

(C) IN THE SOLICITATION OF ADVISORY CLIENTS, IT IS UNLAWFUL FOR ANY PERSON KNOWINGLY TO MAKE ANY UNTRUE STATEMENT OF A MATERIAL FACT, OR OMIT TO STATE A MATERIAL FACT NECESSARY IN ORDER TO MAKE THE STATEMENTS MADE, IN LIGHT OF THE CIRCUMSTANCES UNDER WHICH THEY ARE MADE, NOT MISLEADING.

(D) (1) THE COMMISSIONER BY RULE OR ORDER MAY REQUIRE THAT CERTAIN INFORMATION BE FURNISHED OR DISSEMINATED AS APPROPRIATE IN THE PUBLIC INTEREST OR FOR THE PROTECTION OF INVESTORS AND ADVISORY CLIENTS.

(2) TO THE EXTENT DETERMINED BY THE COMMISSIONER IN HIS DISCRETION, INFORMATION FURNISHED TO CLIENTS OR PROSPECTIVE CLIENTS OF AN INVESTMENT ADVISER PURSUANT TO THE INVESTMENT ADVISERS ACT OF 1940 AND THE RULES THEREUNDER MAY BE USED IN WHOLE OR PARTIAL SATISFACTION OF THIS REQUIREMENT.

[(b)] (E) (1) EXCEPT AS PERMITTED BY RULE OR ORDER OF THE COMMISSIONER, [It] IT is unlawful for any investment [advisor] ADVISER to enter into, extend, or renew any investment advisory contract, unless it provides in writing that:

(i) The investment adviser shall not be compensated on the basis of a share of capital gains on or capital appreciation of the funds or any portion of the funds of the client;

(ii) An assignment of the contract may not be made by the investment adviser without the consent of the other party to the contract; and

(iii) The investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

(2) Paragraph (1) (i) of this subsection does not prohibit an investment advisory contract which provides for compensation based on the total value of a fund averaged over a definite period or as of definite dates or taken as of a definite date.

(3) "Assignment", as used in paragraph (1) (ii) of this subsection, includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of controlling block of the assignor's outstanding voting securities by a security holder of the assignor, but, if the investment [advisor] ADVISER is a partnership, an assignment of an investment advisory contract is not considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission,