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Ethics and Legal

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ETHICS

Consultants are ethically bound by many caveats in the financial field. Central to most ethical guidelines are the principles of full disclosure to the client as it relates to the working relationship and full disclosure to the client as it relates to any potential conflicts of interest.

Full disclosure in the working relationship includes disclosure of pertinent information, compensation, and any information that would help the client make informed decisions on their own behalf. The principle will allow consultants to place the clients' best interest first and for clients to gain confidence in a transparent and unbiased relationship.

Explaining and revealing conflicts of interest also builds confidence and trust between consultants and clients. Conflicts of interest typically occur when multiple as opposed to singular interests may exist for the consultant. If more than one exists, the conflicts may have the potential to influence or corrupt the consultant's action and sway the consultant's judgment from acting in the interest of the client.

The IMCA *Code of Professional Responsibility* (Code) thoroughly outlines disclosure in Standard 2 and the impact of application of the Standard.

Standard 1: IMCA *Code of Professional Responsibility*

Effective July 1, 2009 IMCA® *Standards of Practice*

The IMCA *Code of Professional Responsibility*

This Code has been adopted to promote and maintain a high standard of professional conduct in the investment management consulting profession. All IMCA members are expected to subscribe to the Code, which serves to assure public confidence in the integrity and service offered by professional investment management consultants. Adherence to the Code is required of all IMCA certification holders.

Each financial professional shall:

1. Serve the financial interests of clients. Each professional shall always place the financial interests of the client first. All recommendations to clients and decisions on behalf of clients shall be solely in the best interest of the client.

2. Disclose fully to clients services provided and compensation received. All financial relationships, direct or indirect, between consultants and investment managers, plan officials, beneficiaries, sponsors, or any other potential conflicts of interest shall be fully disclosed on a timely basis.

3. Provide to clients all material information related to the investment decision-making process as well as other information they may need to make informed decisions based on realistic expectations. All client inquiries shall be answered promptly, completely, and truthfully.

4. Maintain the confidentiality of all information entrusted by the client, to the fullest extent permitted by regulatory and legal entities in conjunction with the professional's firm/company policy.

5. Comply fully with all statutory and regulatory requirements affecting the delivery of investment

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consulting services to clients.

6. Maintain competency in investment management consulting and financial services through education and training to better serve clients and enhance investment management consulting.

7. Maintain a high level of professional ethical conduct.

Standard 2: Responsibilities to the Client

Standard 2a—A Consultant's Responsibility to Assist in Achievement of Client's Financial Goals

Consultants have a responsibility to make the client's financial goals their highest priority. All recommendations must be made solely in the client's interests and intended to assist clients in reaching their financial goals.

Explanation

Each client, whether institutional or individual, must have full confidence that the consultant will make objective, well-researched recommendations based on the client's goals and best interests.

Procedures for Compliance

All consultants shall notify clients of their intent to provide unbiased, candid, informed recommendations intended solely to assist clients in reaching their financial goals and to promote the clients' best interests.

First and foremost, in order to determine the client's goals, the consultant shall profile each client to determine rate-of-return objectives, risk tolerance, time horizons, and tax status. Initial and ongoing recommendations shall be based upon the client's goals, both as originally determined and as they change over time. When conflicts or the potential for conflicts arise, the client must be fully advised of the situation. Without full disclosure of the consultant's role or the firm's role in any potential conflict of interest, the client's best interests may be compromised.

In addition to the IMCA *Standards of Practice* (Standards) and IMCA *Code of Professional Responsibility* (Code), consultants shall adhere to the firm's code of conduct and compliance. If at any time consultants believe that they cannot comply with these standards, they should resign the contract with the client.

Impact of the Standard

The professional responsibility implied by this standard is the very basis for clients engaging a consultant on their behalf. Continual understanding, conveyance, and adherence to this standard enhance the stature of the client/consultant relationship and that of the investment consulting profession. Without compliance, trust—the most important aspect of the client/consultant relationship—cannot exist, and the balance of these standards becomes irrelevant.

Standard 2b—A Consultant's Responsibility to Disclose All Compensation

Consultants have a responsibility to disclose to clients all compensation in all forms and amounts received for consulting services provided.

Explanation

Client knowledge of compensation received for services rendered by the consultant establishes a relationship of trust between the parties. The disclosure of compensation as well as disclosure of any

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financial relationships between the consultant and service providers builds an ethical bridge in the relationship. Disclosure of all compensation, and the sources of such compensation, also eliminates the potential for conflicts of interest between the client and consultant.

Procedures for Compliance

Consultants shall annually review all compensation received for consulting services rendered and report to the client any additional compensation beyond that which the client may reasonably be expected to know.

Impact of the Standard

By eliminating the potential for conflicts of interest through the disclosure of compensation and its sources, the consultant enhances the reputation of the consulting profession and IMCA.

Standard 2c—A Consultant's Responsibility to Provide All Pertinent Information

It is the responsibility of the consultant to provide each client with all requested information as well as all information available to the consultant that enables the client to make informed decisions.

Explanation

In a world where huge amounts of information are easily available via the Internet, clients can access data that may or may not be relevant to their situations or that may be biased or incorrect. Even if relevant, correct, and unbiased, information and data do not translate to experience and knowledge. The consultant is responsible for fully researching all available information, determining the implications of that information for the client's situation, and providing full and objective comments.

Procedures for Compliance

Consultants have a professional responsibility to research every relevant and applicable situation presented to them by clients to the fullest extent possible. In all instances, the consultant must inform the client of all aspects known to be relevant to a particular situation, positive or negative. Information shall be presented in an objective and unbiased manner to assist clients in understanding progress toward their goals. This information also shall be made available with a frequency that ensures meaningful communication between the consultant and client. Such information shall relate directly to the client's goals and financial situations.

Impact of the Standard

By complying with this standard and presenting all information known to the consultant regarding the client's situation, consultants can help clients weigh the impact of their decisions in the light of full disclosure. This enhances the reputation of the investment consulting profession and IMCA as the professional sources of information, applicability, and objectivity.

