

## IARD IMPLEMENTATION MODEL RULES

### **Amend Uniform Securities Act by adding to Section 202 the underlined text:**

Sec 202 (a) A broker-dealer, agent, or investment adviser, or investment adviser representative may obtain an initial or renewal registration by filing with the [Administrator] or his designee an application together with a consent to service of process pursuant to section 414(g), and paying any reasonable costs charged by the designee for processing such filings. The application shall contain....

Sec 202 (c)(4) Any person required to pay a fee under this section may transmit through any designee any fee required by this section or the rules promulgated under this section.

*Note: Section 202(a) of The Uniform Securities Act of 1956 (as amended) currently contemplates the use of a designee in the form of a national filing organization by allowing the application for registration to be filed, "with the [Administrator] or his designee." Statutory language was added to Section 202 to allow states to require investment advisers to use and pay fees associated with the use of the web-based Investment Adviser Registration Depository (IARD).*

### **Proposed New Rule:**

#### **Rule 202(a)-A. [Electronic Filing with Designated Entity]**

(a) DESIGNATION. Pursuant to section 202(a) of the Act, the [Administrator] designates the web-based Investment Adviser Registration Depository operated by the National Association of Securities Dealers ("IARD") to receive and store filings and collect related fees from investment advisers and investment adviser representatives on behalf of the [Administrator].

*NOTE: If an Administrator can simply designate the IARD by order and not by rule this provision may not be needed. The proposed new rule makes clear that the NASD maintains records on IARD on the states behalf.*

(b) USE OF IARD. Unless otherwise provided, all investment adviser and investment adviser representative applications, amendments, reports, notices, related filings and fees required to be filed with the [Administrator] pursuant to the rules promulgated under this Act, shall be filed electronically with and transmitted to IARD. The following additional 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, a document is considered filed with the [Administrator] when all fees are received and the filing is accepted by IARD on behalf of the state.

(c) ELECTRONIC FILING. Notwithstanding subsection (b) of this rule, the electronic filing of any particular document and the collection of related processing fees 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

[Administrator]. Any documents or fees required to be filed with the [Administrator] that are not permitted to be filed with or cannot be accepted by IARD shall be filed directly with the [Administrator].

*Note: This is to acknowledge that IARs will come onto IARD later and so will other documents such as Part 2. It is also meant to cover any additional state filing requirements like copies of advisory contracts that the system is not currently expected to accept electronically.*

(d) **HARDSHIP EXEMPTIONS.** This section provides two "hardship exemptions" from the requirements to make electronic filings as required by the rules.

(1) Temporary Hardship Exemption.

(A) Investment advisers registered [licensed] or required to be registered [licensed] under the Act 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.

(B) To request a temporary hardship exemption, the investment adviser must:

(i) File Form ADV-H [17- CFR 279.3] in paper format with the [Administrator] where the investment adviser's principal place of business is located, no later than one business day after the filing (that is the subject of the Form ADV-H) was due; and

(ii) Submit the filing that is the subject of the Form ADV-H in electronic format to IARD no later than seven business days after the filing was due.

(C) **Effective Date -- Upon Filing.** The temporary hardship exemption will be deemed effective upon receipt by the [Administrator] of the complete Form ADV-H. Multiple temporary hardship exemption requests within the same calendar year may be disallowed by the [Administrator].

(2) Continuing Hardship Exemption.

(A) **Criteria for Exemption.** A continuing hardship exemption will be granted only if the investment adviser is able to demonstrate that the electronic filing requirements of this rule are prohibitively burdensome.

(B) To apply for a continuing hardship exemption, the investment adviser must:

(i) File Form ADV-H [17- CFR 279.3] in paper format with the [Administrator] at least twenty business days before a filing is due; and

(ii) If a filing is due to more than one [Administrator], the Form ADV-H must be filed with the [Administrator] where the investment adviser's principal place of business is located. The [Administrator] who receives the application will grant or deny the application within ten business days after the filing of Form ADV-H.

(C) **Effective Date -- Upon Approval.** The exemption is effective upon approval by the [Administrator]. The time period of the exemption may be no longer than one year

after the date on which the Form ADV-H is filed. If the [Administrator] approves the application, the investment adviser must, no later than five business days after the exemption approval date, submit filings to IARD in paper format (along with the appropriate processing fees) for the period of time for which the exemption is granted.

