

**NASAA REGULATIONS REGARDING SOLICITORS**  
**1956 Act Model Rule 401(g)(4)-1**

**Rule 401(g)(4)-1 Regulations for solicitors**

(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 adviser.

(2) “Client” includes any prospective client.

(b) It shall be unlawful for any investment adviser, registered or required to be registered, to pay a cash fee or any other economic benefit, directly or indirectly, in connection with solicitation activities unless:

(1) the solicitor is registered as an investment adviser representative [or is exempt from registration as provided for in subsection (e)]; and

(2) the solicitor to whom a cash fee or any other economic benefit is paid for such referral is not a person:

(A) subject to an order of the U.S. Securities & Exchange Commission issued under section 203(f) of the Investment Advisers Act of 1940;

(B) subject to an order of the [Administrator], the securities administrator of any other state, the U.S. Securities and Exchange Commission, or any self regulatory organization denying, suspending, or revoking registration 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;

(C) 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 Investment Advisers Act of 1940;

(D) convicted within the previous ten years of any felony, or any misdemeanor involving conduct described in section 204(a)(2)(C) of the Act;

(E) found by the U.S. Securities & Exchange Commission to have engaged, or has been convicted of engaging in, any of the conduct specified in sections 203(e)(1), (5) or (6) of the Investment Advisers Act of 1940;

(F) found by the [Administrator] to have engaged, or has been convicted of engaging in, any of the conduct specified in sections 204(a)(2)(A), (B) or (F) of the Act;

(G) subject to an order, judgment or decree described in section 203(e)(4) of the Investment Advisers Act of 1940; or

(H) subject to an order, judgment or decree described in section 204(a)(2)(D) of the Act; and

(3) 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 the foregoing services; and

(4) 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 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 benefit 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 rule 203(b)-1 and a separate disclosure statement as described in subsection (c) of this rule; and

*[Note: The investment adviser should retain a copy of each written agreement required by this section as required by rule 203(a)-2(a)(10).]*

(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

*[Note: The investment adviser should retain a copy of each such acknowledgement and solicitor disclosure document as part of the records required to be kept under rule 203(a)-2(a)(15).]*

(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 (4)(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.

- (c) The separate written disclosure document required to be furnished by the solicitor to the client pursuant to (b)(4)(A)(iii) 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 solicitation or referral services by the investment adviser;
  - (5) the terms of the compensation arrangement including a description of the cash fee or any other economic benefit paid or to be paid to the solicitor; and
  - (6) 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.
- (d) 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.

*[Note: Some states currently do provide a registration exemption for solicitors of investment advisers. If an Administrator wishes to provide such a registration exemption, the following optional subsection is recommended only as a template to promote uniformity among states that choose to provide such an exemption.]*

- [(e) 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 (b) and (c), and the solicitor either:
- (1) provides solicitation activities that are impersonal in nature as set forth in subsection (b)(3) above; or
  - (2) receives an order of the [Administrator] waiving the registration requirement.]

**NASAA REGULATIONS REGARDING SOLICITORS**  
**USA 2002 Model Rule 404(a)-2**

**Rule 404(a)-2 Regulations for solicitors**

(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 adviser.

(2) "Client" includes any prospective client.

(b) It shall be unlawful for any investment adviser, registered or required to be registered, to pay a cash fee or any other economic benefit, directly or indirectly, in connection with solicitation activities unless:

(1) the solicitor is registered as an investment adviser representative [or is exempt from registration as provided for in subsection (e)]; and

(2) the solicitor to whom a cash fee or any other economic benefit is paid for such referral is not a person:

(A) subject to an order of the U.S. Securities & Exchange Commission issued under section 203(f) of the Investment Advisers Act of 1940;

(B) subject to an order of the [Administrator], the securities administrator of any other state, the U.S. Securities and Exchange Commission, or any self regulatory organization denying, suspending, or revoking registration 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;

(C) 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 Investment Advisers Act of 1940;

(D) convicted within the previous ten years of any felony, or any misdemeanor involving conduct described in section 204(a)(2)(C) of the Act;

(E) found by the U.S. Securities & Exchange Commission to have engaged, or has been convicted of engaging in, any of the conduct specified in sections 203(e)(1), (5) or (6) of the Investment Advisers Act of 1940;

(F) found by the [Administrator] to have engaged, or has been convicted of engaging in, any of the conduct specified in sections 204(a)(2)(A), (B) or (F) of the Act;

(G) subject to an order, judgment or decree described in section 203(e)(4) of the Investment Advisers Act of 1940; or

(H) subject to an order, judgment or decree described in section 204(a)(2)(D) of the Act; and

- (3) 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 the foregoing services; and
- (4) the a 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 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 benefit 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 rule 203(b)-1 and a separate disclosure statement as described in subsection (c) of this rule; and

*[Note: The investment adviser should retain a copy of each written agreement required by this section as required by rule 411(c)-1(a)(10).]*

(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

*[Note: The investment adviser should retain a copy of each such acknowledgement and solicitor disclosure document as part of the records required to be kept under rule 411(c)-1(a)(15).]*

(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 (4)(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

- (c) The separate written disclosure document required to be furnished by the solicitor to the client pursuant to (b)(4)(A)(iii) 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 solicitation or referral services by the investment adviser;
  - (5) the terms of the compensation arrangement including a description of the cash fee or any other economic benefit paid or to be paid to the solicitor; and
  - (6) 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.
- (d) 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.

*[Note: Some states currently do provide a registration exemption for solicitors of investment advisers. If an Administrator wishes to provide such a registration exemption, the following optional subsection is recommended only as a template to promote uniformity among states that choose to provide such an exemption.]*

- [(e) 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 (b) and (c), and the solicitor either:
- (1) provides solicitation activities that are impersonal in nature as set forth in subsection (b)(3) above; or
  - (2) receives an order of the [Administrator] waiving the registration requirement.]

***Adoption of this Model Rule will necessitate renumbering the IA Representative Registration Requirements model rule to 404a-1***