Standard 2d—A Consultant's Responsibility to Maintain Client Confidentiality and Privacy

Consultants have a responsibility to maintain the full privacy and confidentiality of all information provided to them by both institutional and individual clients.

Explanation

Institutions, including public funds, and individuals not only have the right to but the need for highly professional, candid, and confidential relationships with their consultants. In order to provide informed professional advice, a consultant must have access to all relevant information involving a

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client's financial situation, investment status, and goals. By acknowledging the privacy policy relating to the confidentiality of client information and the client/consultant relationship, the consultant will be more likely to obtain a full and candid disclosure of the required information.

Procedures for Compliance

Consultants shall advise clients of the privacy policy that applies to their relationship and assure them that all information gathered is of a strictly confidential nature. In addition, the compliance officer at the consultant's firm shall be notified of Standard 2d and the consultant's code of confidentiality.

All client records and information relating to financial situations and goals shall be kept private and confidential by the consultant. Even the disclosure of a client's name without obtaining prior permission from the client is prohibited. The use of client lists that may influence a potential client's decision relative to a consultant's capability is discouraged.

If professional references are requested by new or potential clients, consultants must obtain approval from existing clients in similar industries and situations prior to disclosing the names of these clients.

On no occasion shall the consultant disclose the financial status, goals, structure, or other information relating to any client to any other person or body unless legally required to do so. While certain situations may have similar structures and resolutions, any disclosure of a client's situation disenfranchises the privacy of the client/consultant relationship.

Regarding public funds, consultants may provide, if requested, information that exists in the public domain regarding public fund clients.

Impact of the Standard

Adherence to this standard improves the disclosure of information between the consultant and client and heightens the professionalism of the relationship.

Standard 2e—A Consultant's Responsibility to Maintain Competence

Consultants have a responsibility to maintain competence through the highest ethical, professional, and ongoing educational practices within their means.

Explanation

The ability to render advice in a knowledgeable, professional, candid, and objective fashion is a basic requirement for establishing client trust. In order to have confidence in the advice being rendered, the client must have reason to fully trust the consultant's competencies and capabilities.

Procedures for Compliance

Consultants shall advise clients, partners, and their firms of their commitment to upholding professionalism through compliance with this standard.

Impact of the Standard

By adhering to this standard, the consultant assures clients that their consulting needs will be met competently and professionally.

Standard 3: Responsibilities to the Public

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Standard 3a—A Consultant's Responsibility to Abstain from Use of Material Nonpublic Information

Consultants who receive material nonpublic information in confidence have a responsibility to abstain from disclosure or use of that information, whether or not such use would cause harm to a client.

Explanation

By nature of their profession, consultants hold a unique position of trust and are bound by rules of professional confidentiality. Unless required by law, they may not disclose private information revealed by reason of that profession or position.

Procedures for Compliance

Consultants shall not disclose any confidential client information without the specific consent of the client unless in response to proper legal or regulatory processes. The use of client information for personal benefit is improper, even if it does not cause harm to the client.

Consultants who possess material nonpublic information related to the value of a security shall not trade or cause others to trade in that security if such trading would breach a duty or if the information was misappropriated or relates to a tender offer. If material nonpublic information is disclosed in breach of a duty, the consultant shall make all reasonable efforts to achieve public dissemination of such information.

Impact of the Standard

Adherence to this standard enhances the reputation of consultants, both professionally and personally, and helps to ensure that CIMA® and CIMC® certificants and IMCA members are recognized as maintaining the highest standards of conduct.

Standard 3b—A Consultant's Responsibility to Make Proper Use of Certified Investment Management Analyst® and Certified Investment Management Consultant® Certifications

Consultants have a responsibility to ensure that the CIMA and CIMC certifications are used only by those who meet IMCA requirements. Specifications for proper use of the certifications have been established by IMCA.

Explanation

The CIMA and CIMC certifications are intended to enhance public awareness of the investment management consulting profession and reflect the high standards set by IMCA. To protect the status of these certifications, their use has been regulated by IMCA, and CIMA and CIMC licensees are to use these certifications only in ways approved by IMCA.

Procedures for Compliance

Only those individuals who meet IMCA requirements may use the CIMA or CIMC marks. These individuals are encouraged to use these references, but only in a proper, dignified, and judicious manner.

Qualified individuals may use the proper references verbally, in print, in advertisements, on business cards, on letterhead, and in marketing brochures. CIMA and CIMC licensees must obtain authorization as required from their firm's compliance department for use of the certification on business cards, letterhead, and other printed forms. When using the CIMA or CIMC logo or certification in printed materials, only IMCA-approved artwork, fonts, and positioning may be used, as specified in the *Guide to Use of the IMCA Marks*. Neither reference may be used as any part of a business name. The certification may not be used in any form that does not comply with current IMCA guidelines without the express

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written approval of IMCA prior to any such use.

The use of either reference may be accompanied by an explanation of the requirements that have been met in order to earn the CIMA or CIMC certification. Any explanation of the certification must be quoted directly in the approved form and language as outlined in the *Guide to Use of the IMCA Marks*.

Continued use of the CIMA or CIMC certification is dependent upon meeting continuing education requirements, as determined by IMCA, as well as strict adherence to the IMCA *Standards of Practice* and IMCA *Code of Professional Responsibility.*

Impact of the Standard

As the public's understanding of investment management consulting is broadened, adherence to this standard and standardized usage of the CIMA and CIMC certifications enhance recognition of CIMA and CIMC certifications as representing the highest standard in investment consulting expertise.

Standard 3c—A Consultant's Responsibility to Be Fair and Accurate in Advertising and Communications

It is the responsibility of the consultant to act with integrity, dignity, and honesty and to maintain the highest standards of ethics in all forms of communication.

Explanation

Consultants are prohibited from using communications, written or oral, in conjunction with professional services that contain false, fraudulent, misleading, deceptive, or unfair statements or claims. This includes, but is not limited to, a statement or claim that:

- Contains a misrepresentation of fact
- Fails to make full disclosure of relevant facts in a way that is likely to mislead or deceive
- Creates false or unjustified expectations of favorable results
- Implies educational or professional attainments or licensing recognition not supported in fact
- Represents that professional services can or will be competently performed for a stated fee when this is not the case or makes representations with respect to fees for professional services that do not disclose all variables that may reasonably be expected to affect the fees that will in fact be charged
- Contains other representations or implications that in reasonable probability will cause a person of ordinary prudence to misunderstand or be deceived

Consultants shall maintain the highest standards of ethics when using the media in any manner, whether for advertising or in interviews, scheduled or unscheduled.