(3) Recognition of Exemption. The decision to grant or deny a request for a hardship exemption will be made by the [Administrator] where the investment adviser's principal place of business is located, which decision will be followed by the [administrator] in the other state(s) where the investment adviser is registered.

*Note: The continuing hardship exemption was drafted to allow everyone to be eligible and thus does not limit the exemption to small businesses, as does the SEC hardship exemption. Also, section (d)(2)(B)(ii) requires that an IA that files with more than one state securities administrator need only file Form ADV-H with the Administrator where the IA has its principal place of business. Upon receipt, should the administrator grant the exemption, the applicant will make a paper filing with the IARD (plus pay additional fees associated with the filing). The other states will then receive the filing electronically, after the information is entered by the IARD. The hardship rules only take into consideration difficulties related to making an electronic filing.*

**Amend Current Rules:**

**Rule 202(a)-1. [Application for Investment Adviser Registration (Licensure).] - is amended to read:**

(a) INITIAL APPLICATION. The application for initial registration [licensure] as an investment adviser pursuant to Section 202(a) of the Act shall be made by completing Form ADV (Uniform Application for Investment Adviser Registration) (17 C.F.R. 279.1) in accordance with the form instructions and by filing the form with IARD. The application for initial registration [licensure] shall also include the following:

(1) Proof of compliance by the investment adviser with the examination requirements of Rule 204(b)(6)-1;

(2) Such financial statements as set forth in Rule 203(c)-1, including a copy of the balance sheet for the last fiscal year, and if such balance sheet is as of a date more than 45 days from the date of filing of the application, an unaudited balance sheet prepared as set forth in Rule 203(c)-1;

[(3) A copy of the surety bond required by Rule 202(e)-1, if applicable, shall be made available upon request of the [Administrator];]

(3) [4] The fee required by Section 202(c) of the Act; and;

(4) [5] Any other information the [Administrator] may reasonably require.

*Note: The requirement to file any of these items directly with the [Administrator] is preserved until IARD can process that item electronically. The drafters recommend your state adopt Rule 202(a)-2 with the understanding that your current rule regarding investment adviser registration is effective until IARD processes the item electronically at which time your current rule should be deleted. The requirement to file a consent to service of process is still preserved even though the language has been struck from rule 202(a)-1(a) above, because the language of the Form U-2 is now incorporated*

*into the Form ADV state adviser execution page. The surety bond provision, in this section and throughout these rules, is bracketed because Part 1B of Form ADV will capture surety bond identifying information. Thus, a state may determine that it would not be necessary to have a rule requiring the filing of the actual surety bond.*

(b) ANNUAL RENEWAL. The application for annual renewal registration [licensure] as an investment adviser shall be filed with IARD. The application for annual renewal registration [licensure] shall include the following:

- (1) A copy of the surety bond required by Rule 202(e)-1, if applicable; and
- (2) The fee required by Section 202(c) of the Act.

(c) UPDATES AND AMENDMENTS.

- (1) An investment adviser must file with IARD, in accordance with the instructions in the Form ADV, any amendments to the investment adviser's Form ADV;
- (2) An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment; and
- (3) Within ninety (90) days of the end of the investment adviser's fiscal year, an investment adviser must file with IARD an updated Form ADV.

*Note: Rule 202(a)-1(c)(3) regarding updates of the ADV within 90 days of the end of an investment adviser's fiscal year is a new requirement. States have indicated that when conducting audits of IAs, many do not have an updated ADV available. This rule would insure an IA maintains a current ADV each year.*

(d) COMPLETION OF FILING. An application for initial or renewal registration is not considered filed for purposes of Section 202(a) of the Act until the required fee and all required submissions have been received by the [Administrator].

**Rule 202(a)-2. [Application for Investment Adviser Representative Registration (Licensure).] - is amended to read:**

(a) INITIAL APPLICATION. The application for initial registration [licensure] as an investment adviser representative pursuant to Section 202(a) of the Act shall be made by completing Form U-4 (Uniform Application for Securities Industry Registration or Transfer) in accordance with the form instructions and by filing the Form U-4 with IARD. The application for initial registration [licensure] also shall include the following:

- (1) Proof of compliance by the investment adviser representative with the examination requirements of Rule 204(b)(6)-1; and
- (2) The fee required by Section 202(c) of the Act.

