



STATE OF CALIFORNIA

**Department of Financial Protection and Innovation**

GOVERNOR **Gavin Newsom** • COMMISSIONER **KC Mohseni**

PROPOSED CHANGES UNDER THE  
CORPORATE SECURITIES LAW OF 1968  
(Additions shown by underline and deletions shown by strikethrough.)

1. Amend Section 260.210 to read:

§ 260.210. Agent Procedures for Broker-Dealers.

The procedures set forth in this section are applicable to broker-dealers licensed pursuant to subdivisions (a) and (b) of Section 25211 of the Code.

(a) Upon employment of an individual as an agent, a broker-dealer shall (1) obtain a properly executed application for registration, on the Uniform Application for Securities Industry Registration, or Transfer Form (“Form U4”), (2) obtain for its records, evidence that such agent meets the qualification requirements of Section 260.217 of these rules, and (3) ascertain (by investigation) the character, business reputation and experience of any individual, prior to executing any transaction on behalf of the broker-dealer. Evidence of compliance with Section 260.217 and investigation of the agent, shall be maintained as a part of the records of the broker-dealer as required by Sections 260.241 of these rules.

(b) A broker-dealer who registers its agents with Financial Industry Regulatory Authority, Inc. (“FINRA”), shall:

(1) Upon the employment of an individual as an agent, file the Form U4, through the Central Registration Depository (the “CRD”) of FINRA in accordance with its procedures, and pay, for transmission to the Commissioner, the fees prescribed by Section 260.608.2(a) of these rules. The filing of Form U4 with the CRD does not

constitute an automatic “approval” through the CRD. Broker-dealers should not consider an agent “registration” through the CRD approved until approved by the Commissioner and the approval has been received through the CRD. If requested by the Commissioner, additional information, documentation or details pertaining to the Form U4 or properly executed fingerprint information of the agent must be filed directly with the Commissioner within 15 days from the date of the request. In accordance with Section 250.16, the Form U4 may be abandoned if the Commissioner does not receive the requested information within the time prescribed. The Commissioner shall “reject” through the CRD an abandoned Form U4.

(2) An agent registered through the CRD may comply with the requirements of this subsection through participation in the “Relicensing” program (the Relicensing program was formerly known as “Temporary Agent Transfer” or “TAT”) adopted by the North American Securities Administrators Association (“NASAA”), provided that the agent is eligible and qualifies for registration through the Relicensing program and the broker-dealer has complied ~~will~~ with all of the requirements of the Relicensing program with respect to the agent in a timely manner. Agent CRD registration through the Relicensing program shall not waive any rights of the Commissioner to proceed in any disciplinary proceeding or sanction provided for under the Code.

(3) File an amendment to the Form U4 through the CRD within 30 days when there are any changes to the information contained in the original Form U4. If the Form U4 is being amended due to a disciplinary occurrence, a copy of the amendment shall be filed with the Commissioner upon request.

(4) Within 30 days after the termination of an individual as an agent, file the Uniform Termination Notice for Securities Industry Registration Form (“Form U5”)

through the CRD. The Form U5 shall clearly state the reason(s) for termination. However, if an agent has been terminated for cause, the Form U5 shall, upon request, be filed directly with the Commissioner.

A broker-dealer shall be responsible for the acts, practices, and conduct of an agent in connection with the purchase or sale of securities until such time as they have been properly terminated and the Form U5 has been filed with the CRD of FINRA.

(c) A broker-dealer who is not subject to the provisions of subsection (b) shall:

(1) Upon the employment of an individual as an agent, file the Form U4 with the Commissioner. The filing of Form U4, with the Commissioner, does not constitute an automatic approval. Broker-dealers should not consider an agent registration approved until such approval has been received from this Department. If requested by the Commissioner, additional documentation or details pertaining to the Form U4 must be filed directly with the Commissioner within 15 days from the date of the request. In accordance with Section 250.16, the Form U4 may be abandoned if the Commissioner does not receive the requested information within the time prescribed.

