

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by 1st submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 7. EDUCATION

CHAPTER 3. COMMISSION FOR POSTSECONDARY EDUCATION

PREAMBLE

1. **Sections Affected**

	<u>Rulemaking Action</u>
R7-3-301	Amend
R7-3-302	Amend
R7-3-303	Amend
R7-3-304	Amend
R7-3-305	Amend
R7-3-306	Amend
R7-3-307	Amend
R7-3-308	Amend
R7-3-309	Amend
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 15-1852(C)
Implementing statute: A.R.S. § 15-1851(B)
3. **A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 5 A.A.R. 708, March 5, 1999.
4. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Verna Allen, Executive Director
Address: Commission for Postsecondary Education
2020 North Central Avenue, Suite 275
Phoenix, Arizona 85004
Telephone: (602) 229-2595
Fax: (602) 229- 2599
5. **An explanation of the rule, including the agency's reasons for initiating the rule:**

On October 7, 1998, President Clinton signed reauthorization of the Higher Education Act ("HEA"). HEA changes the name of the State Student Incentive Grant ("SSIG") Program to Leveraging Educational Assistance Partnership ("LEAP") Program. The heading for Article 3 will be changing to reflect the new name of the program. The only other change is removing the name of a former employee.
6. **A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

Not applicable.

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7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

8. The preliminary summary of the economic, small business, and consumer impact:

a. An identification of the proposed rulemaking: Arizona Leveraging Educational Assistance Partnership Program, R7-3-301 through R7-3-30, adopted pursuant to A.R.S. § 15-1851(B).

b. An identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking: There will be no significant impact to anyone or any institution. The rules simply reflect a name change implemented at the federal level.

c. An analysis of the probable costs and benefits from the implementation and enforcement of the proposed rulemaking on the Commission, and on any political subdivision or business directly affected by the proposed rulemaking: There may be minor costs in changing letterhead, envelopes, etc.

d. The probable impact of the proposed rulemaking on employment in business, agencies, and political subdivisions of this state affected by the proposed rulemaking: None.

e. A statement of the probable impact of the proposed rulemaking on small business: None are anticipated as the Program remains unchanged.

f. A statement of the probable effect on state revenues: None are anticipated as the Program remains unchanged.

g. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking: Due to the nature of the various statutory requirements, less intrusive or less costly alternatives are not available.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Verna Allen, Executive Director
Address: Commission for Postsecondary Education
2020 North Central Avenue, Suite 275
Phoenix, Arizona 85004
Telephone: (602) 229- 2595
Fax: (602) 229-2599

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when and how persons may request an oral proceeding on the proposed rule:

Date: June 1, 1999
Time: 10 a.m.
Location: Commission for Postsecondary Education
2020 North Central Avenue, Conference Room #230 via conference call
Phoenix, Arizona 85004
Nature: Oral Proceeding and Adoption of Rules

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable.

12. Incorporations by reference and their location in the rules:

Not applicable.

13. The full text of the rules follows:

TITLE 7. EDUCATION

CHAPTER 3. COMMISSION FOR POSTSECONDARY EDUCATION

ARTICLE 3. ARIZONA STATE STUDENT INCENTIVE GRANT LEVERAGING EDUCATIONAL ASSISTANCE PARTNERSHIP PROGRAM

Section

- R7-3-301. Federal SSIGLEAP Requirements
- R7-3-302. Institutional Eligibility Requirements
- R7-3-303. Receipt and Allocation of Arizona SSIGLEAP Program Funds
- R7-3-304. Arizona SSIGLEAP Student Eligibility Requirements
- R7-3-305. Arizona SSIGLEAP Award Procedures
- R7-3-306. Award Alternation
- R7-3-307. Administrative Costs
- R7-3-308. Institutional Program Review
- R7-3-309. Definitions

ARTICLE 3. ARIZONA STATE STUDENT INCENTIVE GRANT LEVERAGING EDUCATIONAL ASSISTANCE PARTNERSHIP PROGRAM

R7-3-301. Federal SSIGLEAP Requirements

The federal government requires that a state SSIGLEAP Program must:

1. Be administered by a single state agency in accordance with the Federal-State Agreement under Section 1203 of the Higher Education Act, as amended. The Governor of Arizona has designated as the responsible single state agency the Arizona Commission for Postsecondary Education, which hereafter shall be referred to as the Commission;
2. Award grants only to students who meet the eligibility and financial need requirements as outlined in R7-3-304(A) and (B);
3. Provide grants which do not exceed \$5,000 per program year for a full-time student enrolled in an eligible program at a participating postsecondary institution;
4. Use as state matching funds an amount which is over and above the amount the state expended for grants in the initial program year of FY 1974;
5. Provide for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of the accounting for federal funds paid to the state;
6. Provide for making such reports, in such form and containing such information, as may be reasonably necessary to enable the U.S. Secretary of Education to perform program analysis;
7. Provide for the payment of the state matching fund share of grants awarded from direct state appropriated funds;
8. Provide that no payment may be made to a student under this program unless the student meets the requirements specified in R7-3-304;
9. Obey all other United States laws and regulations applying to the Federal-State Student Grant Program;
10. Provide that all institutions of higher education in Arizona which meet the eligibility requirements of R7-3-302 shall be eligible to participate in the program;
11. Provide that state expenditures shall not be less than:
 - a. The average annual aggregate expenditures for the preceding 3 years; or
 - b. The average annual expenditure per full-time equivalent student for those years.
12. Provides assurances that all SSIGLEAP grants will be awarded without regard to sex, race, debilitating condition, creed, or economic background.

R7-3-302. Institutional Eligibility Requirements

To participate in the Arizona SSIGLEAP Program, an Arizona postsecondary educational institution must either:

1. Be a public or other nonprofit institution of higher education which:
 - a. Admits as regular students only persons who have a high school diploma, have the recognized equivalent of a high school diploma, or are beyond the age of compulsory school attendance in the state in which the institution is located, and who have the ability to benefit from the training offered;
 - b. Is legally authorized by the State of Arizona to provide an educational program beyond secondary education;
 - c. Provides an educational program for which it awards an associate, baccalaureate, graduate, or professional degree, or at least a 2-year program which is acceptable for full credit toward a baccalaureate degree; or at least a 1-year training program which leads to a certificate or degree and prepares students for gainful employment in a recognized occupation; or at least a 6-month training program at a postsecondary vocational institution (such as a public community college) which leads to a certificate or degree and prepares students for gainful employment;

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- d. Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution which has satisfactorily assured the Secretary that it will meet the accreditation standards of an approved agency or association within a reasonable time, considering the resources available to the institution, the period of time it has operated and its efforts to meet accreditation standards, or is an institution whose credits are determined by the Secretary to be accepted on transfer by at least 3 accredited institutions on the same basis as transfer credits from fully accredited institutions.
- e. Has a certified Eligibility Letter and a valid written Program Participation Agreement from the Department of Education cited in 34 C.F.R. 668.
2. Be a proprietary institution of postsecondary education which:
 - a. Is not a public or other nonprofit institution;
 - b. Admits as regular students only persons who have a high school diploma, have the recognized equivalent of a high school diploma, or are beyond the age of compulsory school attendance in the state in which the institution is located, and who have the ability to benefit from the training offered;
 - c. Is legally authorized to provide postsecondary education in the State of Arizona;
 - d. Provides at least a 6-month or 600 clock hour program of training to prepare students for gainful employment in a recognized occupation;
 - e. Is accredited by a nationally recognized accrediting agency or association; and
 - f. Has been in existence for at least 2 years. The Secretary considers a school to have been in existence for 2 years if it has been legally authorized to provide, and has provided, a continuous training program to prepare students for gainful employment in a recognized occupation during the 24 months (except for normal vacation periods) preceding the date of application for eligibility.
 - g. Refer to this subsection (1)(e).

R7-3-303. Receipt and Allocation of Arizona SSIGLEAP Program Funds

A. Receipt of funds.

1. The Commission may receive funds for the Arizona SSIGLEAP Program from the following sources:
 - a. The federal government;
 - b. The Arizona Legislature;
 - c. Institutions which are eligible to participate in the program; and,
 - d. Other nonfederal institutions, organizations, or individuals.
2. All funds received will be deposited by the Commission in a properly secured account and appropriate controls will be instituted to assure that accountability will be maintained for all funds received.
3. Available federal program funds will be matched, on a dollar-for-dollar basis, by state appropriated funds.
4. Funds provided by the eligible participating institutions and nonfederal funds from other institutions, organizations, or individuals shall be used by the Commission to supplement the federal and state program funds for grants and for necessary administrative costs.

B. Allocation of funds.

1. Arizona SSIGLEAP Program Funds will be allocated to eligible Arizona postsecondary educational institutions according to their proportionate share of the State's total headcount of Arizona resident students enrolled in eligible programs. The Commission will survey each eligible institution in Arizona no later than May of each year to determine the number of eligible Arizona resident students who are enrolled. Headcount will be determined in the following manner:
 - a. Semester or quarter hour schedule institutions will provide data for the preceding fall semester. (For example, allocations for the ~~1996-97 SSIG LEAP~~ program for any given academic year will be based on ~~Fall 1995~~ enrollment data from the previous academic year.)
 - b. Institutions which operate on clock hour or other nontraditional schedules will provide unduplicated student enrollment data for the period from August through April of the previous year. (For example, allocations for the ~~1996-97 SSIGLEAP~~ program for any given year will be based on data for the period August ~~1995~~, through April ~~1996~~.) Enrollment data must be verified by 2 Administrative Officials of the school.
2. The staff will promptly notify each eligible institution of its preliminary allocation as soon as necessary Commission approvals can be obtained. The total will show the amount of federal and state dollars and also the amount the institution must provide to receive the full allocation. The institution will be asked to select 1 of the following choices:
 - a. It will provide the full amount of institutional funds in order to receive the full allocation.
 - b. It will provide the full amount of institutional funds and also is prepared to provide additional institutional funds if additional federal and state funds should become available. The institution will be asked to specify the amount of additional institutional funds it will be able to provide.
 - c. It prefers to provide a lesser amount which will be noted in the space provided. In this case the federal and state amounts will be adjusted to meet the reduced institutional amount.
 - d. It chooses not to participate in the SSIGLEAP program for this period. In this case it is important that the institution return the form to the Commission to inform them of this choice.