*Note: A reference to electronic signatures is made in the U-4 filing instructions. The U-4 is signed by an IAR and filed with the IA firm. The IA then transmits the electronic U-4 on behalf of the IAR to the IARD and attests on the U-4 to such actions. Paper copies of the Form U-4 containing original signatures of the IAR as well as U-4 DRPs must be maintained by the IA on the premises on behalf of the IAR and available for inspection as requested [see Rule 203(a)-2(a)(21)].*

(b) ANNUAL RENEWAL. The application for annual renewal registration [licensure] as an investment adviser representative shall be filed with IARD. The application for annual renewal registration [licensure] shall include the fee required by Section 202(c) of the Act.

(c) UPDATES AND AMENDMENTS.

(1) The investment adviser representative is under a continuing obligation to update information required by Form U-4 as changes occur.

(2) An investment adviser representative and the investment adviser must file promptly with IARD any amendments to the representative's Form U-4; and

(3) An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment.

(d) COMPLETION OF FILING. An application for initial or renewal registration is not considered filed for purposes of Section 202(a) of the Act until the required fee and all required submissions have been received by the [Administrator].

**Rule 202(b)-1. [Notice Filing Requirements for Federal Covered Advisers.] -is amended to read:**

(a) NOTICE FILING. The notice filing for a federal covered adviser pursuant to Section 202(b) of the Act shall be filed with IARD on an executed Form ADV (Uniform Application for Investment Adviser Registration (17 C.F.R. 279.1)). A notice filing of a federal covered adviser shall be deemed filed when the fee required by Section 202(c) of the Act and the Form ADV are filed with and accepted by IARD on behalf of the state.

*Note: The requirement to file a consent to service of process is still preserved even though the language has been struck from rule 202(b)-1(a) above, because the Form U-2 is now incorporated into the Form ADV federal adviser execution page.*

(b) PORTIONS OF FORM ADV NOT YET ACCEPTED BY IARD. Until IARD provides for the filing of Part 2 of Form ADV, the [Administrator] will deem filed Part 2 of Form ADV if a federal covered adviser provides, within 5 days of a request, Part 2 of Form ADV to the [Administrator]. Because the [Administrator] deems Part 2 of the Form ADV to be filed, a federal covered adviser is not required to submit Part 2 of Form ADV to the [Administrator] unless requested.

(c) RENEWAL. The annual renewal of the notice filing for a federal covered adviser pursuant to section 202 of the Act shall be filed with IARD. The renewal of the notice filing for a federal covered adviser shall be deemed filed when the fee required by Section 202(c) of the Act is filed with and accepted by IARD on behalf of the state.

(d) UPDATES AND AMENDMENTS. A federal covered adviser must file with IARD, in accordance with the instructions in the Form ADV, any amendments to the federal covered adviser's Form ADV.

**Rule 203(a)-2. [Recordkeeping Requirements for Investment Advisers.] - Part (a)14 is amended and Part (a)(21) is added to read:**

*Note: Part 2 of the revised Form ADV (Uniform Requirements for Investment Adviser Brochure and Supplements) will not be adopted by the Commission until later this year. Due to the fact that changes to*

*the proposed Part 2 could occur between now and the time when the Commission adopts Part 2, the following Rule 203(a)-2(a)(14) has been removed from the rest of the proposed IARD implementation rules herein for current consideration and adoption by the NASAA membership as the SEC is only currently adopting Part 1 of the new Form ADV.*

(a) \* \* \*

[(14) (A)

(i) A copy of each written statement and each amendment or revision to the written statement, given or sent to any client or prospective client of the investment adviser as required by Rule 203(b)-1;

(ii) any summary of material changes that is required by Part 2 of Form ADV but is not contained in the written statement; and

(iii) a record of the dates that each written statement, each amendment or revision thereto, and each summary of material changes was given or offered to any client or to any prospective client who subsequently becomes a client.

(B) A memorandum describing any legal or disciplinary event listed in Item 8 of Part 2A or Item 3 of Part 2B of Form ADV and presumed to be material, if the event involved the investment adviser or any of its supervised persons and is not disclosed in the written statements described in paragraph (a)(14)(A) of this section. The memorandum must explain the investment adviser's determination that the presumption of materiality is overcome, and must discuss the factors described in those items.]