(2) File an amendment to the Form U4 with the Commissioner within 30 days, when there are any changes to the information (including information relating to a disciplinary action) contained in the original Form U4.

(3) Within 30 days after the termination of employment of an individual as an agent, file the Form U5 with the Commissioner. The Form U5 shall clearly state the reason(s) for termination. A broker-dealer shall be responsible for the acts, practices, and conduct of an agent in connection with the purchase or sale of securities until such time as they have been properly terminated and the Form U5 has been filed with the Commissioner.

(4) If the fingerprints of an individual employed as an agent are not on file with the Commissioner, such broker-dealer shall file with the Form U4 required under subsection (c)(1), fingerprint information pursuant to California Penal Code Section 11077.1 for such individual. Information about whether an individual's fingerprints are on file with the Commissioner may be obtained from any office of the Commissioner.

(d) The following notices required by state and federal law are hereby incorporated as part of any uniform form:

NOTICES REQUIRED UNDER STATE AND FEDERAL LAW INFORMATION  
PRACTICES ACT OF 1977 (California Civil Code Section 1798.17)

(a) The Department of ~~Business Oversight~~ Financial Protection and Innovation of the State of California, Broker-Dealer and Investment Adviser Office ~~Securities Regulation Division~~, is requesting the information specified in the application for registration, qualification, a certificate or a license.

(b) The Deputy Commissioner, Administration Division ~~Chief Administrative Officer~~, the Department of Financial Protection and Innovation, May Lee State Office Complex, 651 Bannon Street, DFPI Suite 300, Sacramento, CA 95811, ~~Business Oversight, 1515 K Street, Suite 200, Sacramento, CA 95814~~, telephone ~~(916) 445-5541~~ (866) 275-2677, is responsible for the system of records and shall, upon request, inform individuals regarding the location of the Department of Financial Protection and Innovation's ~~Business Oversight's~~ records and the categories of persons who use the information in the records.

(c) The records are maintained pursuant to the Corporate Securities Law of 1968 (Corporations Code Section 25000, et seq.).

(d) The submission of all items of information is mandatory unless otherwise noted. The Department of Financial Protection and Innovation ~~Business Oversight~~ is required to collect from all applicants social security numbers under Family Code Section 17520, and social security numbers or federal taxpayer identification numbers under Business and Professions Code Section 494.5. The Privacy Act of 1974 prohibits a state agency from denying an individual any right, benefit or privilege provided by law because of the individual's refusal to disclose the individual's social security account number.

(e) Failure to provide all or any part of the information requested may preclude the Department of Financial Protection and Innovation ~~Business Oversight~~ from approving the application.

(f) The principal purposes within the Department of Financial Protection and Innovation ~~Business Oversight~~ for which the information is to be used are to determine whether (1) a license, qualification, registration, certificate or other authority should be accepted, granted, approved, denied, revoked or limited in any way; (2) business entities or individuals licensed or otherwise regulated by the Department of Financial Protection and Innovation ~~Business Oversight~~ are conducting themselves in accordance with applicable laws; and/or (3) laws administered by the Department of Financial Protection and Innovation ~~Business Oversight~~ are being or have been violated and whether administrative action, civil action, or referral to appropriate federal, state or local law enforcement or regulatory agencies, or to a self-regulatory organization, as authorized by law, is appropriate.

(g) Any known or foreseeable disclosures of the information pursuant to subdivision (e) or (f) of Civil Code Section 1798.24 may include transfers to other

federal, state, or local law enforcement or regulatory agencies, or to a self-regulatory organization, as authorized by law.

(h) Subject to certain exceptions or exemptions, the Information Practices Act grants an individual a right of access to personal information concerning the requesting individual that is maintained by the Department of Financial Protection and Innovation Business Oversight.

#### FEDERAL PRIVACY ACT OF 1974 (Public Law 93-579)

In accordance with Section 7 of the Privacy Act of 1974 (found at 5 U.S.C. § 552a note (Disclosure of Social Security Number)), the following is information on whether the disclosure of a social security account number is voluntary or mandatory, by what statutory or other authority such number is solicited, and what uses will be made of it.

