

The Impact of Investment Advice Regulations on Personal Actuaries

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1. Introduction

Actuaries are well known in the insurance and pension world for evaluating the likelihood of future events and designing ways to control their financial impact. Traditionally, actuaries have been primarily employed by insurance companies and consulting firms have been the primary employers of actuaries. However, actuarial expertise can also help individuals with personal financial decision-making. Actuaries that specialize in this type of practice are commonly referred to as "personal actuaries."

Personal actuaries work with individuals (or companies representing individuals) in various capacities, such as advising them on retirement, pension and insurance matters. To understand how the role of personal actuaries developed, you need look no further than an experience shared by many actuaries: being approached by family and friends for financial advice. The role of an actuary as a personal financial adviser became a specialty area of actuarial practice when actuaries began to offer advice to individuals.

Expertise in financial risk management and life contingencies gives actuaries a unique and critical perspective for evaluating many personal risk and investment decisions. For instance, incorporating actuarial assumptions such as the effect of mortality (and/or morbidity) into investment analysis may yield additional insight for an individual's decision process. Thus, individuals who seek advice from personal actuaries on investment decisions benefit from the added value an actuary can provide.

Generally, federal and state laws have specific requirements for professionals who provide investment advice, and require that representatives of investment advisory firms either pass certain investment-related examinations, or hold certain professional credentials for which the laws grant examination exemptions. However, actuarial designations are not among the list of exempted credentials. This paper was motivated by the potential detrimental impact these laws have on personal actuaries and the extent to which they pose a competitive disadvantage.

2. Overall Purpose

The Society of Actuaries Task Force on the Personal Actuary (hereafter the Task Force) is charged with monitoring current and emerging trends in personal actuarial services

such as benefit counseling, entitlement counseling and life and health expectancy counseling, and developing educational material in support of these activities. In addition, the Task Force also monitors potential barriers to personal actuaries in their relevant specialty areas and markets.

When the Task Force became aware of the regulatory predicament for personal actuaries wanting to provide investment advice, it decided that the issue merited further exploration and research. Consequently, the Task Force proposed that a research project be conducted to review the pertinent federal and state regulations, and recommend action, as needed. With the funding support of the Society of Actuaries Committee on Finance Research, a formal research effort with this overall purpose in mind was initiated.

From the perspective of the Task Force, many actuaries desiring to work with individuals and provide investment advisory services are already competent to do so by virtue of their experience and education. This educational background would include formal education in a university setting and that obtained through completing relevant examinations offered by the major U.S. actuarial organizations. However, traditionally actuaries have worked for insurers and corporate firms, not individuals, and as a result, were probably not considered at the time the investment adviser laws were drafted. It is the view of the Task Force that actuaries who have achieved fellowship in the SOA, the Canadian Institute of Actuaries (CIA), or Casualty Actuarial Society (CAS) should be added to the list of exempt professionals in state regulations (examples are provided later in the paper).

3. Current Investment Advisor Environment

In order to become an Investment Adviser Representative, according to many states, one must pass either the Uniform Investment Adviser Law Exam (Series 65), or both the General Securities Representative Examination (Series 7) and the Uniform Combined State Law Examination (Series 66) exams. However, most states exempt a number of credentialed professionals from the above exams. These professionals typically include those who hold designations as a Certified Financial Planner (CFP), Chartered Investment Counselor (CIC), Chartered Financial Consultant (ChFC), Personal Financial Specialist (PFS), or Chartered Financial Analyst (CFA).

Some actuaries have obtained such designations and/or have taken the mandated investment adviser exams. The SOA's *Employer and Member Survey Report*, published in September 2003, indicated that 4 percent of actuaries also hold the CFA designation, and 23 percent were pursuing it at that time. This can be interpreted many ways, including the possibility that many actuaries view obtaining the CFA designation as important in securing wider recognition of their investment knowledge. If a statutory exemption from investment adviser exams were added for credentialed actuaries, pursuit of the CFA designation may be viewed as less essential for actuaries to gain recognition of their investment knowledge.

It is generally the view among members of the Task Force (and among other actuaries contacted for this project) that while the actuarial exams may not be as solely focused (or comprehensive) on investments as the CFA exams, they are at least as thorough as other exams series for which exemptions exist (e.g., such as those given to life insurance agents to obtain the ChFC designation, without which they could not as easily sell investment-related products). Therefore, actuaries merit an exam exemption on at least as favorable terms.

In addition to considering actuarial education in investments as more than adequate compared to certain other exempted designations, the Task Force found that other reasons supporting the recommendation for exempting credentialed actuaries understandably refer to the highly selective nature of the actuarial exams (low pass ratios) and the very long travel time typically involved in completing all the actuarial exams.

Attaining the FSA designation often takes many years, while the travel time to earn other designations is typically much shorter. For example, according to internal data from the SOA, the average age for attaining fellowship is 33. Also, many actuaries completed their actuarial exams when the average travel time to completion was in excess of 10 years.

This dedication of time was found to be so lengthy that it prompted revisions to the SOA's educational system; indeed, reduction of travel time is considered to be one of the most important principles in current revisions to the exam system. By contrast, the CFA Institute states on their Web site that average travel time to complete the three prescribed CFA examinations is just over four years (see:

<http://www.cfainstitute.org/pressroom/pdf/CFAProgramFactSheet.pdf> as of 6/11/05).

Similarly, the SOA has traditionally passed about 30 to 50 percent of its candidates, which is widely considered a very high caliber pool of candidates. The low pass ratios are believed by the Task Force (and many actuaries) to be the lowest of any professional exam series, although pass ratios for the first two CFA exams have recently dropped substantially, 32 to 34 percent; but it is 64 percent for Level III,(see:

<http://www.cfainstitute.org/pressroom/pdf/CFAProgramFactSheet.pdf>

and http://www.cfainstitute.org/pressroom/05releases/20050120_01.html, both as of 6/11/05).

As implied above, the CFA exams cover several topics not directly covered in the actuarial exams that would be of use to personal actuaries. For example, considerable emphasis is given to equity valuation, financial statement analysis and deconstruction, and behavioral finance as it applies to individuals. However, the Task Force believes that these are advantages that the CFA exams have over other exempted designations as well, and thus are not a reason to refuse an investment adviser exam exemption to credentialed actuaries.

The Task Force also believes that actuarial exams cover certain topics that none of the other exam series do, such as life and health contingencies, which should be an important consideration when giving financial advice to elderly or impaired clients. When combined with the highly selective nature of the actuarial exams, and their

comprehensiveness in topics, the Task Force believes the case for an exemption for credentialed actuaries is strong. Many other actuaries, not on the Task Force, concur.

For example, Max Rudolph, an actuary with both the FSA and CFA designations, states, "No one who has taken both [series of examinations] will tell you that the CFA designation is as difficult to obtain as the FSA."

Nevertheless, the CFA designation is more broadly recognized in the investment world, and as indicated above, this has prompted many actuaries to seek it to gain recognition for their investment knowledge. For instance, Prakash A. Shimpi, a consultant for Towers Perrin specializing in Enterprise Risk Management, explained: "The CFA designation was a more recognizable qualification for working in financial areas outside of traditional actuarial work, and my FSA designation - although technically more intensive - was viewed merely as a bonus."

However, the Task Force believes that credentialed actuaries have already obtained and demonstrated at least as much investment expertise as holders of most of the exempt designations, and thus merit a statutory exemption also. Moreover, a statutory exemption for actuarial credentials would validate the profession's reputation for comprehensive investment education and highly knowledgeable practitioners in the eyes of the investment community.

4. Review of Investment Advisor Regulations

Investment advisory firms register with the SEC and/or the states. According to the California Department of Corporations Web site, "generally the larger (assets under management of \$25 million or more) and multi-state investment advisers are registered with the SEC whereas the smaller investment advisers and fee-only financial planners are registered with the states. More than 9,000 investment advisers are registered with either the SEC or state securities administrators," (see: <http://www.corp.ca.gov/pub/ialinks.htm>, and state securities administrators search at: http://www.nasaa.org/nasaa/abtnasaa/find_regulator.asp).