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3. A response due date will be included in this notification. Only institutions whose response is received by the Commission by that due date will be eligible to participate in the SSIGLEAP Program for the ~~1996-97 program~~ that academic year.
 4. All institution responses which are received by the Commission on or before the response due date will determine the final list of institutions eligible to participate in the SSIGLEAP program. If all institutions elect to participate, the preliminary allocation will become the final allocation list. However, if some institutions choose not to participate, or if some prefer to participate at a reduced level, the staff will calculate a new final allocation list considering only the institutions on the final institutional eligibility list. The staff will then notify each participant institution of its revised allocation, the amount of institutional funds to provide, and instructions for transmitting its funds to the Commission.
 5. The Commission will maintain the necessary accounts for each eligible institution which participates in the Arizona SSIGLEAP Program. Each account will, as a minimum, show the current status of that account for its source of program funds, and such other information that the Commission deems necessary.
- C. Transfer of institutional funds.**
When the institution receives its final allocation notice from the Commission, it ~~should~~ shall send its institutional funds to the Commission. This transfer ~~should~~ shall take place beginning July 1, ~~1996~~ of each year. Checks conveying institutional funds ~~should~~ shall be made out to the Arizona Commission for Postsecondary Education -- SSIGLEAP Program.
- D. Disbursement of Arizona SSIGLEAP Program Funds to Participating Institutions.**
The Commission will disburse funds from the Arizona SSIGLEAP Program Fund to participating institutions for further disbursement to approved student applicants in accordance with the program calendar.
- E. Reallocation of Unused SSIGLEAP Program Funds.**
1. Schools will be contacted in February, and asked if they will be able to use all their funds or if they wish additional funding and the amount thereof.
 2. Schools not awarding 100% of their funds by the middle of February may have the remaining SSIGLEAP funds recovered by the Commission for reallocation. Remaining institutional funds, less administrative funds, will then be returned to each of those schools when the final program financial report has been received by the Commission.
 3. In March, a reallocation of funds will take place and funds will be available for those schools that asked for additional funds in February.
 - a. If the amount of available funds exceeds the total amount of requests, all requests will be honored. Any remaining available funds will be retained by the Commission for later reallocation.
 - b. If the amount of the requests exceeds the amount of available funds, the Commission will allocate those funds among the requesting institutions based on each institution's proportionate share of Arizona resident students eligible headcount for that institution. The enrollment at non-requesting institutions will not be included in these calculations.
 4. The staff will notify each participant institution of its share of the reallocation, the amount of institutional funds to provide, and instructions for transmitting its funds to the Commission.
 5. Any SSIGLEAP funds retained by the institutions, minus the institutional proportionate share originally paid, must be returned to the Commission in the form of a check by the end of July, along with the signed Financial Report. Any unused program funds remaining in the state treasury will be returned to the institutions in the same proportionate share as was paid in at the beginning of the program year. The Commission may impose a deduction in the amount of those unutilized program funds from a school's following years allocation.

R7-3-304. Arizona SSIGLEAP Student Eligibility Requirements

- A. Student eligibility requirements.**
To be eligible for a grant from the Arizona SSIGLEAP Program, a student must:
1. Be a resident of the State of Arizona as defined by the A.R.S. §§ 15-1802, 15-1803, 15-1804, and 15-1805;
 2. Be enrolled or accepted for enrollment on at least a half-time basis as defined in R7-3-309(A)(20) in an eligible course or program at an Arizona postsecondary educational institution which has met the institutional eligibility requirements in R7-3-302, and which has been approved by the Commission.
 3. At the discretion of the institution financial aid officer, this may include a person who has attained a baccalaureate or 1st professional degree and has re-entered an eligible Arizona postsecondary institution for retraining in a program below the baccalaureate level. Such a person will be considered an undergraduate student for SSIGLEAP purposes.
 4. Have a substantial demonstrated financial need determined in accordance with the provision given in this R7-3-304(B);
 5. Maintain satisfactory progress in a course of study as defined by the institution and not be in default or owe a repayment on a federal grant or loan. Refer to 34 C.F.R. 692.
- B. Financial Need Determination Procedures.**
The financial need of eligible students will be determined annually, or more often if need be, by the financial aid officer of the institution the student is attending, or will attend, using the Federal Methodology (FM) system of need analysis approved by the Commission and the U.S. Department of Education. A student must be considered to have substantial need.

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- C. A student is considered to have substantial financial need when:
1. The student has an expected family contribution of \$2,140 or less as a result of the student's FM need analysis for the program year; or,
 2. The difference between the student's cost of education and the student's expected family contribution is at least \$100.

R7-3-305. Arizona SSIGLEAP Award Procedures

- A. Eligible students who wish to apply for an SSIGLEAP award will provide to the financial aid office the information needed for the financial need analysis as specified in R7-3-304(B).
- B. The financial aid office will:
1. Determine whether or not the student meets the eligibility requirements for an Arizona SSIGLEAP award as outlined in R7-3-304(A);
 2. Determine the financial need of the student using the need analysis specified in R7-3-309(B);
 3. Exercise due diligence in determining that the student:
 - a. Satisfies verification procedures which may be required for federal Title IV financial aid programs;
 - b. Satisfies requirements listed under 34 C.F.R. 692.4.
 4. Recommending the amount of the SSIGLEAP award in accordance with the following guidelines:
 - a. Awards may be made only to students who meet the criteria of R7-3-304(A);
 - b. The total of all SSIGLEAP awards to a student may not exceed \$2,500 for the program year;
 - c. The financial aid officer will determine, based on student need, an award of no more than \$2,500 nor less than \$100 (round all awards to the nearest \$1.00).
 - d. The financial aid officer must insure that all applications are received in a timely fashion so disbursement of funds to students will be made before a semester or training period ends.
 - e. Sign the application form.
 5. Send the application form to:
ARIZONA COMMISSION FOR POSTSECONDARY EDUCATION
2020 North Central Avenue, Suite 275
Phoenix, Arizona 85004-4503
(Attention: ~~L.R. Bustillo, SSIG Administrator~~ Financial Aid Director)
 6. Receive approved applications, assure that SSIGLEAP award funds are disbursed to the student, and retain on file disbursement records (signed receipts, canceled checks, etc.) which verify that the student received the funds. No disbursement may be made to a student who, as a result of a change in status, no longer meets the eligibility requirements outlined in R7-3-304.
 7. Maintain adequate fiscal control, accounting, and financial aid records at the institution in accordance with approved state and federal procedures;
 8. Provide to the Commission such financial and other information as may be required to meet federal reporting and auditing requirements.
- C. The Arizona Commission for Postsecondary Education will:
1. Receive the application for the Arizona SSIGLEAP award;
 2. Verify that the student is eligible and that there are sufficient funds in the SSIGLEAP program account to fund the award;
 3. Approve applications which meet these criteria;
 4. Return applications that do not meet the criteria or are in any way incomplete to the financial aid office;
 5. Disburse funds to the institution's financial aid officer for the approved applications.

R7-3-306. Award Alterations

- A. The Commission will attempt to accommodate any changes which institutional financial aid officers wish to make in individual student awards. These changes might include, for example, cancellation of award, reduction in award level, or increase in award level.
1. Increased SSIGLEAP Awards: A student's SSIGLEAP award may be increased if the earlier award for that program year is less than the maximum amount specified, and if the student is eligible for such an increase. To increase an SSIGLEAP award, the institutional financial aid officer will simply submit to the Commission another SSIGLEAP application form, and provide updated financial aid information on the form. In no case may a student receive more than a total of \$2,500 in SSIGLEAP awards for a program year.
 2. Reversions: A student's SSIGLEAP award may be reduced or canceled. If a student officially or unofficially withdraws or is expelled from the institution, or if the student drops below the minimum number of hours, the institution financial aid officer must attempt to recover all of SSIGLEAP award funds possible in accordance with the repayment policies of that institution.
 3. The reversion procedure includes the following steps:
 - a. Funds are recovered from the student;
 - b. The financial aid officer completes the SSIGLEAP Reversion Form;

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- c. The financial aid officer forwards the completed SSIGLEAP Reversion Form(s) and the Transmittal Form to the Commission.
4. Reverted SSIGLEAP funds recovered by the Commission are redeposited in the secured SSIGLEAP program account and credited to the institution's SSIGLEAP Program Fund account. Such funds are then available to the institution to be used to make new SSIGLEAP awards.

R7-3-307. Administrative Costs

No federal SSIGLEAP funds may be used to administer the Arizona SSIGLEAP Program. Therefore, administrative expenses will be paid from nonfederal state appropriated or institutional program funds provided such payment does not reduce state appropriated matching funds necessary to receive the maximum federal SSIGLEAP funds.

R7-3-308. Institutional Program Review

- A. Commission staff members will review Institutional SSIGLEAP Program records for each program year, and each institution participating in the SSIGLEAP program will be visited at least once every 2 years. The purpose of the visit is to review, with institution financial aid and fiscal officers, the SSIGLEAP student records which state and federal regulations require be kept. Those records include documentation which verifies that:
 1. The student is a resident of the State of Arizona as prescribed by Arizona Revised Statutes.
 2. The student is currently enrolled at least half-time in an eligible course or program.
 3. The student has a demonstrated need for financial assistance as determined by a Federal Methodology needs analysis system approved by the Commission and the U. S. Department of Education.
 4. The student has received the SSIGLEAP funds approved for the award (for example, a canceled check, a written receipt, a signed roster).
 5. The institutional financial aid officer must assure that the total amount of financial aid awarded to a student, from all sources, added to the amount of the family contribution, is limited by and does not exceed the student's total cost of education. The SSIGLEAP award limits and the treatment of any additional funds which were received after the institutional aid awards were made shall be consistent with the federal regulations which govern the Federal Title IV, Campus-based programs.
 6. Repayments and refunds of SSIGLEAP disbursements which have been made to students shall be made in accordance with the written policies of the institution. These written policies must be consistent with applicable federal regulations and a copy must be filed at the Commission office at the beginning of each SSIGLEAP program year.
 7. Verify that the institution has a Certified Letter of Eligibility and a valid Program Participation Agreement from the Department of Education cited in 34 C.F.R. 668.

R7-3-309. Definitions

The following definitions are taken from the Federal Regulations which govern the SSIGLEAP program and apply to this Plan as well.

1. "Academic year" means a period of time, usually 8 to 9 months, during which a full-time student would normally be expected to complete the equivalent of 2 semesters (24 semester hours), 2 trimesters (24 trimester hours), 3 quarters (36 quarter hours), or 900 clock hours of instruction.
2. "Act" means the Higher Education Act of ~~1965~~1998, as amended, ~~Sections 415A-415D~~ of Title IV.
3. "Board" means the Arizona Board of Regents.
4. "C.F.R." means the Code of Federal Regulations.
- ~~45~~6. "Clock hour" means a period of time which is the equivalent of a 50 to 60 minute class, lecture, or recitation, or a 50 to 60 minute period of faculty-supervised laboratory, shop training, or internship.
- ~~56~~7. "Commission" means the Commission for Postsecondary Education.
- ~~67~~8. "Cost of education" means the cost of attending an institution as defined by the institution.
- ~~78~~9. "Dependent student" is a student who does not qualify as an Independent Student.
- ~~89~~10. "Eligible course or program" is 1 which is properly approved by an accrediting agency recognized by the U.S. Department of Education as being an integral part of the curriculum of the institution, is of postsecondary level, and is at least 1 semester in length at a college or university, or 6 months in length, or a minimum of 600 clock hours at a proprietary institution.
- ~~910~~11. "Expected family contribution of a dependent student" means the sum of amounts which reasonably may be expected from the student to meet the student's costs of education and the amount which reasonably may be expected to be made available to the student by the student's parents for such purpose. Amount is calculated based upon the Federal methodology need analysis for current program year.
- ~~4011~~12. "Expected Family Contribution of an Independent Student" means the amount which reasonably may be expected from the student or their spouse, or both, to meet the student's cost of education. Amount is calculated based upon the from Federal methodology need analysis for current program year.
- ~~4412~~13. "Federal methodology" means the methodology now mandated by federal regulation for determining financial need for federally funded programs.