(1) The Department of Financial Protection and Innovation Business Oversight is required to collect from all applicants social security numbers under Family Code Section 17520, and social security numbers or federal taxpayer identification numbers under Business and Professions Code Section 494.5. The Privacy Act of 1974 prohibits a state agency from denying an individual any right, benefit or privilege provided by law because of the individual's refusal to disclose the individual's social security account number.

(2) A social security account number or federal taxpayer identification number is solicited pursuant to one or more of the following authorities: Sections 25210, 25211, 25230, 25230.1, 25231, and 25241 of the Corporations Code; Sections 260.210, 260.211, 260.211.1, 260.231, 260.231.2, 260.236.1, and 260.236.2 of Title 10,

California Code of Regulations; Section 17520 of the Family Code; and Section 494.5 of the Business and Professions Code.

(3) For all persons disclosing a social security account number or federal taxpayer identification number, the number is used to match the information to the names on the list provided by the Department of Child Support Services under Family Code Section 17520, and the lists of tax delinquencies provided by the State Board of Equalization and the Franchise Tax Board under Business and Professions Code Section 494.5. The social security number may be used, in addition to other information provided, to conduct a background investigation of the individual by the Department of Justice's Identification and Information Branch or by other federal, state or local law enforcement agencies, or a self-regulatory organization, as authorized by law. The social security number may also be used to respond to requests for this number made by child support agencies.

#### NOTICES REGARDING TAXPAYER INFORMATION

(4) The State Board of Equalization and the Franchise Tax board are authorized to share taxpayer information with the Department of Financial Protection and Innovation ~~Business Oversight~~ and in the event the state tax obligation is not paid by a certificate holder after a certificate is issued, the Department of Financial Protection and Innovation ~~Business Oversight~~ may be required to suspend the certificate.

Note: Authority cited: Section 25610, Corporations Code. Reference: Sections 31 and 494.5, Business and Professions Code; Sections 25210, 25213, 25213.3, 25217 and 25612.3, Corporations Code; and Section 11077.1, Penal Code.

2. Amend Section 260.216.7 to read:

§ 260.216.7. Control of the Market.

The phrase “manipulative, deceptive, or other fraudulent scheme, device, or contrivance,” as used in subdivision (a) of Section 25216 of the Code, is hereby defined to include any representation made to a customer by a broker-dealer or agent that any security is being offered to such customer “at the market” or at a price related to the market price unless such broker-dealer or agent knows or has reasonable grounds to believe that a market for such security exists other than that made, created, or controlled by such person, or by any person for whom such person is acting or with whom such person is associated, or by any person controlled by, controlling, or under common control with such person. A written notification to a customer at or prior to the completion of the transaction that a broker-dealer making the principal market in a security may be in control of the market, by virtue of the fact that such person is the only broker-dealer regularly appearing in the sheets or by reason of the volume of such person's transactions in relation to the total volume of trading by all broker-dealers, shall be sufficient to ~~negate~~ negate any representation which might otherwise be implied that such person is selling “at the market.”

Note: Authority cited: Sections 25216(a) and 25610, Corporations Code.

Reference: Section 25216, Corporations Code.

3. Amend Section 260.218.4 to read:

§ 260.218.4. Supervision of Agents.

(a) Every broker-dealer shall exercise diligent supervision over the securities activities of all of its agents.

(b) Every agent employed by a broker-dealer shall be subject to the supervision of a supervisor designated by such broker-dealer. The supervisor may be the broker-dealer in the case of a sole proprietor, or a partner, officer, office manager, or any qualified agent.

(c) As part of the responsibility under this rule, every broker-dealer 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 broker-dealer to comply with the following duties imposed by this section, and shall state at which business office or offices the broker-dealer keeps and maintains the records required by Section ~~260.218.5~~ 260.241 of these rules.