Procedures for Compliance

Consultants shall not copy or use material in substantially the same form as the original prepared by another without acknowledging and identifying the name of the author, publisher, or source of such material. Consultants may use, without acknowledgement, factual information published by recognized financial and statistical reporting services or similar sources.

Any use of performance track records must not be misleading or deceptive. Returns shall be computed and communicated in compliance with the IMCA *Performance Reporting Guidelines*.

Communications shall make a clear distinction between fact and opinion. Clear distinction also shall be

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made between a consultant's personal standards, positions, and/or opinions and the standards, positions, and/or opinions of IMCA, the consultant's employer or firm, and associated brokers/dealers/agencies, should there be any variation.

CIMA and CIMC licensees may not use their certifications in any form of advertising or communication, written or oral, unless their continuing education requirement has been fulfilled. IMCA membership or CIMA and CIMC certifications may be referenced only in a dignified and judicious manner. The reference to the CIMA and CIMC certifications may be accompanied by an accurate explanation of the requirements, competency, and professional application that are associated with the right to use such certification. The use of any statement misrepresenting the nature of membership in IMCA or the CIMA and CIMC certifications is forbidden.

Impact of the Standard

Adherence to this standard ensures that IMCA and the CIMA and CIMC certifications are associated with honesty, accuracy, and fairness. This, in turn, ensures that IMCA members and especially CIMA and CIMC licensees continue to be held in high regard.

Standard 3d—A Consultant's Responsibility to Maintain the Highest Standards in Commenting before Regulatory Organizations

The consultant has a responsibility to act with integrity, dignity, and competence, maintaining the highest standards of ethics, when appearing before or submitting comment to a regulatory body or organization.

Explanation

To uphold the high standards set by IMCA and protect the reputation of the consulting profession, consultants may not engage in any comment, testimony, or act that would compromise the integrity of IMCA, the CIMA and CIMC certifications, or the profession as a whole.

Procedures for Compliance

Consultants must exercise due diligence and thoroughness in making all public comments, testimony, recommendations, or actions. Consultants shall ensure that their comment, testimony, recommendation, or action is appropriate, judicial, accurate, and reasonable to the highest extent possible and have a reasonable and adequate basis, supportable through proper research and investigation, for any position put forth. Consultants shall not hold forth any comment or act involving a dishonest, fraudulent, deceitful, or misrepresentative position. Consultants shall disclose all matters relevant to their intended comment, testimony, or action. This disclosure includes, but is not limited to:

- Conflicts of interest concerning clients, prospects, employers, firms, or individuals
- Beneficial compensation, fees, or ownership
- The inclusion or exclusion of material or relevant factors in the preparation of comment, testimony, recommendations, or actions

In presenting their comments, consultants shall make a clear distinction between fact and opinion. Consultants also shall make a clear distinction between their personal standards, positions, and/or opinions and the standards, positions, or opinions of IMCA, their employers or firms, and/or associated brokers/dealers/agencies, should there be any variation.

IMCA membership may be referenced only in a dignified and judicious manner. Consultants who have

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earned and maintained the right to use the CIMA or CIMC certification may, and are encouraged to, refer to their certification, but only in a proper, judicious, and dignified manner. The use of this reference may be accompanied by an accurate explanation of the requirements, competency, and professional application that are associated with the right to use such certification. Consultants may not make any statement misrepresenting the nature of membership in IMCA or the CIMA and CIMC certifications.

Impact of the Standard

By following these standards, consultants ensure that the best interests of the public are served while helping to maintain the highest regard for membership in IMCA and the CIMA and CIMC certifications.

Standard 3e—A Consultant's Responsibility to Disclose Third-Party Affiliations

Consultants have a responsibility to fully disclose the nature and amount of any and all compensation, direct and indirect, paid to a nonaffiliated third party who refers, solicits, or otherwise assists the consultant in obtaining clients.

Explanation

Subject to the law and/or regulations of any governmental or regulatory body, nothing in these standards precludes consultants from compensating a nonaffiliated third party for referring, soliciting, or otherwise assisting the consultant in obtaining clients. IMCA believes, however, that it is in the best interests of the public that all financial arrangements, direct and indirect, associated with the relationship between the consultant and clients or prospective clients be fully disclosed. Disclosure of financial arrangements between consultants and third-party solicitors also is consistent with the spirit of the disclosure provisions of the IMCA *Code of Professional Responsibility*.

Procedures for Compliance

In addition to the disclosure that may be required by federal or state law and regulation, the amount and nature of the compensation paid or payable to the third-party solicitor must be fully disclosed in the written contract and/or written services agreement between the consultant and client.

Impact of the Standard

This standard ensures that all clients and prospective clients can be confident that a full disclosure will be made of all financial arrangements between consultants and third parties, including third-party solicitors, associated with the relationship between the client and consultant.

Standard 3f—A Consultant's Performance Reporting Guidelines Responsibility to Comply with IMCA

Consultants have a responsibility to use their best efforts to comply with the mandatory requirements and disclosures of IMCA *Performance Reporting Guidelines* and to use reasonable efforts to comply with the recommended requirements and disclosures of those guidelines.

Explanation

IMCA believes that the best interests of the public are served by the adoption of a uniform and consistent approach to the analysis and reporting of performance information for manager search and analysis and performance measurement reporting. Therefore, the IMCA *Performance Reporting Guidelines* cover the collection, analysis, and reporting of performance information for manager search and analysis and performance reporting.

These guidelines stress the importance of providing accurate and comparable investment performance

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information and appropriate disclosures to clients during manager search and analysis and performance measurement reporting. The mandatory and recommended disclosures relate to the preparation of information provided to the client or prospective client as well as to the disclosure of potential conflicts of interest, relevant business relationships, and other pertinent items.