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- ~~42~~13. "Full-time undergraduate student" means a student who has not attained the baccalaureate or 1st professional degree and who is carrying a full-time academic work load, other than by correspondence, measured in terms of:
- a. Course work or other required activities as determined by the institution in which the student is enrolled, or by the state whose agency is administering the program authorized by the Act, which amounts to the equivalent for institutions utilizing trimester, semester, or quarter hour systems, or which consists of a program requiring a minimum of 24 clock hours per week in a program of at least 6 months or 600 clock hours for those institutions that do not utilize such systems.
 - b. The tuition and fees customarily charged for full-time study by the institution.
- ~~43~~14. "Full-time graduate student" is a student who has attained a baccalaureate or 1st professional degree, has been accepted by the graduate college, and is enrolled in an approved graduate level program at an accredited university or college for a minimum of 9 semester, trimester, or quarter hours during a normal length term or 5 hours during a summer session.
- ~~44~~15. "Independent" means an independent student as defined by federal regulations.
- ~~45~~16. "Program funds" means the awards; reversions (reverted/retained); and unutilized Funds:
- a. Awards: Awarded ~~SSIGLEAP~~ Funds are dollars given in the form of grants to eligible students attending eligible postsecondary institutions.
 - b. Reversions:
 - i. Reverted ~~SSIGLEAP~~ funds are funds that have been awarded and because student is no longer eligible are returned to the Commission for re-use at a later date.
 - ii. Reverted Retained ~~SSIGLEAP~~ funds are those funds that institutions have kept and not transferred back to the Commission after the student who has been awarded is considered ineligible for ~~SSIGLEAP~~ award.
 - c. Unutilized: Unutilized ~~SSIGLEAP~~ Program Funds are those Funds that have never been awarded to a student by an eligible institution.
- ~~46~~17. "Public or private nonprofit institution of higher education" means an educational institution which:
- a. Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate.
 - b. Is legally authorized to provide a program of education beyond secondary education.
 - c. Provides an educational program for which it awards an associate, baccalaureate, or professional degree or at least a 2-year program which is acceptable for full credit towards a baccalaureate degree, or at least a 6-month vocational program which leads to a certificate or degree and prepares students for gainful employment in a recognized occupation.
 - d. Is accredited by a nationally recognized accrediting agency or association or, if not so accredited,
 - i. Is an institution with respect to which the Commission has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards, and the purpose for which this determination is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time, or
 - ii. Is an institution whose credits are accepted on transfer, by not less than 3 institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited. This term also includes a public or nonprofit private educational institution which, in lieu of the requirement in this subsection 309(A)(16)(d)(I) admits as regular students persons who are beyond the age of compulsory school attendance in the state in which the institution is located and who have the ability to benefit from the training offered by the institution.
- ~~47~~18. "Nonprofit" as applied to a school, agency, organization, or institution means a school, agency, organization, or institution owned and operated by 1 or more nonprofit corporations or associations no part of the net earnings of which may lawfully inure to the benefit of any private shareholder or individual.
- ~~48~~19. "Parent" means the student's mother or father, or both, legal guardians or legally adoptive parents. This does not include foster parents.
- ~~49~~20. "Part-time undergraduate student" is a student who is enrolled at least half-time, but less than full-time, in an eligible program at an eligible and participating Arizona institution. In no case will this be less than 6 semester, trimester or quarter hours per academic term (including 1 summer session), or less than 12 clock hours per week for institutions which utilize a clock hour system.
- ~~20~~21. "Part-time graduate student" is a student who has attained a baccalaureate or 1st professional degree, has been accepted by the graduate college, and is enrolled in an approved graduate level program at an accredited university or college for a minimum of 6 semester, trimester, or quarter hours during any term, including summer sessions.
- ~~24~~22. "Postsecondary education institution" means an educational institution which offers courses or training programs which are beyond the high school level in scope and complexity and which are open to the general public. Major categories are public universities, private colleges and universities, community colleges and proprietary institutions.

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23. "Program Year" means the consecutive period which begins on July 1, ~~1996~~ and runs through June 30, ~~1997~~ of any given year.
24. "Proprietary institution of higher education" means an educational institution:
 - a. Which provides not less than a 6-month or 600 clock hour program of training to prepare students for gainful employment in a recognized occupation,
 - b. Which admits as regular students only persons having a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate, or persons who are beyond the age of compulsory school attendance and who have the ability to benefit from the training offered,
 - c. Which is legally authorized by the state in which it is located to provide a program of education beyond secondary education,
 - d. Which is accredited by a nationally recognized accrediting agency or association approved by the U.S. Commissioner of Education for this purpose,
 - e. Which is not a public or other nonprofit institution, and
 - f. Which has been in existence for at least 2 years. The term also includes any proprietary institution which offers degrees at the associate, baccalaureate or graduate level, and which has an agreement with the U.S. Secretary of Education containing the terms and conditions which the Secretary determines to be necessary to insure that the availability of assistance to students at the school under this program has not resulted, and will not result, in an increase in the tuition, fees, or other changes to students.
25. "State" means, in addition to the several states of the Union, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and Trust Territory of the Pacific Islands, and the Virgin Islands.

NOTICE OF PROPOSED RULEMAKING

**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;
SECURITIES REGULATION**

**CHAPTER 4. CORPORATION COMMISSION
SECURITIES**

PREAMBLE

1. **Sections Affected** **Rulemaking Action**
R14-4-143 New Section
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. §§ 44-1821(A), 44-1941(C), 44-1945(B)
Implementing statute: A.R.S. §§ 44-1801, 44-1842
Constitutional authority: Arizona Constitution Article XV §§ 4, 6, and 13
3. **A list of all previous notices appearing in the Arizona Administrative Register:**
Notice of Rule Making Docket Opening: 5 A.A.R. 622, February 26, 1999.
4. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Cheryl T. Farson, Associate General Counsel
Address: Arizona Corporation Commission, Securities Division
1300 West Washington, Third Floor
Phoenix, Arizona 85007-2996
Telephone: (602) 542-4242
Fax: (602) 594-7470
5. **An explanation of the rule, including the agency's reasons for initiating the rule:**
The Arizona Corporation Commission (the "Commission") proposes the adoption of R14-4-143, which will allow dealers and salesmen to use the Internet for general distribution of information regarding products and services without first complying with registration requirements under the Securities Act of Arizona.

The Commission recognizes that the Internet facilitates the ability of dealers and salesmen to advertise and otherwise disseminate information to the general public that is beneficial to potential investors. However, the distribution of

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information on the Internet by dealers or salesmen may be, for purposes of the Securities Act of Arizona, construed as transacting business in securities, which activity would require the dealers or salesmen to register. The Commission does not find that registration of dealers and salesmen solely based upon that activity is necessary to protect the public interest. Therefore, the Commission proposes the adoption of R14-4-143, which provides guidelines under which dealers and salesmen may distribute information on the Internet without necessitating compliance with registration requirements.

R14-4-143 is based on the Interpretive Order Concerning Broker-Dealers, Investment Advisers, Broker-Dealer Agents and Investment Adviser Representatives Using the Internet for General Dissemination of Information on Products and Services adopted by the North American Securities Administrators Association, Inc., on April 23, 1997.

6. Reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material.

None.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Proposed R14-4-143 will allow dealers or salesmen to distribute information regarding products or services on the Internet without registration if distributed according to the provisions of the rule. This rule does not preclude or prohibit the application of antifraud provisions to such activities. The Commission anticipates that the benefit to potential investors of access to such information will exceed any diminishment of the authority of the Commission that may be caused by the inapplicability of the registration requirements to dealers or salesmen distributing such information on the Internet.

8. The preliminary summary of the economic, small business, and consumer impact:

Pursuant to A.R.S. § 41-1055(D)(3), the Commission is exempt from providing an economic, small business, and consumer impact statement.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Not applicable.

10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule, or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: June 10, 1999

Time: 9:30 a.m.

Location: Arizona Corporation Commission
1200 West Washington Avenue
Phoenix, Arizona 85007

Nature: Oral proceeding. Subsequent to the oral proceeding, the Arizona Corporation Commission will take final action at an open meeting with respect to the making of the proposed rule.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None.

12. Incorporations by reference and their location in the rules:

None.

13. The full text of the rule follows:

**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;
SECURITIES REGULATION**

**CHAPTER 4. CORPORATION COMMISSION
SECURITIES**

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ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

Section

R14-4-143. General dissemination of information on the Internet

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

R14-4-143. General dissemination of information on the Internet

- A.** Dealers and salesmen who use the Internet to distribute information on products and services directed generally to anyone having access to the Internet shall not be deemed to be selling, purchasing, or offering to sell or buy any securities in Arizona for purposes of Article 4 of the Securities Act of Arizona based solely on that activity if the following conditions are observed:
1. The Internet communication includes a clear and prominent statement that the dealer or salesman may only sell, purchase, or offer to sell or buy any securities in Arizona if first compliant with or exempt from registration requirements.
 2. The dealer or salesman complies with the statement contained in the Internet communication under subsection (A)(1).
 3. The Internet communication is subject to a mechanism, policy, or procedure reasonably designed to ensure that, prior to any sale, purchase, or offer to sell or buy in connection with prospective customers or clients in Arizona, the dealer or salesman is first compliant with or exempt from registration requirements.
 4. The Internet communication does not involve either effecting or attempting to effect transactions in securities, the rendering of investment advice for compensation, or individualized solicitation or negotiations for the sale of investment advisory services in Arizona.
 5. In the case of a salesman:
 - a. The affiliation with a dealer is prominently disclosed in the Internet communication.
 - b. The dealer with whom the salesman is associated first authorizes the Internet communication.
 - c. The dealer with whom the salesman is associated retains responsibility for reviewing and approving the content of any Internet communication.
 - d. In distributing information through the Internet, the salesman acts within the scope of the authority granted by the dealer.
- B.** Compliance with this Section relieves the dealer or salesman from registration requirements only. The dealer or salesman is subject to Article 13 of the Securities Act of Arizona and related regulations.

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**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;
SECURITIES REGULATION**

**CHAPTER 6. CORPORATION COMMISSION
INVESTMENT MANAGEMENT**

PREAMBLE

<u>1. Sections Affected</u>	<u>Rulemaking Action</u>
R14-6-101	Amend
R14-6-102	Amend
R14-6-103	Amend
R14-6-104	Amend
R14-6-106	New Section
R14-6-201	Amend
R14-6-202	Amend
R14-6-203	Amend
R14-6-204	Amend
R14-6-205	Amend
R14-6-206	Amend
R14-6-207	Amend
R14-6-208	Amend
R14-6-209	Amend
R14-6-210	New Section

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R14-6-205. Information to be furnished to clients (“Brochure Rule”): prescribes information that must be furnished to clients and the timing and method of such disclosure.

R14-6-206. Custody of client funds or securities by investment advisers: provides that it is a fraudulent practice under the IM Act for an investment adviser to fail to comply with the procedures prescribed in the Section when maintaining custody of a client’s funds or securities.

R14-6-207. Suitability of investment advisory services: provides that it is a fraudulent practice under the IM Act for an investment adviser to fail to provide suitable investment advice based on a reasonable inquiry of the client’s financial situation, investment experience, and investment objectives.

R14-6-208. Advertisements by investment advisers or investment adviser representatives: provides that it is a fraudulent practice under the IM Act for an investment adviser or investment adviser representative to fail to comply with the limitations on advertising and the requirements prescribed in the Section.

R14-6-209. Financial and disciplinary information that investment advisers shall disclose to clients: provides that it is a fraudulent practice for an investment adviser to fail to disclose to any client or prospective client all material facts with respect to (1) a financial condition that is reasonably likely to impair the adviser’s ability to meet contractual commitments to clients where the adviser has discretionary authority, custody, or requires prepayments of fees, (2) a legal or disciplinary event that is material to the evaluation of the adviser’s integrity or ability to meet contractual commitments to clients, or (3) a failure to comply with an arbitration award.

R14-6-210. Licensure of investment adviser representatives: provides the circumstances under which investment adviser representatives who are employed by federally registered investment advisers must be licensed in Arizona. Also provides that a person employing investment adviser representatives who solicit on behalf of another investment adviser must license as an investment adviser.

R14-6-211. Solicitation: defines the activities that do not constitute solicitation for purposes of A.R.S. § 44-3101(3)(d).

R14-6-212. Filing requirements: enumerates the specific filing requirements for licensure, notice filings, and renewal of licensure and notice filings.

6. **Reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material.**

None.

7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

8. **The preliminary summary of the economic, small business, and consumer impact:**

Pursuant to A.R.S. § 41-1055(D)(3), the Commission is exempt from providing an economic, small business, and consumer impact statement.

9. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Not applicable.

10. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule, or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Date: June 10, 1999

Time: 10 a.m.

Location: Arizona Corporation Commission
1200 West Washington Avenue
Phoenix, Arizona 85007

Nature: Oral proceeding. Subsequent to the oral proceeding, the Arizona

Corporation Commission will take final action at an open meeting with respect to the making of the proposed rule.

11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None.

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- 12. Incorporations by reference and their location in the rules:**
17 CFR 275.204.2 (1998) R14-6-101(B)(16)

13. The full text of the rule follows:

**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;
SECURITIES REGULATION**

**CHAPTER 6. CORPORATION COMMISSION
INVESTMENT MANAGEMENT**

ARTICLE 1. GENERAL PROVISIONS RELATING TO THE ARIZONA INVESTMENT MANAGEMENT ACT

Section

- R14-6-101. Definitions
R14-6-102. Scope of ~~this Article~~ Provisions
R14-6-103. Severability
R14-6-104. Enforcement of the Arizona Investment Management Act
R14-6-106. General Dissemination of Information on the Internet

ARTICLE 2. DUTIES OF INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

- R14-6-201. Books and Records of Investment Advisers
R14-6-202. Supervision
R14-6-203. Dishonest and Unethical Practices
R14-6-204. Written Examination
R14-6-205. Information to be Furnished to Clients (“Brochure Rule”)
R14-6-206. Custody of Client Funds or Securities by Investment Advisers
R14-6-207. Suitability of Investment Advisory Services
R14-6-208. Advertisements by Investment Advisers or Investment Adviser Representatives
R14-6-209. Financial and Disciplinary Information that Investment Advisers shall Disclose to Clients
R14-6-210. Licensure of Investment Adviser Representatives
R14-6-211. Solicitation
R14-6-212. Filing Requirements

ARTICLE 1. GENERAL PROVISIONS RELATING TO THE ARIZONA INVESTMENT MANAGEMENT ACT

R14-6-101. Definitions

- ~~A.~~ The definitions set forth in A.R.S. §§ 44-1801 and 44-3101 shall apply to the rules promulgated under Chapter 13.
~~B.~~ The following definitions shall apply to all rules promulgated under Chapter 13 unless the context otherwise requires:
1. “IM Act” means the Arizona Investment Management Act, A.R.S. § 44-3101 *et seq.*
 2. “Advertisement” means, except as set forth in subsections (d) and (e), any notice, circular, letter, or other written, oral, or electronically-generated communication addressed to or reasonably designed by the investment adviser or investment adviser representative to be accessed by more than 1 person, or any notice or other announcement in any publication or by radio or television, which directly or indirectly offers:
 - a. Any analysis, report, or publication concerning securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or
 - b. Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or
 - c. Any other investment advisory service with regard to securities; or
 - d. A communication over a computer on-line service including, but not limited to, an electronic bulletin board shall not be deemed to be an advertisement when an investment adviser or an investment adviser representative is either:
 - i. Engaged in a discussion regarding securities and does not receive compensation from any person for the discussion; or
 - ii. Responds to unsolicited inquiries regarding the provision of investment advisory services.
 - e. A communication by 1 or more investment advisers or investment adviser representatives shall not be deemed to be an advertisement when the communication is addressed solely to or is reasonably designed to be accessed solely by other investment advisers or investment adviser representatives.
 3. “Certified public accountant” or “CPA” means an accountant who has been registered or licensed to practice public accounting and is permitted to use the title “certified public accountant” and use the initials “CPA” after the accountant’s name.

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4. "~~Chapter 13~~" means A.R.S. Title 44, Chapter 13.
5. "~~Commodity Exchange Act~~" means 7 U.S.C. 1 *et seq.* (1988 & Supp. V 1993), which is incorporated by reference, does not contain any later amendments or editions, and is on file in the Office of the Secretary of State. Copies of the Commodity Exchange Act are available from the Securities Division of the Corporation Commission and from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.
6. "~~Division~~" means the Securities Division of the Corporation Commission.
7. "~~Fixed fee basis~~" means an investment advisory fee which at any given time can be precisely established in dollar amount without regard to the investment performance or value of an account and which is not based on the purchase or sale of specific securities.
8. "~~Form ADV~~" means the Uniform Application for Investment Adviser Registration, 17 CFR 279.1 (1994) (Form amended at 59 FR 21657 (1994) and 59 FR 27659 (1994)), which is incorporated by reference, does not contain any later amendments or editions, and is on file in the Office of the Secretary of State. Copies of Form ADV are available from the Division and from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.
9. "~~Impersonal advisory services~~" means investment advisory services provided solely:
 - a. ~~By means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts;~~
 - b. ~~Through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or~~
 - e. ~~Any combination of the foregoing services.~~
10. "~~NASAA~~" means the North American Securities Administrators Association, Inc. or any successor organization.
11. "~~NASD~~" means the National Association of Securities Dealers, Inc. or any successor organization.
12. "~~Relative~~" means any relationship by blood, marriage, or adoption, not more remote than 1st cousin.
13. "~~Rule 204-2~~" means ~~United States Securities and Exchange Commission Rule 204-2, 17 CFR 275.204.2 (1994),~~ which is incorporated by reference, does not contain any later amendments or editions, and is on file in the Office of the Secretary of State. Copies of Rule 204-2 are available from the Division and from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.
14. "~~Rule 204-3~~" means ~~United States Securities and Exchange Commission Rule 204-3, 59 FR 21661 (1994) (to be codified at 17 CFR 275.204.3),~~ which is incorporated by reference, does not contain any later amendments or editions, and is on file in the Office of the Secretary of State. Copies of Rule 204-3 are available from the Division and from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.
15. "~~SEC~~" means United States Securities and Exchange Commission.
16. "~~Securities Act~~" means the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.*
17. "~~Unincorporated organization~~" includes a limited liability company for purposes of the definition of "person," as defined in A.R.S. § 44-1801(13).

A. The definitions set forth in A.R.S. §§ 44-1801 and 44-3101 shall apply to the rules promulgated under A.R.S. title 44, chapter 13.

B. The following definitions shall apply to all rules promulgated under A.R.S. title 44, chapter 13, unless the context otherwise requires:

1. "Advertisement" means, except as set forth in subsections (d) and (e), any notice, circular, letter, or other written, oral, or electronically generated communication addressed to or reasonably designed by the investment adviser or investment adviser representative to be accessed by more than 1 person, or any notice or other announcement in any publication or by radio or television, that directly or indirectly offers:
 - a. Any analysis, report, or publication that either concerns securities, or is to be used in making any determination as to when to buy or sell any security or which security to buy or sell; or
 - b. Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or
 - c. Any other investment advisory service with regard to securities; or
 - d. A communication over a computer on-line service including but not limited to an electronic bulletin board shall not be deemed to be an advertisement when an investment adviser or an investment adviser representative is either:
 - i. Engaged in a discussion regarding securities and does not receive compensation from any person for the discussion; or
 - ii. Responds to unsolicited inquiries regarding the provision of investment advisory services.
 - e. A communication by 1 or more investment advisers or investment adviser representatives shall not be deemed to be an advertisement when the communication is addressed solely to or is reasonably designed to be accessed solely by other investment advisers or investment adviser representatives.
2. "Certified public accountant" or "CPA" means an accountant who has been registered or licensed to practice public accounting and is permitted to use the title "certified public accountant" and to use the initials "CPA" after the accountant's name.

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3. "Federal covered adviser" means an investment adviser registered under the investment advisers act of 1940.
4. "Fixed fee basis" means an investment advisory fee that at any given time can be precisely established in a dollar amount without regard to the investment performance or value of an account and that is not based on the purchase or sale of specific securities.
5. "Form ADV" means the Uniform Application for Investment Adviser Registration, 17 CFR 279.1.
6. "IM Act" means the Arizona Investment Management Act, A.R.S. § 44-3101 et seq.
7. "Impersonal advisory services" means investment advisory services provided solely:
 - a. By means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts;
 - b. Through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or
 - c. Any combination of the foregoing services.
8. "Internet" means all proprietary or common carrier electronic systems, or similar media.
9. "Internet communication" means the distribution of information on the Internet.
10. "Investment-related" means pertaining to securities, commodities, banking, insurance, or real estate, including but not limited to acting as or being associated with a broker-dealer, investment company, investment adviser, government securities broker or dealer, municipal securities dealer, bank, savings and loan association, entity, or person required to be registered under the Commodity Exchange Act, or fiduciary.
11. "Involved" means acting or aiding, abetting, causing, counseling, commanding, inducing, conspiring with, or failing reasonably to supervise another in doing an act.
12. "Management person" means a person with power to exercise, directly or indirectly, a controlling influence over the management or policies of an investment adviser that is a company or to determine the general investment advice given to clients.
13. "NASAA" means the North American Securities Administrators Association, Inc., or any successor organization.
14. "NASD" means the National Association of Securities Dealers, Inc., or any successor or subsidiary organization.
15. "Relative" means any relationship by blood, marriage, or adoption, not more remote than 1st cousin.
16. "Rule 204-2" means United States securities and exchange commission rule 204-2, 17 CFR 275.204.2 (1998), which is incorporated by reference, does not contain any later amendments or editions, and is on file in the office of the secretary of state. Copies of Rule 204-2 are available from the Division and from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.
17. "SEC" means United States Securities and Exchange Commission.
18. "Securities Act" means the Securities Act of Arizona, A.R.S. § 44-1801 et seq.
19. "Self-regulatory organization" or "SRO" means any national securities or commodities exchange, registered association, or registered clearing agency.
20. "Unincorporated organization" includes a limited liability company for purposes of the definition of "person," as defined in A.R.S. § 44-1801.
21. "Wrap fee program" means a program under which any client is charged a specified fee or fees not based directly upon transactions in a client's account for investment advisory services, which may include portfolio management or advice concerning the selection of other investment advisers, and execution of client transactions.

R14-6-102. Scope of this Article Provisions

The following rules are adopted by the Commission under the authority granted pursuant to Chapter 13. All rules shall be generally applicable to the administration of the IM Act but the Commission may at any time abrogate or waive strict adherence to any particular rule in any specific instance where the Commission may deem it advisable for the equitable administration of the law. When not in conflict with these rules, the applicable provisions of A.A.C. R14-3-101 through R14-3-113 also shall apply.

The following Sections are adopted by the Commission under the authority granted pursuant to A.R.S. title 44, chapter 13. Such Sections shall be generally applicable to the administration of the IM Act, but the Commission may at any time abrogate or waive strict adherence to any particular provision when the Commission deems it advisable for the equitable administration of the law. When not in conflict with these Sections, the applicable provisions of R14-3-101 through R14-3-113 also shall apply.

R14-6-103. Severability

The provisions of the rules promulgated under Chapter 13 are severable. If any provision of a rule is held to be invalid, such invalidity shall not affect other provisions which can be given effect without the invalid provision.

The provisions of the Sections promulgated under A.R.S. title 44, chapter 13, are severable. If any provision of a Section is held to be invalid, such invalidity shall not affect other provisions that can be given effect without the invalid provision.

R14-6-104. Enforcement of the Arizona Investment Management Act

The rules relating to investigations and examinations conducted pursuant to and orders issued under the IM Act are contained at A.A.C. R14-4-301 through R14-4-308.

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The provisions relating to investigations and examinations conducted pursuant to and orders issued under the IM Act are contained at A.A.C. R14-4-301 through R14-4-308.

R14-6-106. General dissemination of information on the Internet

- A.** Investment advisers and investment adviser representatives who use the Internet to distribute information on products and services directed generally to anyone having access to the Internet shall not be deemed to be transacting business in Arizona for purposes of Article 4 of the IM Act based solely on that activity if the following conditions are observed:
1. The Internet communication includes clear and prominent statements that:
 - a. The investment adviser or investment adviser representative may only transact business in Arizona if first compliant with or exempt from licensure or notice filing requirements.
 - b. The investment adviser or investment adviser representative may only communicate with persons in Arizona individually about effecting or attempting to effect transactions in securities, rendering investment advice for compensation, or soliciting or negotiating for the sale of investment advisory services if first compliant with or exempt from licensure or notice filing requirements.
 2. The investment adviser or investment adviser representative complies with the statements contained in the Internet communication under subsection (A)(1).
 3. The Internet communication is subject to a mechanism, policy, or procedure reasonably designed to ensure that, prior to any subsequent, direct communication with prospective customers or clients in Arizona, the investment adviser or investment adviser representative is first compliant with or exempt from the licensure or notice filing requirements of the IM Act.
 4. The Internet communication does not involve either effecting or attempting to effect transactions in securities, the rendering of investment advice for compensation, or individualized solicitation or negotiations for the sale of investment advisory services in Arizona.
 5. In the case of an investment adviser representative:
 - a. The affiliation with an investment adviser is prominently disclosed in the Internet communication.
 - b. The investment adviser with whom the investment adviser representative is associated first authorizes the Internet communication.
 - c. The investment adviser with whom the investment adviser representative is associated retains responsibility for reviewing and approving the content of any Internet communication.
 - d. In distributing information through the Internet, the investment adviser representative acts within the scope of the authority granted by the investment adviser.
- B.** Compliance with this Section relieves the investment adviser or investment adviser representative of licensure or notice filing requirements only. The investment adviser or investment adviser representative are subject to Article 9 of the IM Act and related regulations.

ARTICLE 2. DUTIES OF INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

R14-6-201. Books and Records of Investment Advisers

- A.** Each investment adviser shall make, maintain, and preserve books and records in compliance with Rule 204-2. The investment adviser shall concurrently file with the Commission a copy of any notices or written undertakings required to be filed with the SEC under Rule 204-2.
- B.** To the extent that the SEC amends Rule 204-2, investment advisers in compliance with Rule 204-2 as amended shall not be deemed to be in violation of this Section and shall not be subject to enforcement action by the Commission for violation of this Section to the extent that the violation results solely from the investment adviser's compliance with the amended Rule 204-2.
- C.** As of the effective date of this Section, each investment adviser shall make, maintain, and preserve for at least 5 years the following additional books and records:
1. A file containing each customer complaint received relating to advisory activities conducted by the investment adviser, its investment advisory representatives, or its employees, and all correspondence relating to such complaint;
 2. A file containing all advertisements used by the investment adviser or any investment adviser representative, including any radio or television transcripts and advertisements placed on computer or electronic bulletin boards;
 3. In each client file, all correspondence received or sent by the investment adviser, any investment adviser representative, or any employee, that relates to any client account, securities, or funds.
- D.** Books and records that are required to be maintained pursuant to subsection (A) shall be available for inspection by the Commission in accordance with the provisions of Rule 204-2. Books and records that are required to be maintained pursuant to subsection (C) shall be readily accessible and may be preserved in accordance with Rule 204-2(g).
- A.** Except as provided in subsection (G), each investment adviser licensed or required to be licensed under the IM Act shall make, maintain, and preserve books and records in accordance with the requirements imposed on federal covered advisers under rule 204-2. The investment adviser shall file with the Commission a copy of any notices or written undertakings required to be filed by federal covered advisers with the SEC under rule 204-2.

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- B.** To the extent that the SEC amends rule 204-2, investment advisers in compliance with the requirements contained in rule 204-2 as amended shall not be deemed to be in violation of this Section and shall not be subject to enforcement action by the Commission for violation of this Section to the extent that the violation results solely from the investment adviser's compliance with the requirements contained in the amended rule 204-2.
- C.** Except as provided in subsection (G), each investment adviser licensed or required to be licensed under the IM Act shall make, maintain, and preserve for at least 5 years the following additional books and records:
1. A file containing each customer complaint received relating to advisory activities conducted by the investment adviser, its investment advisory representatives, or its employees, and all correspondence relating to such complaint.
 2. A file containing all advertisements used by the investment adviser or any investment adviser representative, including any radio or television transcripts and advertisements placed on computer or electronic bulletin boards.
 3. In each client file, all correspondence received or sent by the investment adviser, any investment adviser representative, or any employee, that related to any client account, securities, or funds.
- D.** Books and records that are required to be maintained pursuant to subsection (A) shall be available for inspection by the Commission in accordance with the provisions of rule 204-2. Books and records that are required to be maintained pursuant to subsection (C) shall be readily accessible and may be preserved in accordance with rule 204-2(g). Notwithstanding other record preservation requirements of this Section, the following records or copies shall be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:
1. Records required to be preserved under rule 204-2(a)(3), (a)(7) through (10), (a)(14) through (15), (b), and (c).
 2. Records required to be preserved under subsection (C) of this Section.
- E.** A record made and kept under a provision of subsections (A) or (C) that contains all of the information required under any other provision of subsections (A) or (C) in a readily accessible format need not be maintained in duplicate in order to meet the requirements of the other provision.
- F.** Any book or other record made, kept, maintained, and preserved in compliance with A.A.C. R14-4-132 that is substantially the same as the book or other record required to be made, kept, maintained, and preserved under this Section shall be deemed to be made, kept, maintained, and preserved in compliance with this Section.
- G.** Every investment adviser licensed or required to be licensed in Arizona that has its principal place of business in a state other than Arizona shall be exempt from the requirements of this Section, provided the investment adviser is licensed in such other state and is in compliance with that state's recordkeeping requirements.

R14-6-202. Supervision

For purposes of A.R.S. § 44-3201(A)(12), no investment adviser shall be deemed to have failed to reasonably supervise its investment adviser representatives or employees if:

- ~~1. There have been established and maintained written procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any violation by such investment adviser representatives or employees of the IM Act, or any rule adopted thereunder; and~~
- ~~2. Such investment adviser has reasonably discharged the duties and obligations incumbent upon it by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with.~~

For purposes of A.R.S. § 44-3201(A)(12), no investment adviser shall be deemed to have failed to reasonably supervise its investment adviser representatives or employees if:

1. The investment adviser has established and maintained written procedures, and a system for applying such procedures, that reasonably may be expected to prevent and detect, insofar as practicable, any violation of the IM Act or any rule adopted thereunder by such investment adviser representatives or employees; and
2. Such investment adviser has discharged reasonably the duties and obligations incumbent upon it by reason of such procedures and system without reasonable cause to believe that the investment adviser representatives or employees are not complying with such procedures and system.

R14-6-203. Dishonest and Unethical Practices

~~"Dishonest and unethical practices", with respect to investment advisers and investment adviser representatives under A.R.S. § 44-3201(A)(13) shall include, but not be limited to, the following:~~

- ~~1. Refusing to allow or otherwise impeding designees of the Commission from conducting an investigation or examination under the IM Act or any rule adopted thereunder;~~
- ~~2. Placing an order to purchase or sell a security for the account of a client without authority to do so;~~
- ~~3. Placing an order to purchase or sell a security for the account of a client upon instruction of a 3rd party without first obtaining a written 3rd party trading authorization from the client;~~
- ~~4. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without first obtaining written discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of specified securities shall be executed, or both;~~

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- ~~5. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives, and character of the account;~~
 - ~~6. Borrowing money or securities from a client or client's account unless the client is a dealer, an affiliate, or relative of the investment adviser or investment adviser representative, or a financial institution or other entity engaged in the business of loaning funds or securities;~~
 - ~~7. Loaning money to a client unless the investment adviser or investment adviser representative is a financial institution or other entity engaged in the business of loaning funds or the client is an affiliate or relative of the investment adviser or investment adviser representative;~~
 - ~~8. Misrepresenting to any client, or prospective client, the qualifications of the investment adviser, the investment adviser representative, or an employee, or misrepresenting the nature of the investment advisory services being offered or fees to be charged for such services, or omitting to state a material fact necessary to make the statements made regarding qualifications, services, or fees, in light of the circumstances under which they were made, not misleading;~~
 - ~~9. Providing a report or recommendation to any client prepared by someone other than the investment adviser or investment adviser representative without disclosing that fact. This prohibition does not apply to a situation where the investment adviser or investment adviser representative uses published research reports or statistical analyses to render investment advice or where the investment adviser or investment adviser representative orders such a report in the ordinary course of providing service;~~
 - ~~10. Charging a client an investment advisory fee that is unreasonable in light of the type of services to be provided, the experience and expertise of the investment adviser or the investment adviser representative, the sophistication and bargaining power of the client, and whether the investment adviser has disclosed that lower fees for comparable services may be available from other sources;~~
 - ~~11. Failing to disclose to a client in writing before entering into or renewing an investment advisory agreement with that client, or before any investment advice is rendered, any material conflict of interest relating to the investment adviser, the investment adviser representative, or an employee which could reasonably be expected to impair the rendering of unbiased and objective advice including, but not limited to:
 - ~~a. Compensation arrangements connected with investment advisory services to clients which are in addition to compensation from such clients for those services; and~~
 - ~~b. Charging a client an investment advisory fee for rendering investment advice without disclosing that compensation for executing securities transactions pursuant to such investment advice will be received by the investment adviser, the investment adviser representative, or an employee;~~~~
 - ~~12. Promising or guaranteeing a client that a gain, loss, or other outcome will be achieved as a result of the investment advice;~~
 - ~~13. Disclosing the identity, affairs, or investments of a client to any 3rd party unless required by law to do so, or unless consented to by the client;~~
 - ~~14. With respect to any client initially retained after the effective date of this rule, entering into, extending, modifying, or renewing any investment advisory contract except a contract for impersonal advisory services unless such contract is in writing and discloses all the material terms of the contract including but not limited to the services to be provided, the investment 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 non-performance, and of any grant of discretionary power to the investment adviser;~~
 - ~~15. With respect to any client initially retained after the effective date of this rule, entering into, extending, modifying, or renewing any investment advisory contract without disclosing, in writing to the client, any affirmative answers to disciplinary questions numbered 11A and 11K in Part I of the Form ADV;~~
 - ~~16. Entering into, extending, modifying, or renewing any investment advisory contract which allows the assignment of such contract by the investment adviser without the prior written consent of the client;~~
 - ~~17. Committing any act that results in denial, revocation, or suspension of a license or registration relating to securities by an agency of any state, where such denial, revocation or suspension arises out of any scheme, act, practice or course of business that operates or would operate as a fraud or deceit, or arises out of a violation of Article 13 of the Securities Act or the rules promulgated thereunder; and~~
 - ~~18. For any investment adviser to, in any manner, request, or require, in any contract, agreement, or otherwise, any condition, stipulation, or provision binding on any person to waive compliance with any provision of the IM Act or the rules thereunder. Any such waiver shall be void.~~
- A.** Except as otherwise provided in subsection (B), "dishonest and unethical practices," with respect to investment advisers and investment adviser representatives under A.R.S. § 44-3201(A)(13), shall include but not be limited to the following:
1. Refusing to allow or otherwise impeding the Commission from conducting an investigation or examination under the IM Act or any rule adopted thereunder.
 2. Placing an order to purchase or sell a security for the account of a client without authority to do so.

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3. Placing an order to purchase or sell a security for the account of a client upon instruction of a 3rd party without first obtaining a written 3rd-party trading authorization from the client.
 4. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without first obtaining written discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of specified securities shall be executed, or both.
 5. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives, and character of the account.
 6. Borrowing money or securities from a client or client's account unless the client has authorized the borrowing in writing and is a dealer, an affiliate, or relative of the investment adviser or investment adviser representative, or a financial institution or other entity engaged in the business of loaning funds or securities.
 7. Loaning money to a client unless the investment adviser or investment adviser representative is a financial institution or other entity engaged in the business of loaning funds or the client is an affiliate or relative of the investment adviser or investment adviser representative.
 8. Misrepresenting to any client, or prospective client, the qualifications of the investment adviser, the investment adviser representative, or an employee, or misrepresenting the nature of the investment advisory services being offered or fees to be charged for such services, or omitting to state a material fact necessary to make the statements made regarding qualifications, services, or fees, in light of the circumstances under which they were made, not misleading.
 9. Providing a report or recommendation to any client prepared by someone other than the investment adviser or investment adviser representative without disclosing that fact. This prohibition does not apply to a situation where the investment adviser or investment adviser representative uses published research reports or statistical analyses to render investment advice or where the investment adviser or investment adviser representative orders such a report in the ordinary course of providing service.
 10. Charging a client an investment advisory fee that is unreasonable in light of the type of services to be provided, the experience and expertise of the investment adviser or the investment adviser representative, and the sophistication and bargaining power of the client.
 11. Failing to disclose to a client in writing before entering into or renewing an investment advisory agreement with that client, or before any investment advice is rendered, any material conflict of interest relating to the investment adviser, the investment adviser representative, or an employee that could reasonably be expected to impair the rendering of unbiased and objective advice including but not limited to:
 - a. Compensation arrangements connected with investment advisory services to clients that are in addition to compensation from such clients for those services; and
 - b. Charging a client an investment advisory fee for rendering investment advice without disclosing that compensation for executing securities transactions pursuant to such investment advice will be received by the investment adviser, the investment adviser representative, or an employee.
 12. Guaranteeing a client that a gain, loss, or other outcome will be achieved as a result of the investment advice.
 13. Disclosing the identity, affairs, or investments of a client to any 3rd party unless required by law to do so or consented to by the client.
 14. With respect to any client initially retained after July 19, 1996, entering into, extending, modifying, or renewing any investment advisory contract except a contract for impersonal advisory services unless such contract is in writing and discloses all the material terms of the contract including but not limited to the services to be provided, the investment advisory fee or the formula for computing the fee, the amount or the manner of calculation of the amount of the pre-paid fee to be returned in the event of contract termination or nonperformance, and that grant of any discretionary power to the investment adviser.
 15. With respect to any client initially retained after July 19, 1996, entering into, extending, modifying, or renewing any investment advisory contract without disclosing, in writing to the client, any affirmative answers to disciplinary questions numbered 11A and 11K in Part I of the Form ADV.
 16. Entering into, extending, modifying, or renewing any investment advisory contract that allows the assignment of such contract by the investment adviser without the prior written consent of the client.
 17. Committing any act that results in denial, revocation, or suspension by an agency of any state of a license or registration relating to securities, where such denial, revocation, or suspension arises out of any scheme, act, practice, or course of business that operates or would operate as fraud or deceit, or arises out of a violation of Article 13 of the Securities Act or the rules promulgated thereunder.
 18. Failing to comply with any arbitration award issued in connection with doing business as an investment adviser or investment adviser representative or as a dealer or salesman as defined in A.R.S. title 44, chapter 12.
 19. Requesting or requiring any person to waive compliance with any provision of the IM Act or the rules thereunder. Any such waiver shall be void.
- B.** With respect to federal covered advisers, the provisions of this Section only apply to the extent the practice involves fraud or deceit and only to the extent permitted by Section 203A of the investment advisers act of 1940.

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R14-6-204. Written Examination

- A.** ~~Prior to licensure, except as provided in subsection (B), each investment adviser who is an individual and each investment adviser representative, each of whom is hereafter referred to as an “applicant,” must take and receive a score of at least 70% on:~~
- ~~1. The NASAA Series 65 Uniform Investment Adviser State Law Examination or Series 66 Combined State Law Examination; and~~
 - ~~2. The NASD Series 7 General Securities Registered Representative Examination or Series 2 General Securities Representative (Non member) Examination.~~
- B.** ~~The examinations described in subsection (A)(2) shall not be required of an applicant who has completed and maintains 1 of the following credentials:-~~
- ~~1. Certified Financial Planner (CFP) designation awarded by the Certified Financial Planner Board of Standards, Inc.;~~
 - ~~2. Chartered Financial Analyst (CFA) designation awarded by the Institute of Chartered Financial Analysts;~~
 - ~~3. Chartered Financial Consultant (ChFC) designation awarded by the American College, Bryn Mawr, Pennsylvania;~~
 - ~~4. Chartered Investment Counselor (CIC) designation awarded by the Investment Counsel Association of America, Inc.;~~
~~or~~
 - ~~5. Personal Financial Specialist (PFS) designation awarded by the American Institute of Certified Public Accountants.~~
- C.** ~~In the event that the NASAA or NASD Series examination numbers change, the most current examination series deemed applicable by the Commission to the category of licensure shall apply.~~
- D.** ~~In the event that the title changes for any of the credentials designated in subsection (B), the title deemed applicable by the Commission shall apply.~~
- A.** Prior to licensure, except as provided in subsection (B), each investment adviser who is an individual and each investment adviser representative shall take and receive a score of at least 70% on:
1. The NASAA Series 65 Uniform Investment Adviser State Law Examination or Series 66 Combined State Law Examination; and
 2. The NASD Series 7 General Securities Registered Representative Examination or Series 2 General Securities Representative (Nonmember) Examination.
- B.** The examinations described in subsection (A)(2) shall not be required of an investment adviser or an investment adviser representative who has completed and maintains 1 of the following credentials:
1. Certified Financial Planner (CFP) designation awarded by the Certified Financial Planner Board of Standards, Inc.
 2. Chartered Financial Analyst (CFA) designation awarded by the Institute of Chartered Financial Analysts.
 3. Chartered Financial Consultant (ChFC) designation awarded by the American College, Bryn Mawr, Pennsylvania.
 4. Chartered Investment Counselor (CIC) designation awarded by the Investment Counsel Association of America, Inc.
 5. Personal Financial Specialist (PFS) designation awarded by the American Institute of Certified Public Accountants.
- C.** In the event that the NASAA or NASD Series examination numbers change, the most current examination series deemed applicable by the Commission to the category of licensure shall apply.
- D.** In the event that the title changes for any of the credentials designated in subsection (B), the title deemed applicable by the Commission shall apply.