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

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

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

(4) The review and written approval by the designated supervisor of the delegation by any customer of discretionary authority with respect to the account to the

broker-dealer or to a stated agent or agents of the broker-dealer and the prompt written approval of each discretionary order entered on behalf of that account; and

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

(d) Every broker-dealer who has designated more than one supervisor pursuant to Subsection (b) of this section shall designate from among its partners, officers or other qualified agents, a person or group of persons who shall:

(1) supervise and periodically review the activities of the supervisors designated pursuant to subsection (b) of this section; and

(2) periodically inspect each business office of the broker-dealer to ensure ~~insure~~ that the written procedures are enforced.

Note: Authority cited: Sections 25218 and 25610, Corporations Code.

Reference: Section 25218, Corporations Code.

4. Amend Section 260.230 to read:

§ 260.230. Electronic Filings.

(a) Designation: The Commissioner designates the web-based Investment Adviser Registration Depository (“IARD”) operated by the Financial Industry Regulatory Authority to receive and store filings and collect related fees from investment advisers and investment adviser representatives on behalf of the Commissioner.

(b) Use of IARD: All investment adviser and investment adviser representative applications, amendments, reports, notices, related filings and fees required to be filed with the Commissioner pursuant to the rules promulgated under the Code shall be filed electronically with and transmitted to IARD, except as otherwise indicated in these rules. The following conditions relate to such electronic filings:

(1) Electronic Signature: 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 required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to IARD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing.

(2) When filed: Solely for purposes of a filing made through IARD, unless otherwise specified, a document is considered filed with the Commissioner when all fees are received and the filing is accepted by IARD on behalf of the state.

(3) Any documents required to be filed with the Commissioner that are not permitted to be filed with or cannot be accepted by IARD shall be filed ~~in paper~~ directly with the Commissioner at IAAPP@dfpi.ca.gov.

NOTE: Authority cited: Sections 25231, 25610 and 25612.5, Corporations Code.  
Reference: Section 1633.7, Civil Code; and Sections 25231 and 25612.5, Corporations  
Code.

5. Amend Section 260.230.1 to read:

§ 260.230.1. Notice Filing Requirements for Investment Advisers Registered

Under Section 203 of the Investment Advisers Act of 1940.

(a) Initial notice: A person subject to subsection (a) of Corporations Code Section 25230.1 shall file an initial notice consisting of Form ADV (Uniform Application for Investment Adviser Registration (17 CFR 279.1)) in accordance with the instructions in Form ADV within thirty (30) days of conducting business in the state. The notice shall be deemed filed when the fee required by Section 25608.1(d) and Form ADV are filed with and accepted by IARD on behalf of this state.

~~(b) Portions of Form ADV not yet accepted by IARD: If an investment adviser agrees to provide, within five (5) days of a request, Part 2 of Form ADV to the Commissioner, an investment adviser is not required to file Part 2 of Form ADV with the Commissioner until IARD provides for the filing of Part 2 of Form ADV.~~

~~(c)~~ (b) Annual renewal: The notice expires December 31st unless renewed. The annual renewal shall be filed with IARD in accordance with its procedures. The renewal of the notice filing shall be deemed filed when the fee required by Section 25608.1(d) is filed with and accepted by IARD on behalf of the state.

~~(d)~~ (c) Amendments to Form ADV: Any changes to the information contained in Form ADV shall be filed with IARD in accordance with the instructions in Form ADV.

~~(e)~~ (d) Investment Adviser Representatives: Each investment adviser representative, as defined in Section 25009.5(b) of the Code, with a place of business in the state shall be reported in the manner prescribed in Section 260.236.1(b) of these rules.

~~(f)~~ (e) Switching to state registration: Upon the filing of Form ADV-W (Notice of Withdrawal from Registration as an Investment Adviser) withdrawing registration with the Securities and Exchange Commission under the Investment Advisers Act of 1940, an investment adviser may not conduct business in this state as an investment adviser until the investment adviser has secured a certificate from the Commissioner or unless the investment adviser is otherwise exempt. An investment adviser may file an application for an investment adviser certificate in accordance with the instructions in Section 260.231 prior to the date the investment adviser's registration with the Securities and Exchange Commission is subject to termination.