Procedures for Compliance

IMCA recognizes that the terms “best efforts” and “reasonable efforts” are subject to interpretation. IMCA further recognizes that the employment status of consultants includes individuals who control the policies of their firms as well as persons who have little or no influence or control over the policies of their firms.

For consultants who control the policies of their firms, the term “best efforts” shall mean that the consultant must comply with the mandatory requirements and disclosures of the IMCA *Performance Reporting Guidelines*. For those consultants who do not control the policies of their firms, the term “best efforts” shall mean that if the firm does not comply with the mandatory requirements and disclosures of the IMCA *Performance Reporting Guidelines*, the consultant must submit a written request for compliance to those persons who control firm policies. Further, to the extent that consultants who do not control the policies of their firms can reasonably comply with the mandatory requirements, and such compliance is not in conflict with the policies of their firms, the consultant must comply.

All consultants also must take reasonable efforts to comply with the recommended requirements and disclosures of the guidelines. In determining whether efforts to comply are reasonable, consultants should take into consideration, among other things, their position with the firm and their ability to influence and/or control firm policy, available personnel and technological resources, and the time and costs that are required to comply with the recommended requirements.

Impact of the Standard

Compliance with the IMCA *Performance Reporting Guidelines* instills confidence in the public that manager search information and client performance reporting are being presented fairly and accurately. Compliance with the guidelines also enables clients to make informed investment manager-selection decisions and manager-performance evaluations.

Standard 4: Responsibilities to the Profession

Standard 4a—A Consultant’s Responsibility to Make Proper Use of Professional Certifications

Consultants have a responsibility to use care in promoting their professional certifications, including the CIMA® and CIMC® certifications.

Explanation

To maintain the status implied by a professional designation, consultants who have earned such certifications should display their accomplishments in a proper and dignified manner.

Procedures for Compliance

Holders of professional certifications must present the mark correctly, e.g., Certified Investment Management Analyst or CIMA licensees, and Certified Investment Management Consultant or CIMC licensees, and may use the marks only if currently entitled to do so. On signage, business cards, or stationery, the mark may not be listed in words larger than the certificant’s name. Marks may not be misrepresented in any way.

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Impact of the Standard

Compliance with this standard conveys professional courtesy and fairness and promotes respect for professional certifications.

Standard 4b—A Consultant's Responsibility to Abide by Regulations and Principles

Consultants have a responsibility to make every effort to understand and comply with regulations and rules that are applicable to their specific positions and duties.

Explanation

In addition to the standards presented in this booklet, consultants are governed by various rules, including fiduciary obligations, statutes of government regulatory agencies, and rules of self-regulatory organizations. These rules and standards should be followed at all times.

Procedures for Compliance

Consultants must maintain knowledge of all rules and regulations that govern their profession. They must abide by these rules or obtain exceptions from the appropriate authority as necessary.

Impact of the Standard

Compliance with all applicable rules and regulations ensures that the integrity of the consulting profession is upheld, competition is fair, and clients are well served.

Standard 4c—A Consultant's Responsibility to Maintain Knowledge Base through Continuing Education

Consultants have a responsibility to stay current with changes in their field and to expand their knowledge beyond the formal coursework taught in the pursuit of a designation. This is achieved primarily through continuing education.

Explanation

As times change, new ideas, investments, and laws are introduced constantly. To ensure that clients are well served, consultants must stay abreast of these changes and maintain competency in their profession.

Procedures for Compliance

At a minimum, a consultant who holds a professional certification shall fulfill the continuing education requirements established for that designation. Consultants also should keep informed about broader issues involving the fields of investment management and investment consulting. Fulfilling this obligation may require more than attending the minimum number of classes needed to maintain a professional designation. A consultant could fulfill this responsibility by additional means, e.g., reading journals, undertaking self-study, or attending appropriate study groups.

Consultants shall not accept engagements unless they are competent in the specific area of expertise involved. If offered an engagement in an area where they are not competent, consultants shall either not accept the client, until and unless they have been able to obtain the appropriate level of competence, or seek the advice of qualified professionals and/or refer clients to those professionals.

Impact of the Standard

Compliance with this standard ensures that consultants fulfill their obligation to maintain a certain level of competence through continuing education and thereby continue to serve the best interests of the client.

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Standard 4d—A Consultant's Responsibility to Avoid Plagiarism and Other Forms of Theft

It is the responsibility of the consultant to avoid using or copying materials prepared by another without proper authorization and acknowledgement.

Explanation

In addition to being unprofessional, plagiarism and other forms of theft are illegal.

Procedures for Compliance

If consultants wish to use the work of others, they must obtain the necessary permissions and include appropriate acknowledgments. Such acknowledgement includes, but is not limited to, identifying the author, publisher, and/or source of the material. While factual information such as that published by recognized financial and statistical reporting services may be used without acknowledgement, credit must be given to conclusions made by others that have been derived from the factual information.

Acknowledgement is to be made regardless of the medium used for communication (e.g., print, verbal, electronic). Acknowledgement may be made in the body of the communication or in a reference made in the body of the communication to a footnote that is easily available.

Impact of the Standard

Compliance with this standard promotes continued research and analytical efforts in the areas of investment management, performance, and investment consulting. Those who contribute to the investment consulting profession in this way may reconsider their efforts if their work is plagiarized.

Standard 4e—A Consultant's Responsibility to Conduct Business and Personal Affairs Professionally and Ethically

Consultants have a responsibility to avoid conduct, in both their business and personal lives, that exhibits a lack of honesty, trustworthiness, or fitness to practice as a consulting professional.

Explanation

This standard goes beyond the requirements for technical compliance with rules and regulations and focuses on the integrity of consultants by prohibiting any professional or personal behavior that discredits the profession as a whole.

Procedures for Compliance

In all professional and personal activities, consultants shall abide by applicable laws and regulations, including those of IMCA. Consultants shall not engage in any acts of dishonesty, fraud, or misrepresentation that reflect negatively on professional competence or acts that indicate a general disrespect for the law.

Examples of such acts can include, but are not limited to:

- Acts resulting in conviction of a felony
- Acts resulting in conviction of a misdemeanor involving moral turpitude (e.g., lying, cheating, stealing)
- Conduct that compromises the integrity of the CIMA or CIMC certification or the consulting profession as a whole

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In addition to self-regulatory agencies such as the Financial Industry Regulatory Authority (FINRA), the investment industry is regulated by government agencies, including the Securities and Exchange Commission (SEC), and the Department of Labor, that monitor conduct and take disciplinary action in cases of unethical behavior. IMCA procedures for investigating complaints against CIMA and CIMC licensees and implementing disciplinary action, if required, are outlined in the IMCA *Disciplinary Rules and Procedures.*

On the whole, however, compliance with Standard 4e is a matter of a consultant's own personal integrity and moral character. Each consultant must be aware of the implications of all professional and personal actions. Any conduct that reflects poorly on the individual, the employer or firm, or the profession as a whole should not be tolerated. General compliance with this standard can be enhanced by strict observation of the following broad guidelines:

- Abide by all statutory and regulatory requirements involving the delivery of consulting services.
- Establish and maintain a standard of excellence in all aspects of investment management consulting.
- Participate in IMCA activities designed to improve the consulting profession and uphold its reputation.
- Maintain the highest standard of personal conduct at all times.

Impact of the Standard

In conjunction with the IMCA *Code of Professional Responsibility,* compliance with this standard helps to promote and maintain the highest standard of personal and professional conduct in the investment management consulting profession. This, in turn, serves to assure public confidence in the integrity and services offered by professional investment management consultants.

Standard 5: Responsibilities to the Employer

Standard 5a—A Consultant's Responsibility to Inform Employer of the IMCA Code and Standards

Consultants shall make employers aware of the IMCA *Code of Professional Responsibility* and *Standards of Practice*.

Explanation

Informing employers about the IMCA *Code and Standards* promotes awareness of professional responsibility and ethical practices and thereby increases consultants' adherence to these rules of conduct. In addition, the Standards may serve as the basis of employee programs within the consultant's Standards designed to enhance ethical awareness and advocate honesty in interactions with clients.

Procedures for Compliance

Consultants shall provide copies of the IMCA *Code of Professional Responsibility* and IMCA *Standards of Practice* to the appropriate persons within their organizations, typically their supervisors and/or compliance officers.

Impact of the Standard

By ensuring the dissemination of the IMCA *Code and Standards* to supervisory individuals responsible for overseeing consultant practices, Standard 5a assists the employer in supervision of the consultant's interaction with clients and adherence to professional standards.

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Standard 5b—A Consultant's Responsibility to Disclose Conflicts of Interest

Consultants shall disclose to employers all situations, ownership of securities, and/or memberships on boards or in organizations that could reasonably interfere with their duty to employers or their ability to make unbiased and objective recommendations and decisions regarding their consulting clients.

Explanation

This standard protects employers and, indirectly, clients by requiring consultants to disclose those situations and actions that may result in a conflict of interest. Examples of these disclosures include the following:

- Recommending that clients invest in companies that use the consultant's services
- Holding a seat on the board of an organization that employs them as a consultant
- Maintaining a relationship with an investment advisor that could result in a conflict of interest

Procedures for Compliance

Consultants should notify their employers in writing of any situation that could lead to a conflict of interest, as outlined above. The consultant should retain copies of such notification.

Impact of the Standard

Adherence to this standard ensures that potential conflicts of interest are identified and addressed in a proactive, rather than reactive, manner, thereby minimizing potential loss of business and/or credibility.

Standard 5c—A Consultant's Responsibility to Disclose Additional Compensation

It is the responsibility of consultants to disclose and obtain written approval from employers prior to accepting any compensation and/or benefits from clients or third parties that are in addition to compensation and benefits provided by employers.

Explanation

The purpose of this standard is to avert conflicts of interest and ensure objectivity in the delivery of consulting-related services to clients. Adherence to this standard should prevent the consultant from providing nonobjective advice or preferential treatment to any client. Under this standard, the consultant is barred from receiving compensation from outside sources or third parties without the approval of the employer. This includes payments to vendors by third parties for services that are for the benefit of the consultant.

Procedures for Compliance

Before entering into any compensation arrangement that has not been authorized or granted by the consultant's employer, the consultant must first disclose and obtain approval for the arrangement in writing. Additionally, the consultant may only provide services offered by the firm at the firm's stated fee schedules. The provision of additional services or the charging of fees not approved by the employer is prohibited.

Impact of the Standard

Adherence to this standard prevents the consultant from entering into compensation arrangements that could impair the consultant's ability to render objective and unbiased advice to each client.

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Standard 5d—A Consultant's Responsibility to Exercise Reasonable Supervision

Consultants acting in a supervisory capacity (responsibility and authority over others) have a responsibility to exercise reasonable supervision to prevent, detect, and correct violations of the IMCA *Standards of Practice*.

Explanation

This standard helps to ensure that the IMCA *Standards of Practice* are carried out in a uniform and ethical manner by all employees in their relationships with consulting clients. To achieve this goal, supervisors should have a thorough and current understanding of the Standards and establish and implement compliance guidelines and procedures for employees to follow.

Procedures for Compliance

Through knowledge and periodic review of the Standards, supervisors are responsible for making a reasonable effort to detect violations. Once aware of any violation of the Standards, the supervisor must initiate a prompt and thorough investigation of the violation according to established compliance guidelines and procedures. Failure to supervise or to take prompt and thorough steps to assess, investigate, and correct violations of the Standards will be a breach of Standard 5d. However, if the supervisor implements steps to reasonably supervise but is not aware of a violation, the supervisor will not be in violation of this standard.

Supervisors must report to their employers any knowledge of procedures and guidelines that are not being followed. If, after the passage of a reasonable amount of time from the date of notification, the employer fails to take any action to correct the violation of the Standards, the consultant shall notify IMCA. Supervisors also should report to their employer and to IMCA any inadequacies they perceive in the IMCA *Standards of Practice* or in the procedures designed to detect violations of the Standards.