(21) Copies, with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form U-4 and each amendment to Disclosure Reporting Pages (DRPs U-4) must be retained by the investment adviser (filing on behalf of the investment adviser representative) and must be made available for inspection upon regulatory request.

**[Rule 203(b)-1. [Investment Adviser Brochure Rule.] - is removed and re-written:**

*Note: Part 2 of the revised Form ADV (Uniform Requirements for Investment Adviser Brochure and Supplements) will not be adopted by the Commission until later this year. Due to the fact that changes to the proposed Part 2 could occur between now and the time when the Commission adopts Part 2, the following Rule 203(b)-1 has been removed from the rest of the proposed IARD implementation rules herein for current consideration and adoption by the NASAA membership as the SEC is only currently adopting Part 1 of the new Form ADV.*

(a) GENERAL REQUIREMENTS. Unless otherwise provided in this rule, an investment adviser, registered [licensed] or required to be registered [licensed] pursuant to Section 201 of the Act shall offer and deliver to each client and prospective client a firm brochure and one or more supplement(s) as required by this section. The brochure and supplement(s) must contain

all information required by Part 2 of Form ADV [CFR279.1], and such other information as the [Administrator] may require.

(b) OFFER AND DELIVERY REQUIREMENTS.

(1) An investment adviser shall deliver:

(A) The current brochure required by this section to a client or prospective client, and

(B) The current brochure supplement(s) for each investment adviser representative who will provide advisory services to the client. For purposes of this section, an investment adviser representative will provide advisory services to a client if the investment adviser representative will:

(i) Regularly communicate investment advice to that client; or

(ii) Formulate investment advice for assets of that client; or

(iii) Make discretionary investment decisions for assets of that client; or

(iv) Solicit, offer or negotiate for the sale of or sell investment advisory services.

(2) The documents required in (1) above shall be delivered:

(A) Not less than 48 hours prior to entering into any investment advisory contract with such client or prospective client, or

(B) At the time of entering into any such contract, if the client has a right to terminate the contract without penalty within five business days after entering into the contract. ]

*Note: 203(b)-1(b) combines the requirements for IAs to deliver a brochure and IARs to deliver brochure supplements to clients either at least 48 hours prior to or at the time of execution of the advisory contract so long as the client has a five business day rescission period as stated in 203(b)-1(b)(2). The SEC has eliminated both of these requirements and requires delivery at the time the IA enters into a written or oral contract or when the supervised person begins to provide advisory services to the client.*

(3) An investment adviser shall, at least once a year, without charge, deliver or offer in writing to deliver to each of its clients the current brochure and any current brochure supplement(s) required by paragraph (b)(1) of this section. If a client accepts the written offer, the investment adviser must send to that client the current brochure and supplements within seven days after the investment adviser is notified of the acceptance.

*Note: In the drafting of this rule, it was felt that several deviations from the federal proposal were justified. First, reference to an exception to delivery of a brochure to an investment company client was deleted (from the present model rules) because, post-NSMIA, state registered IAs are no longer advising investment companies. Second, while the SEC has provided an exception to the brochure delivery for an investment adviser that provides impersonal advisory services of less than \$500 (presently \$200 and identical in the NASAA model rule) and an exception to the brochure*

*supplement delivery for an investment adviser that provides impersonal advisory services (without dollar limitation), the drafters did not provide an exception at all to the brochure and brochure supplement delivery requirement. It was felt that client disclosure (to include the required disciplinary information) from the IA, as well as the IAR, is imperative for a client when entrusting his/her financial affairs to an IA. In addition, disciplinary disclosure is key to a client's ability to make an informed decision whether or not to engage the adviser, regardless of the type or amount of services being provided. In lieu of keeping the present model rule (\$200) or raising the level (\$500), the drafters decided that there should be no threshold level for state IAs. Increasing the threshold (or expanding the delivery exception) would only increase the number of clients that would receive no disclosure at all.*

(c) DELIVERY TO LIMITED PARTNERS. If the adviser is the general partner of a limited partnership, the manager of a limited liability company, or the trustee of a trust, then for purposes of this section the investment adviser must treat each of the partnership's limited partners, the company's members, or the trust's beneficial owners as a client. For purposes of this section, a limited liability partnership or limited liability limited partnership is a "limited partnership."