Note: Authority cited: Sections 25230.1, 25610 and 25612.5, Corporations Code.  
Reference: Sections 25230.1, 25231, 25608.1(d), 25612.3 and 25612.5, Corporations Code.

6. Amend Section 260.231 to read:

§ 260.231. Application for Investment Adviser Certificate.

The application for a certificate as an investment adviser and all amendments thereto shall be filed as follows:

(a) Initial Application: The application for a certificate as an investment adviser pursuant to Section 25231 of the Code shall be made by completing Form ADV in accordance with the form instructions and by filing the form with IARD for transmission to the Commissioner. The Commissioner may require additional documentation as deemed appropriate as prescribed in subsection ~~(a)(4)~~ (a)(3) of this rule.

~~(1) Part 2 of Form ADV shall be filed directly with the Commissioner until the form can be filed with IARD.~~

~~(1)(2)~~ An applicant shall complete a Customer Authorization of Disclosure of Financial Records, as set forth in subsection (i), and maintain the form in the applicant's books and records as provided in Section 25241 of the Code and Section 260.241.3 of these rules. At the time the application for a certificate is filed, the ~~The~~ applicant shall directly email provide the a copy of the form to the Commissioner at IAAPP@dfpi.ca.gov upon request.

~~(2)(3)~~ The applicant shall file directly with the Commissioner, a Statement of Financial Condition with worksheet that demonstrates compliance with the minimum financial requirements as prescribed in Section 260.237.2, investment advisory contract(s), and proof of compliance with the qualification requirements prescribed in Section 260.236, and the federal taxpayer identification number as provided in subdivision (j) of this section, if the applicant is a business entity other than a sole proprietorship.

~~(3)~~ (4) The Commissioner may request additional information, documentation or detail pertaining to Form ADV to be filed directly with the Commissioner.

(b) Filing fee: The fee for filing an initial application is \$125 as prescribed in Section 25608(q). The payment of this fee shall keep the certificate, if granted, in effect during the calendar year during which it is granted. The applicant shall remit the fee directly with IARD in accordance with its procedures for transmission to the Commissioner. Fees are not refundable except pursuant to Government Code Sections 13140- through 13144.

(c) Completion of Filing: ~~For the purposes of Section 250.51, an~~ An application for a certificate as an investment adviser is not considered filed until the required fee and all required submissions are received by the Commissioner. The filing of Form ADV with IARD does not constitute automatic approval. The applicant shall not consider the application approved until approved by the Commissioner and the approval has been received through IARD.

(d) Amendments to Form ADV: Any amendment to Form ADV shall be filed with IARD in accordance with the requirements of Section 260.241.4.

(e) Annual Renewal: The annual renewal shall consist of the fee as prescribed in Section 25608(q). The renewal fee shall be filed through IARD in accordance with its procedures for transmission to the Commissioner. This fee shall keep the certificate in effect for the next calendar year.

(f) Successions: An application for a certificate as an investment adviser pursuant to Section 25231 shall be filed in accordance with the instructions in this section if a person is succeeding to the business of an investment adviser licensed pursuant to Section 25230, and is not eligible for registration with the Securities and

Exchange Commission. Notwithstanding the foregoing, if an investment adviser succeeds to and continues the business of a predecessor investment adviser, and the succession is based solely on a change on the predecessor's date or state of incorporation, form of organization, or composition of a partnership, and there has been no practical change in control or management, the successor may, within 30 days after the succession, amend the Form ADV of the predecessor investment adviser to reflect these changes.

(g) Switching to Securities and Exchange Commission registration: Upon registration with the Securities and Exchange Commission, the investment adviser shall file Form ADV-W with IARD in accordance with instructions in Form ADV-W.

(h) Dually certificated broker-dealers: Subsections (b) and (e) of this rule shall not apply to a broker-dealer licensed under Section 25210 of the Code.