Impact of the Standard

Establishing guidelines for the supervisor's responsibility under the IMCA *Standards of Practice* increases the likelihood that violations will be detected and that procedures for corrective action can be implemented in a timely manner.

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Legal

In the client relationship, a consultant often is identified as a fiduciary or is said to have a fiduciary duty owed to the client. The term fiduciary can have a variety of meanings to clients and consultants. In general, a fiduciary duty, or capacity, can be defined as an ethical relationship between a consultant and a client in which the consultant is to act on behalf of and always in the best interest of the client. In turn, the client places trust and good faith in the consultant. The sole benefit of this relationship must be in the interest of the client at all times. Additionally, a fiduciary must adhere to a process that is deemed to be prudent.

The fiduciary relationship for a consultant and client can be established with individuals, trusts, foundations, endowments, ERISA plans, and many other circumstances. In each case, certain duties are expected to be performed at a minimum on behalf of the client or clients.

For individuals and trusts, the fiduciary has a responsibility to manage investments prudently. The Prudent Man Rule or the Prudent Investor Rule may apply in such cases. Although the rule is almost 200 years old and based on the Harvard College v. Amory case of 1830, it still is considered the foundation for most fiduciary relationships.

The rule states that trustees are directed to "observe how men of prudence, discretion, and intelligence manage their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety of the capital to be invested." Trustees are to exercise care and skill in the selection of investments.

The initial Prudent Man Rule focused primarily on the merits of the individual investments, did not allow for risky investments, and focused on investments in government securities. Over time, interpretation of the rule evolved, with large steps taking place after the Great Depression and after World War II.

The more modern Prudent Investment Rule incorporates the theory of diversification and allows for overall portfolio management as the guiding principle for astute investment management.

Trustees are considered to be fiduciaries to the beneficiaries. Legally, an account or property is committed to the trustee. A beneficiary has no legal title to the trust, but has a beneficial use or interest. In this relationship, the trustee must only act in the interest of the beneficiary, and can in no way act in his or her own best interest.

With foundations, endowments, and ERISA plans, a board of directors may be held to the same fiduciary standards as a trustee. A major difference is the board's capacity to act in the interest of an entity, or in some cases, a large group of individuals. In many cases, the entities or individuals have legal title or claim to assets that the board is managing on their behalf. The decisions may be on a different scale, but the core principal of the fiduciary relationship remains intact.

Another term for the relationship is the principal-agent relationship. In a trustee relationship, the principal is the beneficiary, the person who is owed the duty, while the agent would be the trustee, the person who is the fiduciary. Other examples of the principal-agent relationship include company-board of directors, client-consultant, and heirs-executors.

A consultant may be considered a fiduciary under a number of different circumstances. In most cases,

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as a fiduciary, the consultant must apply fiduciary standards and exercise those standards with care. Some cases are obvious and others are by default.

Direct Relationships

In many cases, the consultant should be aware of the direct fiduciary relationship. These cases include becoming a trustee and sitting on the board of directors of a foundation.

If a consultant is named as a trustee, the consultant must be prepared to act in a fiduciary capacity on behalf of the client. The foundational case for trustee fiduciary standards was *Keech v. Sandford* in 1726. The law ultimately states that the trustee has a strict duty and that there never should be a conflict of interest in the relationship. Consultants agreeing to become trustees must realize that they are expected to be fiduciaries.

A consultant who holds himself or herself out as a fiduciary for ERISA plans and pensions may be held to fiduciary standards. In these cases, consultants must be prepared to define the scope and nature of their relationship with the entity for which they are consulting.

Sitting on the board of directors for a company, foundation, or endowment also may make the consultant a fiduciary. The duties owed to the individuals or entities should be examined by the consultant prior to making the commitment to sit on a board.

Indirect Relationships

In some cases, the consultant may be held out as a fiduciary without realizing that he or she is being held to a fiduciary standard. Sitting on the board of directors, as described above, may be one of those cases. Another situation is in the case of discretionary accounts. If a consultant manages a discretionary account on behalf of a client, he or she may be considered a fiduciary. In most cases, if there is a question of the nature of the relationship, the consultant may be held to the high standards of fiduciary care.

Under current legislation, prohibited transactions for ERISA plans are specific. According to IRS Publication 560 and www.irs.gov, ERISA prohibited transactions include the following:

1. a transfer of plan income or assets to, or use of them by or for the benefit of, a disqualified person;
2. any act of a fiduciary by which plan income or assets are used for his or her own interest;
3. the receipt of consideration by a fiduciary for his or her own account from any party dealing with the plan in a transaction that involves plan income or assets;
4. the sale, exchange, or lease of property between a plan and a disqualified person;
5. lending money or extending credit between a plan and a disqualified person; and
6. furnishing goods, services, or facilities between a plan and a disqualified person.

According to Publication 560, disqualified individuals include the following:

1. a fiduciary of the plan;
2. a person providing services to the plan;
3. an employer, any of whose employees are covered by the plan;

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4. an employee organization, any of whose members are covered by the plan;

5. any direct or indirect owner of 50 percent or more of any of the following:

   i. the combined voting power of all classes of stock entitled to vote, or the total value of shares of all classes of stock of a corporation that is an employer or employee organization described in (3) or (4);

   ii. the capital interest or profits interest of a partnership that is an employer or employee organization described in (3) or (4); or

   iii. the beneficial interest of a trust or unincorporated enterprise that is an employer or an employee organization described in (3) or (4);

6. a member of the family of any individual described in (1), (2), (3), or (4) (i.e., the individual's spouse, ancestor, lineal descendant, or any spouse of a lineal descendant);

7. a corporation, partnership, trust, or estate of which (or in which) any direct or indirect owner described in (1) through (5) holds 50 percent or more of any of the following:

   i. the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation;
   ii. the capital interest or profits interest of a partnership; or
   iii. the beneficial interest of a trust or estate;

8. an officer, director (or an individual having powers or responsibilities similar to those of officers or directors), a 10-percent or more shareholder, or highly compensated employee (earning 10 percent or more of the yearly wages of an employer) of a person described in (3), (4), (5), or (7);

9. a 10-percent or more (in capital or profits) partner or joint venture of a person described in (3), (4), (5), or (7); or

10. any disqualified person, as described in (1) through (9) above, who is a disqualified person with respect to any plan to which a multiemployer plan trust is permitted to make payments under section 4223 of ERISA.

Consultants should pay particular attention to items (1) and (2). In general, as a disqualified individual, the consultant should not benefit from the relationship as the guidelines describe above.

Consultants must be aware of different laws and the application of those laws for their clients. The laws serve as a basis of rules that ultimately are designed to protect the beneficiaries and plan participants that are covered.

ERISA

ERISA stands for the Employee Retirement Income Security Act of 1974. This act established the standards for employee retirement, health, and other benefit plans. The act applies to nongovernment employers that offer these benefits. ERISA establishes the general rules for conduct, reporting, disclosures, procedures, and protection. Consolidated Omnibus Budget Reconciliation Act (COBRA) of

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1985 and Health Insurance Portability and Accountability Act (HIPAA) of 1996 also are covered under ERISA.

The Department of Labor, Internal Revenue Service (IRS), and the Pension Benefit Guarantee Corporation (PBGC) each have responsibilities under ERISA.

The Department of Labor is responsible for the fiduciary and reporting requirements for company-sponsored ERISA plans such as 401(k)s, profit sharing plans, and defined benefit plans. Companies that sponsor these plans must disclose to their employees information about the financial health of the plan, how to participate, and other information that can allow employees to make informed decisions. It is not simply good business practice for employers and investment advisors to properly follow ERISA's requirements and always place themselves in a fiduciary role for the benefit of the employer and the plan participants. Business owners and investment advisors can be sued by plan participants for breach of that fiduciary duty.

Though not a requirement, section 404(c) of ERISA provides minimum responsibilities and disclosures that plan participants should be provided with to lessen (but not eliminate) fiduciary liability. If the plan is intended to be compliant with section 404(c), plan participants must be explicitly made aware.

Minimum standards for participation, vesting, benefit accrual, and funding are provided for under ERISA and administered by the IRS. Certain standards must be met for these plans to receive favorable tax treatment; otherwise the IRS can disqualify the plans and assess penalties. The rules that plans must follow to maintain tax benefits include the following: Pension plans must offer joint and survivor options and any ERISA plan cannot discriminate in favor of highly compensated employees or officers.

The Pension Protection Act of 2006 (PPA) specified two vesting options for any defined contribution plan offered by an employer. Participants can either become 100-percent vested in employer contributions after three years (cliff vesting) or gradually vest by 20 percent annually until 100-percent vested. Employee contributions to a defined contribution plan are always 100-percent vested.

Defined benefit plan vesting schedules differ slightly. Instead of a three-year lump vesting schedule, defined benefit plans can vest at 100 percent for up to five years of service. Alternatively, 20 percent of the plan can vest each year starting in year three.

Minimum funding rules established by ERISA and the PPA are meant to keep defined benefit plans properly funded for their beneficiaries. The PBGC provides a form of insurance for defined benefit plans only and does not provide protection for defined contribution plans such as 401(k) plans. If a pension plan cannot meet its obligations to its beneficiaries, the PBGC takes over the plan and provides some amount of pension benefit up to a guaranteed maximum that is adjusted annually.

A defined benefit plan sponsor may terminate a plan in either of two ways: 1) A plan may undergo a standard termination when plenty of assets exist to provide benefits promised to the participants; 2) A distress termination occurs if the plan sponsor voluntarily terminates the plan, but there are either not enough assets to fund each participant's benefit or providing the benefits could potentially put the sponsor out of business. The PBGC also can initiate a plan's takeover on its own if it determines that a plan is unsustainable.

In addition to employer plans, ERISA also gave rise to the individual retirement account (IRA) or individual retirement arrangement, allowing individuals to defer taxes on some savings without necessitating an employer-sponsored plan.

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Because ERISA covers all employer-sponsored benefit programs, the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 and Health Insurance Portability and Accountability Act (HIPAA) of 1996 also are part of ERISA. COBRA is most-widely known for allowing a participant to continue under employer-provided health coverage for a limited period of time under certain conditions after separation from employment. COBRA also prohibits employers from limiting participation in retirement plans for new employees close to retirement age and freezing benefits for participants 65 or older.

HIPAA intended to make health insurance more portable by eliminating pre-existing conditions as the basis for an employer to refuse coverage in some cases. HIPAA also prevents the refusal of coverage due to health status, genetic information, or disability.

Uniform Prudent Investor Act (UPIA)

UPIA was adopted in 1992 and essentially updates the Prudent Man Rule. UPIA makes it possible for investment managers and fiduciaries to manage a portfolio using methodologies from modern portfolio theory. Measurement of a portfolio's performance is based on the entire portfolio and not each individual underlying asset. Individual securities, once considered too risky to include in a portfolio, such as commodities, futures, and derivatives, now are acceptable based on the concept of managing a portfolio's overall risk.

Because UPIA now puts greater emphasis on the total return of a portfolio, fiduciaries should consider the impact on the portfolio caused by general economic conditions, inflation or deflation, tax consequences, the purpose of each individual investment within the total portfolio, other resources available to the beneficiaries, liquidity needs, and any special value or relationship any beneficiary or beneficiaries have with an asset.

One of the major complaints of the previous Prudent Investor Rule was that it did not specifically allow trustees to delegate investment management. UPIA corrects this oversight, allowing for professional investment management when this better fulfills the purpose of the trust.

Uniform Management of Institutional Funds Act (UMIFA) and Uniform Prudent Management of Institutional Funds Act (UPMIFA)

UPMIFA was designed to replace UMIFA. Both UMIFA and UPMIFA are at the core of law for endowments and charities. They provide rules regarding the guidelines for amounts a charity or endowment can spend and on what they can spend the funds. They also provide rules for the investment of funds.

UMIFA and UPMIFA differ based on the historical dollar value rule. UMIFA considered the historical dollar, while UPMIFA states that institutions "may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines to be prudent for the uses, benefits, purposes, and duration for which the endowment fund is established." In general, it is believed that the UPMIFA rules brought UMIFA up to date.