R14-6-205. Information to be Furnished to Clients (“Brochure Rule”)

- A.** ~~Each investment adviser shall comply with the provisions of Rule 204-3.~~
- B.** ~~To the extent that the SEC amends Rule 204-3, investment advisers in compliance with Rule 204-3 as amended shall not be deemed to be in violation of this Section and shall not be subject to enforcement action by the Commission for violation of this Section to the extent that the violation results solely from the investment adviser’s compliance with the amended Rule 204-3.~~
- A.** Each investment adviser licensed or required to be licensed under the IM Act shall furnish each client and prospective client with a written disclosure statement that may be either a copy of Part II of its Form ADV or a written document containing at least the information required by Part II of Form ADV.
- B.** The information required to be disclosed by subsection (A) shall be disclosed to clients not less than 48 hours prior to entering into any written or oral investment advisory contract, or no later than the time of entering into such contract if the client has the right to terminate the contract without penalty within 5 business days after entering into the contract.
- C.** An investment adviser need not deliver the statement required by subsection (A) in connection with entering into an investment company contract or a contract for impersonal advisory services. The investment adviser shall, however, offer in writing to deliver the statement within 7 business days upon receipt of a written request.
- D.** Without charge and to each of its clients, an investment adviser licensed or required to be licensed under the IM Act shall deliver annually within 7 business days upon receipt of a written request or offer in writing to deliver the statement required by this Section.
- E.** If an investment adviser licensed or required to be licensed under the IM Act renders substantially different types of investment advisory services to different clients, any information required by Part II of Form ADV may be omitted from the statement furnished to the client or prospective client if such information is applicable only to a type of investment

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advisory service or fee that is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

- F.** Nothing in this Section shall relieve any investment adviser from any obligation pursuant to any provision of the IM 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 Section.
- G.** An investment adviser licensed or required to be licensed under the IM Act 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 programs, shall, in lieu of the written disclosure statement required by subsection (A) and in accordance with the other subsections of this Section, furnish each client and prospective client of the wrap fee program with a written disclosure statement containing at least the information required by Schedule H of Form ADV. Any additional information included in such disclosure shall be limited to information concerning wrap fee programs sponsored by the investment adviser.
- H.** If the investment adviser is required under subsection (G) to furnish disclosure statements to clients or prospective clients of more than 1 wrap fee program, the investment adviser may omit from the disclosure statement furnished to clients and prospective clients of a wrap fee program or programs any information required by Schedule H that is not applicable to clients or prospective clients of that wrap fee program or programs.
- I.** An investment adviser need not furnish the written disclosure statement required by subsection (G) to clients and prospective clients of a wrap fee program if another investment adviser is required to furnish and does furnish the written disclosure statement to all clients and prospective clients of the wrap fee program.

R14-6-206. Custody of Client Funds or Securities by Investment Advisers

~~It shall constitute a fraudulent practice within the meaning of A.R.S. § 44-3241(A)(4) for any investment adviser to take or have custody of any securities or funds of any client unless:~~

- ~~1. The investment adviser notifies the Commission in writing that the investment adviser has or may have custody of client funds or securities. Such notification may be given on Form ADV;~~
- ~~2. The securities of each client are segregated, marked to identify the particular client having the beneficial interest therein, and held in safekeeping in some place reasonably free from risk of destruction or other loss;~~
- ~~3. All client funds are deposited in 1 or more bank or similar accounts containing only clients' funds, such accounts are maintained in the name of the investment adviser as agent or trustee for such clients, and the investment adviser maintains a separate record for each such account showing the name and address of the bank or similar institution where the account is maintained, the dates and amounts of deposits into and withdrawals from the account, and the exact amount of each client's beneficial interest in the account;~~
- ~~4. Immediately after accepting custody or possession of funds or securities from any client, the investment adviser notifies the client in writing of the place where and the manner in which the funds and securities will be maintained and, subsequently, if and when there is a change in the place where or the manner in which the funds or securities are maintained, the investment adviser gives prompt (but in no event more than 10 business days) written notice thereof to the client;~~
- ~~5. At least once every 3 months, the investment adviser sends each client an itemized statement showing the client's funds and securities in the investment adviser's custody at the end of such period and all debits, credits, and transactions in the client's account during such period; and~~
- ~~6. At least once every calendar year, an independent CPA or public accountant verifies all client funds and securities by actual examination at a time chosen by the independent CPA or public accountant without prior notice to the investment adviser. The independent CPA's or public accountant's report stating that such CPA or public accountant has made an examination of such funds and securities, and describing the nature and extent of the examination, shall be filed with the Commission promptly (but in no event more than 30 days) after each such examination.~~

A. Except as otherwise provided in subsection (B), it shall constitute a fraudulent practice within the meaning of A.R.S. § 44-3241(A)(4) for any investment adviser to take or have custody of any securities or funds of any client unless:

- 1. The investment adviser notifies the Commission in writing that the investment adviser has or may have custody of client funds or securities. Such notification may be given on Form ADV.
- 2. The securities of each client are segregated, marked to identify the particular client having the beneficial interest therein, and held in safekeeping in some place reasonably free from risk of destruction or other loss.
- 3. All client funds are deposited in 1 or more bank or similar accounts containing only clients' funds, such accounts are maintained in the name of the investment adviser as agent or trustee for such clients, and the investment adviser maintains a separate record for each such account showing the name and address of the bank or similar institution where the account is maintained, the dates and amounts of deposits into and withdrawals from the account, and the exact amount of each client's beneficial interest in the account.
- 4. Immediately after accepting custody or possession of funds or securities from any client, the investment adviser notifies the client in writing of the place where and the manner in which the funds and securities will be maintained and, subsequently, if and when there is a change in the place where or the manner in which the funds or securities are maintained, the investment adviser gives written notice to the client within 10 business days.

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5. At least once every 3 months, the investment adviser sends each client an itemized statement showing the client's funds and securities in the investment adviser's custody at the end of such period and all debits, credits, and transactions in the client's account during such period.
6. At least once every calendar year, an independent CPA or public accountant verifies all client funds and securities by actual examination at a time chosen by the independent CPA or public accountant without prior notice to the investment adviser. The independent CPA's or public accountant's report stating that such CPA or public accountant has made an examination of such funds and securities, and describing the nature and extent of the examination, shall be filed with the Commission within 30 calendar days after the examination.

B. With respect to federal covered advisers, the provisions of this Section only apply to the extent the practice involves fraud or deceit and only to the extent permitted by Section 203A of the investment advisers act of 1940.

R14-6-207. Suitability of Investment Advisory Services

~~It shall constitute a fraudulent practice within the meaning of A.R.S. § 44-3241(A)(4) for any person providing investment advisory services to provide investment advisory services to any client, other than in connection with impersonal advisory services, unless the person:~~

1. ~~Before providing any investment advisory services, and as appropriate thereafter, makes a reasonable inquiry of the client as to the financial situation, investment experience, and investment objectives of the client; and~~
2. ~~Reasonably determines that the investment advisory services are suitable for the client based upon the information obtained from the client in accordance with subsection (1) above.~~

A. Except as otherwise provided in subsection (B), it shall constitute a fraudulent practice within the meaning of A.R.S. § 44-3241(A)(4) for any person to provide investment advisory services to any client, other than in connection with impersonal advisory services, unless the person:

1. Before providing any investment advisory services, and as appropriate thereafter, makes a reasonable inquiry of the client as to the financial situation, investment experience, and investment objectives of the client; and
2. Reasonably determines that the investment advisory services are suitable for the client based upon the information obtained from the client in accordance with subsection (1) above.

B. With respect to federal covered advisers, the provisions of this Section only apply to the extent the practice involves fraud or deceit and only to the extent permitted by Section 203A of the investment advisers act of 1940.

R14-6-208. Advertisements by Investment Advisers or Investment Adviser Representatives

~~**A.** It shall constitute a fraudulent practice within the meaning of A.R.S. § 44-3241(A)(4) for any investment adviser or investment adviser representative, directly or indirectly, to use any advertisement:~~

1. ~~Which refers, directly or indirectly, to any testimonial of any kind concerning the investment adviser or investment adviser representative or concerning any advice, analysis, report, or other service rendered by such investment adviser; or~~
2. ~~Which refers, directly or indirectly, to past specific recommendations of such investment adviser or investment adviser representative which were or would have been profitable to any person; provided, however, that this shall not prohibit an advertisement which sets out or offers to furnish a list of all recommendations made by such investment adviser or investment adviser representative within the immediately preceding period of not less than 1 year if such advertisement, and such list if it is furnished separately:
 - a. ~~States the name of each such security recommended, the date and nature of each such recommendation (for example, whether to buy, sell, or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each such security as of the most recent practicable date; and-~~
 - b. ~~Contains the following cautionary legend on the 1st page thereof in print or type as large as the largest print or type used in the body or text thereof: "It should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list;" or~~~~
3. ~~Which represents, directly or indirectly, that any graph, chart, formula, or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making his or her own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to its use; or~~
4. ~~Which contains any statement to the effect that any report, analysis, or other service will be furnished free or without charge, unless such report, analysis or other service actually is or will be furnished entirely free and without any condition or obligation, directly or indirectly; or~~
5. ~~Which states that the Commission has approved any advertisement.~~

B. ~~When requested by the Commission, any advertisement used directly or indirectly in connection with the provision of investment advisory services shall be filed with the Commission at least 10 business days prior to its proposed use.~~

C. ~~Any advertisement that has been requested by the Commission pursuant to the provisions of subsection (B) but that has not been filed with the Commission shall not be used.~~

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- A.** Except as otherwise provided in subsection (D), it shall constitute a fraudulent practice within the meaning of A.R.S. § 44-3241(A)(4) for any investment adviser or investment adviser representative, directly or indirectly, to use any advertisement:
1. Which refers, directly or indirectly, to any testimonial of any kind concerning the investment adviser or investment adviser representative or concerning any advice, analysis, report, or other service rendered by such investment adviser or investment adviser representative.
 2. Which refers, directly or indirectly, to past specific recommendations of the investment adviser or investment adviser representative that were or would have been profitable to any person; except that an investment adviser or investment adviser representative may furnish or offer to furnish a list of all recommendations made by the investment adviser or investment adviser representative within the immediately preceding period of not less than 1 year if the investment adviser or investment adviser representative also furnishes:
 - a. The name of each security recommended, the date and nature of each recommendation (for example, whether to buy, sell, or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each such security; and
 - b. The following legend on the 1st page in prominent print or type: "It should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list."
 3. Which represents, directly or indirectly, that any graph, chart, formula, or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making that person's own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to its use.
 4. Which represents, directly or indirectly, that any report, analysis, or other service will be furnished for free or without charge, unless such report, analysis, or other service actually is or will be furnished entirely free and without any direct or indirect condition or obligation.
 5. Which states that the Commission has approved any advertisement.
- B.** When requested by the Commission, any advertisement used directly or indirectly in connection with the provision of investment advisory services shall be filed with the Commission at least 10 business days prior to its proposed use.
- C.** Any advertisement that has been requested by the Commission pursuant to the provisions of subsection (B) but that has not been filed with the Commission shall not be used.
- D.** With respect to federal covered advisers, the provisions of this Section only apply to the extent the practice involves fraud or deceit and only to the extent permitted by Section 203A of the investment advisers act of 1940.