As stated above, a pre-requisite to registering as an investment adviser representative is normally passing either:

- the Uniform Investment Adviser Law Examination Series 65, or
- both of the following:
 - the General Securities Representative Examination (Series 7) and
 - the Uniform Combined State Law Examination (Series 66).

According to the North American Securities Administrators Association's (NASAA) Web site (www.nasaa.org), most states will allow an individual to substitute one of the following certifications for passing the Series 65 exam: CFP, CIC, ChFC, PFS or CFA.

Investment adviser representatives usually work for registered investment advisory companies. For sole proprietors, it may be required to register both as an investment advisory company *as well as* a representative of that company. According to the North American Securities Administrators Association, the laws regarding sole proprietorship investment advisers are complicated and vary by state.

This report does not attempt to provide details on every state regarding pertinent administrative codes, statutes or regulations. The largest 10 states by population are:

1. California
2. Texas
3. New York
4. Florida
5. Illinois
6. Pennsylvania
7. Ohio
8. Michigan
9. Georgia
10. New Jersey

Together, these states constitute approximately 55 percent of the total U.S. population. Of those states, excerpts from the regulations for New York, Texas, Florida and California are presented in the appendices. As an example, here is the relevant exemption language in Florida law:

(5) The examination requirement for investment adviser principals, investment adviser representatives, and associated persons of issuer dealers shall not apply to an individual who currently holds one of the following professional designations: 1. Certified Financial Planner (TM) or CFP® awarded by the Certified Financial Planner Board of Standards, Inc.; 2. Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, PA; 3. Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants; 4. Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts; 5. Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.
(Specific Authority 517.03(1) FS. Law Implemented 517.12(8) FS. History—New 12-5-79, Amended 9-20-82, Formerly 3E-600.05, Amended 8-1-91, 1-11-93, 4-18-96, 4-2-00, 10-30-03, Formerly 3E-600.005.)

For other states, the state statutes detailing investment advisor requirements can be found by using the following link:

http://www.nasaa.org/industry_regulatory_resources/Directory_of_Securities_Laws_Regulations/

Note that personal actuaries should review the applicable statutes and seek qualified legal guidance, as appropriate. This report does not attempt nor should be construed to provide legal advice in any way.

5. Proposed Action Steps

The Task Force recommends that actuarial organizations lobby the relevant legislative and regulatory bodies to provide actuaries pursuing an investment-focused career path with the same exemption status as other professionals.

It is worth noting that regulatory action in the past has often led to actuaries serving in emerging roles. For example, the Sarbanes-Oxley Act of 2002 has significantly increased the need for actuaries in the broader business community. Jim Presmanes, assistant VP of risk management and insurance at Haverty's, a retail furniture company, gives an example: "Sarbanes-Oxley legislation motivated us to hire a consulting actuary to evaluate our organizational risk. We hired the consulting actuary to assist in evaluating financial risk [reserve volatility and development]. We receive quarterly third-party actuarial analyses from an actuarial consulting firm. This keeps us on track and ensures Sarbanes-Oxley compliance with respect to retained loss development and associated expense drivers. We also hired a consulting intern from Georgia State University's Department of Risk Management and Insurance to work with the actuary to enhance the model we use to estimate outstanding liabilities."

The Task Force recognizes that sometimes a professional accrediting organization will give partial or complete credit towards its own designation(s) through completion of another organization's examinations. However, the Task Force recommends that encouraging legislators to provide an explicit exemption for credentialed actuaries would be far more practical than trying to work with other professional associations to recognize actuarial credentials through reciprocity agreements. The proposal to legislators to exempt actuaries could be bolstered by conducting a comparative study of the material included in the actuarial examinations and those required for designations that currently enjoy an exemption from the investment adviser examinations.

Including this exemption will require regulatory language revisions on a state-by-state basis, and amending the Uniform Securities Act, as applicable. The Uniform Securities Act was drafted by the National Conference of Commissioners on Uniform State Laws. This act contains language some states use in defining credential-based exemptions from investment advisor examination requirements. It was approved by the American Bar Association on Feb 10, 2003. The complete Uniform Securities Act can be found at: <http://www.law.upenn.edu/bll/ulc/securities/2002final.htm>.