(i) An authorization for the disclosure of financial records shall be made on the following form:

STATE OF CALIFORNIA

DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION BUSINESS  
OVERSIGHT

CUSTOMER AUTHORIZATION OF DISCLOSURE OF FINANCIAL RECORDS

Pursuant to Corporations Code Section 25241 and Government Code Sections 7470 and 7473, any financial institution, wherever situated, possessing financial records of:

Name of (check appropriate designation(s) below)

\_\_\_\_\_ Broker-Dealer

\_\_\_\_\_ Investment Adviser

is hereby authorized to disclose to the California Department of Financial Protection and Innovation ~~Business Oversight~~ records of the above-named broker-dealer or investment adviser business whether such records relate to accounts which have been closed, accounts which are currently maintained, or accounts which are hereafter established.

This authorization is effective as of the date of execution and shall remain effective until five years after the expiration or revocation of the above-named broker-dealer or investment adviser license, including renewals of such license.

This authorization may not be revoked.

The terms used in this authorization shall have the definitions contained in the California Right to Financial Privacy Act (Government Code Section 7460 et seq.) and the Corporate Securities Law (Corporations Code Section 25000 et seq.).

The above-named licensee has duly caused this authorization to be signed on its behalf by the undersigned, thereunto duly authorized.

Executed on \_\_\_\_\_, 20 \_\_\_\_ at \_\_\_\_\_

\_\_\_\_\_

Name of Licensee

\_\_\_\_\_

Licensee's ~~Department of~~

~~Business Oversight File~~ FINRA CRD Number

By \_\_\_\_\_

\_\_\_\_\_

(Title)

Form QR 500.261

STATE OF CALIFORNIA

DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION ~~BUSINESS~~

~~OVERSIGHT~~

INSTRUCTIONS FOR CUSTOMER AUTHORIZATION OF DISCLOSURE OF

FINANCIAL RECORDS

~~On the reverse is a Customer Authorization of Disclosure of Financial Records form.~~

The Commissioner of Financial Protection and Innovation ~~Business Oversight~~ is authorized to require such authorization from certain licensees and other persons pursuant to the authority cited in the first paragraph of the Customer Authorization of Disclosure of Financial Records form.

The form must be properly executed. A copy of the form must be directly emailed to the Commissioner at IAAPP@dfpi.ca.gov at the time the application and submitted with the attached application for license, qualification, registration or other authority is filed.

~~All information required on the form, except the signature of the person executing the form, is to be typewritten.~~ The applicant shall maintain this completed and executed form in its books and records in accordance with Section 25241 of the Corporations Code and California Code of Regulations, title 10, section 260.241.3.

If the form requests a ~~Department of Business Oversight file~~ FINRA CRD number, the applicant need only provide such number if it is known to the applicant and is the type of file number appropriate for the license, qualification, registration or other authority applied for in the attached application.

If additional authorization forms are needed, they may be obtained from ~~any office of the Department of~~ Financial Protection and Innovation's website Business Oversight, or accurate copies of the form may be utilized by applicants.

(j) The following notices required by state and federal law are hereby incorporated as part of any uniform form:

NOTICES REQUIRED UNDER STATE AND FEDERAL LAW

INFORMATION PRACTICES ACT OF 1977

(California Civil Code Section 1798.17)

(a) The Department of Financial Protection and Innovation Business Oversight of the State of California, ~~Securities Regulation Division~~ Broker-Dealer and Investment Adviser Office, is requesting the information specified in the application for registration, qualification, a certificate or a license.

(b) The Deputy Commissioner, Administration Division, Department of Financial Protection and Innovation, 651 Bannan Street, Suite 300, Sacramento, CA 95811, ~~Chief Administrative Officer, the Department of Business Oversight, 1515 K Street, Suite 200 Sacramento, CA 95814~~, telephone ~~(916) 445-5544~~ (866) 275-2677, is responsible for the system of records and shall, upon request, inform individuals regarding the location of the Department of Financial Protection and Innovation's Business Oversight's records and the categories of persons who use the information in the records.

(c) The records are maintained pursuant to the Corporate Securities Law of 1968 (Corporations Code Section 25000, et seq.).