UPMIFA updated UMIFA in four key areas: investment conduct, expenditure of funds, delegation of management, and release or modification of restrictions.

To perform their fiduciary duty, charities are expected to manage the costs of their portfolio management prudently, consider the total portfolio when making individual investment decisions, and are specifically required to diversify and balance their portfolio in consideration of their risk tolerance.

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UPMIFA also provides the following seven specific guidelines for amounts a charity or endowment can spend and on what they can spend the funds:

1. duration and preservation of the endowment fund;
2. the purposes of the institution and the endowment fund;
3. general economic conditions;
4. effect of inflation or deflation;
5. the expected total return from income and the appreciation of investments;
6. other resources of the institution; and
7. the investment policy of the institution.

UMIFA updated the legal constraint that trusts can only spend income, subject to a floor defined by the historical dollar value. The historical dollar value is the sum of the original gift plus any additions required by the donor or by law. UPMIFA eliminated this rule and instead states that institutions "may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines to be prudent for the uses, benefits, purposes, and duration for which the endowment fund is established."

For individual state governments that prefer more specific guidelines, they can amend the act to allow an initial assumption of imprudence if an organization spends more than 7 percent of the fund's fair market value over a three-year period using an averaging formula.

UPMIFA also clarifies the procedures for releasing or modifying restrictions on charitable funds. If notice is given to the state's attorney general and the changes are still consistent with the donor's intent, a court can allow modifications if it determines the funds are either unlawful or not practical to retain or the fund's purpose is impossible to achieve or is wasteful.

Additionally, if the amount of the donation in question is less than $25,000 and more than 20 years old, the charity may modify the fund's restrictions without going to court. Again, the state's attorney general must be notified, but if the charity receives no objections after 60 days, restrictions can be changed as long as the result is consistent with the original intent of the gift.

Federal Regulatory Agencies

The two core agencies for federal regulation in investment management are the Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Agency (FINRA).

SEC

The mission of the U.S. Securities and Exchange Commission is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. Though it is the primary overseer and regulator of the U.S. securities markets, the SEC works closely with many other institutions, including Congress, other federal departments and agencies, the self-regulatory organizations (e.g., the stock exchanges), state securities regulators, and various private sector organizations.

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The Securities Exchange Act of 1934 created the SEC to interpret securities law, to provide rules regarding the disclosure of information by public companies, and to enforce those rules. Market participants, including securities exchanges, brokers and dealers, self-regulatory organizations, clearing agencies, and others are required to register with the SEC. These entities are required to disclose information regarding their financial condition and business practices, including the registration of new securities, annual shareholder reports, and mergers and acquisitions. The SEC requires also that investments such as mutual funds, exchanged-traded funds, and others disclose information useful to investors so that they can make informed investment decisions.

To determine standards for what information should be disclosed by these various organizations and public companies and how that information should be presented, the SEC works closely with self-regulatory organizations such as the Financial Accounting Standards Board. The SEC also oversees securities exchanges, self-regulatory organizations, and credit rating agencies.

In a single statement, the SEC exists to provide investors with rules for the fair execution of trades and to enforce those rules. To that end, several major violations of fair trading are prohibited by the SEC. The SEC prohibits the use of insider or nonpublic information to place trades. For example, wash sales can be used either to create artificial tax losses or, when used by very large shareholders, to mislead investors by manipulating the share price. Wash sales occur when investors sell shares only to almost immediately buy back those same or similar shares, usually within 30 days. Churning, whereby an advisor creates multiple transactions, typically over a short period of time, that generates commissions or other income and increases the costs to a client's invested assets without a clear benefit to the client.

In order to provide investment professionals with the information they need to follow these rules and maintain the integrity of the securities industry, the SEC administers the examination and inspection programs for all registered self-regulatory agencies, investment companies, broker-dealers, and advisors, among others in the securities business.

The SEC also has jurisdiction over the private, nonprofit Securities Investor Protection Corporation (SIPC) that insures customer accounts at member brokerage firms against the failure of those same firms. Unlike Federal Deposit Insurance Corporation (FDIC) coverage, SIPC insurance does not insure accounts against loss due to market movements.

Financial Industry Regulatory Authority (FINRA)

FINRA is the largest independent, nonprofit self-regulatory organization (SRO) registered under the SEC for all securities firms doing business in the United States. It writes and enforces rules related to federal securities law to protect and educate investors. FINRA examines firms and can punish individuals and firms through fines, suspensions, and up to and including expulsion from the securities industry.

All brokers must be licensed and registered by FINRA, pass qualification exams, and satisfy continuing-education requirements. For the public's protection, FINRA also discloses any disciplinary action it takes against registered advisors.

Most advertisements and marketing material used by members must be filed with FINRA before an advisor or firm can distribute them to the public. Further, FINRA requires that not only the sales material be truthful, but that the security sold is suitable to the individual investor and that the investor receives complete disclosure about an investment before purchase. When problems arise, FINRA also administers the arbitration typically required as the starting point to begin to resolve disputes among investors and its members.

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FINRA replaced the National Association of Securities Dealers, Inc. (NASD) when its rulemaking and enforcement activities were consolidated with those of the enforcement division of the New York Stock Exchange in 2007.

Thus, FINRA also monitors securities exchanges for suspicious activities and provides educational materials freely available to the public.

State Agencies

Each state has its own state security administrator responsible for regulating the securities industry in that state. The state security administrator also can register securities offered or sold in their state and oversee the firms and individuals selling securities or providing investment advice to their citizens. Although similar in scope to the SEC, investment advisors managing less than $100 million must register and file Form ADV with the state securities agency in their principal location.

The National Securities Markets Improvement Act of 1996 amended the Securities Act of 1933 to exempt securities traded nationwide and registered with the SEC from registering with a state individually. Each state's securities law or "blue sky laws," a name taken from a fraudulent rainmaking scheme against drought-stricken farmers, still provide the state with the authority to prosecute over securities fraud.

The North American Securities Administrators Association (NASAA) is the membership organization for each state's securities administrator as well as for U.S. territories, Canada, and Mexico.

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