(d) WRAP FEE PROGRAM BROCHURES.

(1) If the investment adviser is a sponsor of a wrap fee program, then the brochure, required to be delivered by paragraph (b)(1) of this section to a client or prospective client of the wrap fee program, must be a wrap fee brochure containing all information required by Form ADV. Any additional information in a wrap fee brochure must be limited to information applicable to wrap fee programs that the investment adviser sponsors.

(2) The investment adviser does not have to offer or deliver a wrap fee brochure if another sponsor of the wrap fee program offers or delivers to the client or prospective client of the wrap fee program a wrap fee program brochure containing all the information the investment adviser's wrap fee program brochure must contain.

(3) A wrap fee brochure does not take the place of any brochure supplement(s) that the investment adviser is required to deliver under paragraph (b)(1)(B) of this section.

*Note: The rule on the wrap fee brochure was moved here from 203(b)-2 to be incorporated under the brochure section for clarity purposes. Thus, 203(b)-2 was removed and reserved. The definitions relating to wrap fees were moved from 203(b)-2 to 203(b)-1(i). Wrap fee disclosure requirements formerly found in 203(b)-2(b) have been incorporated into 203(b)-1(d). Wrap fee brochure filing and delivery requirements formerly found in 203(b)-2(c) have been incorporated into 203(b)-1(b). Wrap fee amendment requirements formerly found in 203(b)-2(d) have been incorporated into 203(b)-1(e).*

(e) DELIVERY OF UPDATES AND AMENDMENTS. The investment adviser must amend its brochure and any brochure supplement(s) and deliver the amendments to clients promptly when information contained in the brochure or brochure supplement(s) becomes materially inaccurate. The instructions to Part 2 of Form ADV contain updating and delivery instructions that the investment adviser must follow. An amendment will be considered to be delivered promptly if the amendment is delivered within thirty (30) days of the event that requires the filing of the amendment.

(f) MULTIPLE BROCHURES. If an investment adviser renders substantially different types of investment advisory services to different clients, the investment adviser may provide them with different brochures, provided that each client receives all applicable information about services and fees. The brochure delivered to a client may omit any information required by Part 2A of Form ADV



if such information is applicable only to a type of investment advisory service or fee that is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

(g) OTHER DISCLOSURE OBLIGATIONS. Nothing in this rule shall relieve any investment adviser from any obligation pursuant to any provision of the Act or the rules and regulations thereunder or other federal or state law to disclose any information to its clients or prospective clients not specifically required by this rule.

(h) CONVERSION RULE. All investment advisers registered [licensed] or required to be registered [licensed] under the Act must deliver to each of their clients their current brochure and all required brochure supplements within [thirty (30) days] from the date of making its initial filing with IARD.

*Note: The thirty (30) day filing deadline may be extended under the SEC's rule proposal. The Project Group recommends that NASAA's final proposal parallel the SEC's timeframe for use of the new Part 2 brochure. Thus, the thirty (30) days may be changed to a longer period in the final proposal.*

(i) DEFINITIONS. For the purposes of this rule:

(1) "Current brochure" and "current brochure supplement" mean the most recent revision of the brochure or brochure supplement, including all subsequent amendments (i.e., stickers).

(2) "Entering into," in reference to an investment advisory contract, does not include an extension or renewal without material change of any such contract which is in effect immediately prior to such extension or renewal.

(3) "Sponsor" of a wrap fee program means an investment adviser that is compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding the selection of other investment advisers in the program.

(4) "Wrap fee program" means an advisory program under which a specified fee or fees, not based directly upon transactions in a client's account, is charged for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and the execution of client transactions. ]

*Note: Certain definitions were deleted because they no longer are used in the amended version of the proposed rules.*

**Rule 203(b)-2. [Wrap Fee Brochure.]** - is removed and reserved.

**Rule 203(d)-1. is renamed to [Transition Schedule for Conversion to IARD] and is amended to read:**

(a) ELECTRONIC FILING OF FORM ADV.

(1) By (date to be determined), each investment adviser registered [licensed] or required to be registered [licensed] under the Act must resubmit its Form ADV electronically (if it has not previously done so) with IARD unless it has been granted a hardship exemption under Rule 202(a)-A(d).