(d) The submission of all items of information is mandatory unless otherwise noted. The Department of Financial Protection and Innovation Business Oversight is required to collect from all applicants social security numbers under Family Code Section 17520, and social security numbers or federal taxpayer identification numbers under Business and Professions Code Section 494.5. The Privacy Act of 1974 prohibits a state agency from denying an individual any right, benefit or privilege provided by law because of the individual's refusal to disclose the individual's social security account number.

(e) Failure to provide all or any part of the information requested may preclude the Department of Financial Protection and Innovation ~~Business Oversight~~ from approving the application.

(f) The principal purposes within the Department of Financial Protection and Innovation ~~Business Oversight~~ for which the information is to be used are to determine whether (1) a license, qualification, registration, certificate or other authority should be accepted, granted, approved, denied, revoked or limited in any way; (2) business entities or individuals licensed or otherwise regulated by the Department of Financial Protection and Innovation ~~Business Oversight~~ are conducting themselves in accordance with applicable laws; and/or (3) laws administered by the Department of Financial Protection and Innovation ~~Business Oversight~~ are being or have been violated and whether administrative action, civil action, or referral to appropriate federal, state or local law enforcement or regulatory agencies, or to a self-regulatory organization, as authorized by law, is appropriate.

(g) Any known or foreseeable disclosures of the information pursuant to subdivision (e) or (f) of Civil Code Section 1798.24 may include transfers to other federal, state, or local law enforcement or regulatory agencies, or to a self-regulatory organization, as authorized by law.

(h) Subject to certain exceptions or exemptions, the Information Practices Act grants an individual a right of access to personal information concerning the requesting individual that is maintained by the Department of Financial Protection and Innovation ~~Corporations~~.

FEDERAL PRIVACY ACT OF 1974 (Public Law 93-579)

In accordance with Section 7 of the Privacy Act of 1974 (found at 5 U.S.C. § 552a note (Disclosure of Social Security Number)), the following is information on whether the disclosure of a social security account number is voluntary or mandatory, by what statutory or other authority such number is solicited, and what uses will be made of it.

(1) The Department of Financial Protection and Innovation ~~Business Oversight~~ is required to collect from all applicants social security numbers under Family Code Section 17520, and social security numbers and federal taxpayer identification numbers under Business and Professions Code Section 494.5. The Privacy Act of 1974 prohibits a state agency from denying an individual any right, benefit or privilege provided by law because of the individual's refusal to disclose the individual's social security account number.

(2) A social security account number or federal taxpayer identification number is solicited pursuant to one or more of the following authorities: Sections 25210, 25211, 25230, 25230.1, 25231, and 25241 of the Corporations Code; Sections 260.210, 260.211, 260.211.1, 260.231, 260.231.2, 260.236.1, and 260.236.2 of Title 10, California Code of Regulations; and Section 17520 of the Family Code; and Section 494.5 of the Business and Professions Code.

(3) For all persons disclosing a social security account number or federal taxpayer identification number, the number is used to match the information to the names on the list provided by the Department of Child Support Services under Family Code Section 17520, and the lists of tax delinquencies provided by the State Board of Equalization and the Franchise Tax Board under Business and Professions Code Section 494.5. The social security number may be used, in addition to other information

provided, to conduct a background investigation of the individual by the Department of Justice's Identification and Information Branch or by other federal, state or local law enforcement agencies, or a self-regulatory organization, as authorized by law. The social security number may also be used to respond to requests for this number made by child support agencies.

#### NOTICE REGARDING TAXPAYER INFORMATION

(4) The State Board of Equalization and the Franchise Tax Board are authorized to share taxpayer information with the Department of Financial Protection and Innovation ~~Business Oversight~~ and in the event the state tax obligation is not paid by a certificate holder after a certificate is issued, the Department of Financial Protection and Innovation ~~Business Oversight~~ may be required to suspend the certificate.

