process of a sales representative who is not registered or registering with ~~the~~ [NASD-FINRA](#) or who is not affiliated with an [NASD-FINRA](#) broker-dealer shall be filed through the broker-dealer, or issuer with which the person is affiliated with the Securities Commissioner.
- E. Any other person who must file a Consent to Service of Process form shall file Forms U-2 (Uniform Consent to Service of Process) and U-2A (Uniform Corporate Resolution), if applicable, with the Securities Commissioner.