

§ 275.206(4)-2

17 CFR Ch. II (4-1-03 Edition)

or (3) any other investment advisory service with regard to securities.

(Sec. 206, 54 Stat. 852, as amended; 15 U.S.C. 80b-6)

[26 FR 10549, Nov. 9, 1961, as amended at 62 FR 28135, May 22, 1997]

§ 275.206(4)-2 Custody or possession of funds or securities of clients.

(a) It shall constitute a fraudulent, deceptive, or manipulative act, practice or course of business within the meaning of section 206(4) of the Act (15 U.S.C. 80b-6(4)) for any investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b-3) who has custody or possession of any funds or securities in which any client has any beneficial interest, to do any act or take any action, directly or indirectly, with respect to any such funds or securities, unless:

(1) All such securities of each such client are segregated, marked to identify the particular client who has the beneficial interest therein, and held in safekeeping in some place reasonably free from risk of destruction or other loss; and

(2)(i) All such funds of such clients are deposited in one or more bank accounts which contain only clients' funds, (ii) such account or accounts are maintained in the name of the investment adviser as agent or trustee for such clients; and (iii) the investment adviser maintains a separate record for each such account which shows the name and address of the bank where such account is maintained, the dates and amounts of deposits in and withdrawals from such account, and the exact amount of each client's beneficial interest in such account; and

(3) Such investment adviser, immediately after accepting custody or possession of such funds or securities from any client, notifies such client in writing of the place and manner in which such funds and securities will be maintained, and thereafter, if and when there is any change in the place or manner in which such funds, or securities are being maintained, gives each such client written notice thereof; and

(4) Such investment adviser sends to each client, not less frequently than once every 3 months, an itemized state-

ment showing the funds and securities in the custody or possession of the investment adviser at the end of such period, and all debits, credits and transactions in such client's account during such period; and

(5) All such funds and securities of clients are verified by actual examination at least once during each calendar year by an independent public accountant at a time that shall be chosen by such accountant without prior notice to the investment adviser. A certificate of such accountant stating that an examination of such funds and securities has been made, and describing the nature and extent of the examination, shall be attached to a completed Form ADV-E (17 CFR 279.8) and transmitted to the Commission promptly after each examination.

(b) This section shall not apply to an investment adviser also registered as a broker-dealer under section 15 of the Securities Exchange Act of 1934 if (1) such broker-dealer is subject to and in compliance with § 240.15c3-1 under the Securities Exchange Act of 1934, or (2) such broker-dealer is a member of an exchange whose members are exempt from § 240.15c3-1 under the provisions of paragraph (b)(2) thereof, and such broker-dealer is in compliance with all rules and settled practices of such exchange imposing requirements with respect to financial responsibility and the segregation of funds or securities carried for the account of customers.

(Sec. 206(4), 54 Stat. 852, as amended; 15 U.S.C. 80b-6)

[27 FR 2150, Mar. 6, 1962, as amended at 54 FR 32049, Aug. 4, 1989; 62 FR 28135, May 22, 1997]

§ 275.206(4)-3 Cash payments for client solicitations.

(a) It shall be unlawful for any investment adviser required to be registered pursuant to section 203 of the Act to pay a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities unless:

(1)(i) The investment adviser is registered under the Act;

(ii) The solicitor is not a person (A) subject to a Commission order issued under section 203(f) of the Act, or (B) convicted within the previous ten years of any felony or misdemeanor involving conduct described in section