(2) If the amendment to Form ADV is made after (date to be determined), or at an earlier date if an investment adviser has filed its Form ADV [17 CFR 279.1] (or any amendments to Form ADV) electronically with IARD, the registrant [licensee] must file amendments to Form ADV required by this section electronically with IARD, unless it has been granted a hardship exemption under Rule 202(a)-A(d).

*Note: This rule is drafted for a state that wants a specific transition rollout schedule for its IAs. If a state adopts an approach with its rules that provides for an effective date that requires all IAs on the system as of a particular date, this rule would not be needed because the newly proposed Rule 202(a)-A addresses electronic filing requirements and the subsequent filing of the amendments after the initial filing. The SEC will have a phase-in period for all existing IAs, which requires federal adviser to amend onto the system by April 2001. The drafters recommend the use of June 30, 2001 for the state transition deadline, in order to be certain that all IAs are on the system by December 31, 2001. Each state will have to set its own time frame for the deadlines referenced in both the IA and the IAR sections of this rule.*

(b) ELECTRONIC FILING OF FORM U-4. By (date to be determined), for each investment adviser representative registered [licensed] or required to be registered [licensed] under the Act, Form U-4 must be resubmitted electronically (if it has not previously been done) with IARD, unless the investment adviser (filing on behalf of the investment adviser representative) has been granted a hardship exemption under Rule 202(a)-A(d).

*Note: This part of the rule will need to reference the final deadline to file onto the IARD for any IAR who may not have previously done so.*

**Rule 204(e)-1. [Withdrawal of Investment Adviser and Investment Adviser Representative Registration (Licensure).] - is amended to read:**

(a) INVESTMENT ADVISER. The application for withdrawal of registration [licensure] as an investment adviser pursuant to Section 204(e) of the Act shall be completed by following the instructions on Form ADV-W (Notice of Withdrawal from Registration as Investment Adviser) (17 C.F.R. 279.2) and filed upon Form ADV-W with IARD.

(b) INVESTMENT ADVISER REPRESENTATIVE. The application for withdrawal of registration [licensure] as an investment adviser representative pursuant to Section 204(e) of the Act 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.

*Note: Your state may want to consider applying this rule to allow federal covered advisers to terminate their notice filing status prior to year end when such status would be due for renewal.*

**Rule 401g2-1 (ALTERNATIVE TWO) - is amended to read:**

(a) Notwithstanding Section 401(g) of this Act, the term "investment adviser representative" as used in this Act and applied to federal covered advisers only includes a person who has a "place of business," as defined in paragraph (b)(4) of this rule, and who either:

(1) is a "supervised person" as defined in paragraph (b)(3) of this rule, provided the supervised person:

(A) has more than five clients who are natural persons (other than excepted persons as defined in paragraph (b)(1) of this rule); and

(B) more than 10% of whose clients are natural persons (other than excepted persons as defined in paragraph (b)(1) of this rule); and

(C) (i) on a regular basis solicits, meets with, or otherwise communicates with clients of a federal covered adviser, or

(ii) does not provide only "impersonal investment advice," as defined in paragraph (b)(2) of this rule; or who

(2)\* \* \*

(b) For purposes of this section:

(1) "Excepted person" means a natural person who:

(A) immediately after entering into the investment advisory contract with the investment adviser has at least \$750,000 under management with the investment adviser, or

(B) the investment adviser reasonably believes, immediately prior to entering into the advisory contract, has a net worth (together with assets held jointly with a spouse) at the time of the contract is entered into of more than \$1,500,000.

*Note: The definition of investment adviser representative was amended by adding 401g2-1(a)(1)(A) to reflect a revision the SEC made in August 1998 to the definition of investment adviser representative. Under the SEC amended definition, supervised persons of federal registered IAs are IARs subject to state registration if they have more than five clients who are natural persons and more than ten percent of their clients are natural persons. The SEC made this revision to aid supervised persons with one or a few institutional clients so that they would not have to register at the state level. Prior to the SEC amendment, for a supervised person to have one accommodation client without being subject to state registration, the supervised person would need to have at least ten clients that are not retail clients. In addition, the definition of "excepted person" was amended to reflect the recent SEC amendments raising the dollar figures in keeping with inflationary changes. The current dollar amounts would define an "excepted person" as one with either \$750,000 under management instead of \$500,000 or \$1,500,000 in net worth instead of \$1,000,000.*