R14-6-209. Financial and Disciplinary Information that Investment Advisers ~~Must~~ Shall Disclose to Clients

- A.** The following definitions shall apply to this Section:
1. "Investment-related" means pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, investment company, investment adviser, government securities broker or dealer, municipal securities dealer, bank, savings and loan association, entity, or person required to be registered under the Commodity Exchange Act, or fiduciary).
 2. "Involved" means acting or aiding, abetting, causing, counseling, commanding, inducing, conspiring with, or failing reasonably to supervise another in doing an act.
 3. "Management person" means a person with power to exercise, directly or indirectly, a controlling influence over the management or policies of an investment adviser which is a company or to determine the general investment advice given to clients.
 4. "Self-regulatory Organization" or "SRO" means any national securities or commodities exchange, registered association, or registered clearing agency.
- B.** It shall constitute a fraudulent practice within the meaning of A.R.S. § 44-3241(A)(4) for any investment adviser to fail to disclose to any client or prospective client all material facts with respect to:
1. A financial condition of the investment adviser that is reasonably likely to impair the ability of the investment adviser to meet contractual commitments to clients, if the investment adviser has discretionary authority (express or implied) or custody over such client's funds or securities, or requires prepayment of advisory fees of more than \$500 from such client, 6 months or more in advance; or
 2. A legal or disciplinary event that is material to an evaluation of the investment adviser's integrity or ability to meet contractual commitments to clients.
- C.** It shall constitute a rebuttable presumption that the following legal or disciplinary events involving the investment adviser or a management person of the investment adviser (any of the foregoing being referred to hereafter as a "person") that were not resolved in the person's favor or subsequently reversed, suspended, or vacated are material within the meaning of subsection (B)(2) for a period of 10 years from the time of the event. No affirmative or negative presumption of materiality shall be created under subsection (B)(2) for events not specifically set forth in this subsection.
1. A criminal or civil action in a court of competent jurisdiction in which the person:

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- a. ~~Was convicted, pleaded guilty or nolo contendere (“no contest”) to a felony or misdemeanor, or is the named subject of a pending criminal proceeding (any of the foregoing referred to hereafter as “action”), and such action involved: an investment-related business; fraud, false statements, or omissions; wrongful taking of property; or bribery, forgery, counterfeiting, or extortion;~~
 - b. ~~Was found to have been involved in a violation of an investment-related statute or rule; or~~
 - e. ~~Was the subject of any order, judgment, or decree permanently or temporarily enjoining the person from, or otherwise limiting the person from, engaging in any investment-related activity.~~
 - 2. ~~Administrative proceeding before the Securities and Exchange Commission, the Commission, or any federal regulatory agency or any state agency (any of the foregoing being referred to hereafter as “agency”) in which the person:~~
 - a. ~~Was found to have caused an investment-related business to lose its authorization to do business; or~~
 - b. ~~Was found to have been involved in a violation of an investment-related statute or rule, and was the subject of an order by the agency denying, suspending, or revoking the authorization of the person to act in, or barring or suspending the person’s association with, an investment-related business; or otherwise significantly limiting the person’s investment-related activities.~~
 - 3. ~~Self-regulatory Organization (“SRO”) proceedings in which the person:~~
 - a. ~~Was found to have caused an investment-related business to lose its authorization to do business; or~~
 - b. ~~Was found to have been involved in a violation of the SRO’s rules and was the subject of an order by the SRO barring or suspending the person from membership or from association with other members, or expelling the person from membership; fining the person more than \$2,500; or otherwise significantly limiting the person’s investment-related activities.~~
- D.** ~~The information required to be disclosed by subsection (B) shall be disclosed to clients promptly but in no event later than 30 days after the occurrence of the event requiring disclosure, and to prospective clients not less than 48 hours prior to entering into any written or oral investment advisory contract, or no later than the time of entering into such contract if the client has the right to terminate the contract without penalty within 5 business days after entering into the contract.~~
- E.** ~~For purposes of calculating the 10-year period during which events are presumed to be material under subsection (C), the date of the reportable event shall be the date on which the final order, judgment, or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees lapsed.~~
- F.** ~~Compliance with subsection (C) shall not relieve any investment adviser from the disclosure obligations of subsection (B); compliance with subsection (B) shall not relieve any investment adviser from any other disclosure requirement under the Act, the rules thereunder, or under any other state or federal law. Note: Investment advisers may disclose this information to clients and prospective clients in their “brochure,” the written disclosure statement to clients under R14-6-205, provided, that the delivery of the brochure satisfies the timing of disclosure requirements described in subsection (D).~~
- A.** Except as otherwise provided in subsection (F), it shall constitute a fraudulent practice within the meaning of A.R.S. § 44-3241(A)(4) for any investment adviser to fail to disclose to any client or prospective client all material facts with respect to:
- 1. A financial condition of the investment adviser that is reasonably likely to impair the ability of the investment adviser to meet contractual commitments to clients, if the investment adviser has discretionary authority (express or implied) or custody over the client’s funds or securities, or requires prepayment of advisory fees of more than \$500 from such client, 6 months or more in advance.
 - 2. A legal or disciplinary event that is material to an evaluation of the investment adviser’s or an investment adviser representative’s integrity or ability to meet contractual commitments to clients.
 - 3. A failure to comply with any arbitration award issued in connection with doing business as an investment adviser or investment adviser representative or as a dealer or salesman as defined in A.R.S. title 44, chapter 12.
- B.** It shall constitute a rebuttable presumption that the following legal or disciplinary events involving the investment adviser, an investment adviser representative, or a management person of the investment adviser (any of the foregoing being referred to hereafter as a “person”) that were not resolved in the person’s favor or subsequently reversed, suspended, or vacated are material within the meaning of subsection (A)(2) for a period of 10 years from the time of the event. No affirmative or negative presumption of materiality shall be created under subsection (A)(2) for events not specifically set forth in this subsection.
- 1. A criminal or civil action in a court of competent jurisdiction in which the person:
 - a. Was convicted or pleaded guilty or nolo contendere (“no contest”) to a felony or misdemeanor, or is the named subject of a pending criminal proceeding (any of the foregoing referred to hereafter as “action”), and such action involved: an investment-related business; fraud, false statements, or omissions; wrongful taking of property; or bribery, forgery, counterfeiting, or extortion;
 - b. Was found to have been involved in a violation of an investment-related statute or rule; or
 - c. Was the subject of any order, judgment, or decree permanently or temporarily enjoining the person or otherwise limiting the person from engaging in any investment-related activity.
 - 2. An administrative proceeding before the SEC, the Commission, or any federal or state agency (any of the foregoing being referred to hereafter as “agency”) in which the person:

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- a. Was found to have caused an investment-related business to lose its authorization to do business; or
- b. Was found to have been involved in a violation of an investment-related statute or rule, and was the subject of an order by the agency denying, suspending, or revoking the authorization of the person to act in, or barring or suspending the person's association with, an investment-related business; or otherwise significantly limiting the person's investment-related activities.
- 3. SRO proceedings in which the person:
 - a. Was found to have caused an investment-related business to lose its authorization to do business; or
 - b. Was found to have been involved in a violation of the SRO's rules and was the subject of an order by the SRO barring or suspending the person from membership or from association with other members, or expelling the person from membership; fining the person more than \$2,500; or otherwise significantly limiting the person's investment-related activities.
- C. The information required to be disclosed by subsection (A) shall be disclosed to clients within 30 calendar days after the occurrence of the event requiring disclosure, and to prospective clients not less than 48 hours prior to entering into any written or oral investment advisory contract, or no later than the time of entering into such contract if the client has the right to terminate the contract without penalty within 5 business days after entering into the contract.
- D. For purposes of calculating the 10-year period during which events are presumed to be material under subsection (B), the date of the reportable event shall be the date on which the final order, judgment, or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees lapsed.
- E. Compliance with subsection (B) shall not relieve any investment adviser from the disclosure obligations of subsection (A); compliance with subsection (A) shall not relieve any investment adviser from any other disclosure requirement under the IM Act, the rules thereunder, or under any other state or federal law. Investment advisers may disclose this information to clients and prospective clients in their "brochure," the written disclosure statement to clients under R14-6-205, provided, that the delivery of the brochure satisfies the timing of disclosure requirements described in subsection (C).
- F. With respect to federal covered advisers, the provisions of this Section only apply to the extent the practice involves fraud or deceit and only to the extent permitted by Section 203A of the investment advisers act of 1940.

R14-6-210. Licensure of Investment Adviser Representatives

- A. The definition of investment adviser representative in A.R.S. § 44-1301 includes an individual employed by a federal covered adviser only if the individual has a place of business in Arizona and either:
 - 1. Is a supervised person and meets all of the following conditions:
 - a. Has more than 5 clients who are natural persons, other than excepted persons.
 - b. Has clients more than 10% of whom are natural persons, other than excepted persons.
 - c. On a regular basis, solicits, meets with, or otherwise communicates with clients of the investment adviser or provides other than impersonal advisory services.
 - 2. Is not a supervised person.
- 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 \$500,000 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 the contract is entered into of more than \$1,000,000.
 - 2. "Supervised person" means any partner, officer, director, or other person occupying a similar status or performing similar functions, or employees of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.
 - 3. "Place of business" means:
 - a. An office at which the investment adviser representative regularly provides investment advisory services, solicits, meets with, or otherwise communicates with clients, or
 - b. Any other location that is held out to the general public as a location at which the investment adviser representative provides investment advisory services, solicits, meets with, or otherwise communicates with clients.
- C. A person that employs 1 or more investment adviser representatives who solicit, offer, or negotiate for the sale of or sell investment advisory services on behalf of an investment adviser shall license as an investment adviser unless each investment adviser representative is also employed by the investment adviser on whose behalf the activity is conducted.

R14-6-211. Solicitation

- A. An individual shall not be included in the definition of investment adviser representative under A.R.S. § 44-3101(3)(d) if that individual meets both of the following conditions:
 - 1. The individual does not on a regular basis give advice regarding, or recommend the services of, an investment adviser or an investment adviser representative.

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2. The individual does not accept or receive directly or indirectly any commission, fee, or other remuneration in connection with a referral to or recommendation of the services of an investment adviser or an investment adviser representative.
- B.** The term “remuneration” shall be broadly construed, but shall not include the exchange of client referrals between professionals without an exchange of additional compensation.
- C.** No individual or entity subject to an order or finding that denies, revokes, or suspends licensure or registration under the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Securities Act, the IM Act, or the rules or regulations of an SRO may solicit, offer, or negotiate for the sale of or sell investment advisory services.

R14-6-212. Filing Requirements

- A.** In addition to the items enumerated in A.R.S. § 44-3153(B), an application for licensure as an investment adviser shall include the following:
 1. A notarized affidavit of any officer, director, partner, member, trustee, or manager of the applicant stating:
 - a. That a review of the records of the investment adviser has been conducted.
 - b. Whether any investment adviser activity has been conducted with residents of Arizona prior to licensure as an investment adviser.
 2. If the applicant intends to have a branch office in Arizona, the address and name of a contact individual located at such branch.
- B.** A notice filing shall include the items enumerated in A.R.S. § 44-3153(D).
- C.** For purposes of A.R.S. § 44-3158(A), a license of an investment adviser or an investment adviser representative shall be renewed upon receipt of the nonrefundable license fee prescribed in A.R.S. § 44-3181.
- D.** For purposes of A.R.S. § 44-3153(E), a notice filing shall be renewed upon receipt of the nonrefundable license fee prescribed in A.R.S. § 44-3181.