NOTE: Authority cited Sections 25231, 25610, 25612.3 and 25612.5, Corporations Code. Reference: Sections 31 and 494.5, Business and Professions Code; Section 1798.17, Civil Code; Sections 25230, 25231, 25234, 25236, 25237, 25241, 25242, 25608, 25612.3, 25612.5 and 25613, Corporations Code; Section 17520, Family Code; Sections 7470, 7473, 7490 and 13140-13144, Government Code; and Section 7 of Public Law 93-579 (5 U.S.C. Section 552a note).

7. Amend Section 260.238 to read:

§ 260.238. Investment Advisers: Fair, Equitable and Ethical Principles.

The following activities do not promote "fair, equitable or ethical principles," as that phrase is used in Section 25238 of the Code:

(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 adviser after reasonable examination of such of the client's records as may be provided to the adviser.

(b) Placing an order to purchase or sell a security for the account of a client without 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 trading authorization from the client.

(d) Exercising any discretionary power, including any power of attorney, 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 a specified security shall be executed, or both.

(e) 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.

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

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

(h) Misrepresenting to any advisory client, or any 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 service, or omitting to state a material fact necessary to make the statements made regarding the 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 adviser without disclosing the fact. This prohibition does not apply, however, 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 advisory fee that is unreasonable in light of the type of services to be provided, the experience and expertise of the adviser, the sophistication and bargaining power of the client, and whether the adviser has disclosed that lower fees for comparable services may be available from other sources.

(k) Failing to disclose to a client in writing before entering into or renewing an advisory agreement with that client any material conflict of interest relating to the adviser, its representatives or any of its employees, which could be reasonably 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; and

(2) Charging a client an advisory fee for rendering advice without disclosing that a commission 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 earned by the adviser, its representatives or employees for the sale of securities to the client.

(l) Guaranteeing a client that a specific result will be achieved (e.g., a gain or no loss) as a result of the advice which will be rendered.

(m) Disclosing the identity, affairs, ~~or~~ investments, or other confidential information of any client to any third party unless required by law to do so, or unless consented to by the client.

(n) 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.

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

(p) Including in any contract (including an advisory contract) a condition, stipulation, or provision requiring any person to waive compliance with any provision of these rules or the law.

(q) Engaging in any conduct or act, indirectly or through any other person, which would be unlawful for that person to do directly under the provisions of these rules or the law.

(r) Engaging in any conduct or act that has the appearance or effect of intimidating the investment adviser's client or any representative of the Commissioner.

(s) Failing to fully disclose documents or information during an examination or investigation conducted by the Commissioner.

(t) Engaging in any act that is inconsistent with having a fiduciary duty to act solely in the best interests of a client.

~~(u) Engaging in any other conduct that is unfair, inequitable, or unethical.~~

NOTE: Authority cited: Sections 25238 and 25610, Corporations Code.

Reference: Section 25238, Corporations Code.

8. Amend Section 260.241 to read:

**§ 260.241. Books and Records of Broker-Dealers.**

(a) Unless otherwise provided by order of the Commissioner, every broker-dealer shall make, maintain, and preserve books and records in compliance with U.S. Securities and Exchange Commission rules 15c2-11 (17 CFR 240.15c2-11), 15g-2(c) (17 CFR 240.15g-2(c)), 15g-4(b)(2) (17 CFR 240.15g-4(b)(2)), 15g-5(b)(2) (17 CFR 240.15g-5(b)(2)), 15g-6(f) (17 CFR 240.15g-6(f)), 17a-3 (17 CFR 240.17a-3), and 17a-4 (17 CFR 240.17a-4), all of which are incorporated by reference. These books and records shall be legible, true, complete, accurate, and current.

(b) For purposes of the application of the above-referenced U.S. Securities and Exchange Commission rules, “member” shall also mean “broker-dealer” as defined in Corporations Code Section 25004, “associated person” shall also mean “agent” as defined in Corporations Code Section 25003, and “securities regulatory authority” shall also mean the Department of ~~Business Oversight~~ Financial Protection and Innovation.

Note: Authority cited: Sections 25241 and 25610, Corporations Code.

Reference: Section 25241, Corporations Code.