As of this writing, only nine states had formally adopted the Uniform Securities Act, and only four others were planning to introduce it in legislative session for 2005. Therefore, state-specific revisions to regulatory language will be necessary for a majority of the

states (see: http://www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-usa.asp as of 6/11/05).

6. Final Recommendations and Conclusions

The Task Force recognizes that regardless of exemptions in statutory law, actuaries wishing to offer investment advice must still be subject to applicable actuarial professional standards and codes of conduct. Just as an actuary who has never worked in valuation might not be qualified to issue a reserve opinion without garnering adequate experience first, appropriate criteria should be required to ensure that actuaries who offer investment advisory services meet the applicable professional standards. This could be handled by the actuarial profession's established guidelines for actuarial practice. For instance, actuaries who have completed the investment track exams administered by the SOA could be deemed to have adequate professional education to offer investment advice.

Ultimately, only actuaries with relevant experience and current industry knowledge should be in the role of giving advice. Setting such a requirement would have the beneficial effect of maintaining high standards of professionalism, encouraging actuaries to keep abreast of current developments, and encouraging actuaries to seek more continuing education in the field of investments. At the same time, an exemption to investment adviser examinations would raise the awareness of and respect for actuarial designations.

Given that actuaries are at a competitive disadvantage to already more established professions in providing personal investment guidance, the Task Force believes time is of the essence to create a level playing field. Consequently, the Task Force recommends that an immediate and significant effort be made on behalf of actuaries to add the actuarial designations to the list of other professional designations that are exempted from the exam(s) prescribed under investment adviser statutes. A broad partnership of actuarial organizations in this endeavor will not only expedite this effort, but also greatly increase its chance of success. As in other critical matters of professional encroachment, the future of the actuarial profession depends on it.

Postscripts

Thanks to Suzanne Merrall, attorney-at-law, for helping with legal research for this report. Thanks also to members of the Task Force on the personal actuary who provided valuable input on the issues raised in this paper.

Appendices

New York Investment Advisory Services Regulation, Section 11.7:

11.7 Waivers.

(a) an investment adviser who is an individual or a business engaged in advising members of the public as defined in section 11.12(f) that has been continuously registered in this jurisdiction for a period of five (5) years without any regulatory action or arbitrations shall be exempt from provisions of section 11.6.

(b) An individual who represents an investment adviser in doing any of the acts which make that person an investment adviser as defined in section 11.12(f), or solicits business for an investment adviser, and who has been continuously registered in any jurisdiction, other than New York, for a period of two (2) years prior to the date of filing registration information pursuant to section 11.4(c) without any regulatory action or arbitrations, shall be exempt from provisions of section 11.6.

(c) The examination requirement of section 11.6 shall not apply to any individual who currently holds one of the following professional designations in good standing:

- (1) Certified Financial Planner(CFP) awarded by the Certified Financial Planner Board of Standards, Inc.;
- (2) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;
- (3) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;
- (4) Chartered Financial Analyst (CFA) awarded by the Association for Investment Management Research;
- (5) Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.; or
- (6) Such other professional designation as the administrator may by rule or order recognize.

(d) All requests for waivers under the subdivisions of section 11.7 must be made on Form NYIAQ (New York Investment Adviser Qualification).

Florida (69W-600.005 Examinations/Qualifications):

(3) Examination Requirements for Investment Adviser Representative and Principal: An individual applying to be registered as an investment adviser or investment adviser representative shall provide the Office of Financial Regulation with proof of passing, within two years of the date of application for registration, one of the following examinations: 1. the Uniform Investment Adviser Law Examination (Series 65) or 2. the General Securities Representative Examination (Series 7) and the Uniform Combined State Law Examination (Series 66)[...]

(5) The examination requirement for investment adviser principals, investment adviser representatives, and associated persons of issuer dealers shall not apply to an individual who currently holds one of the following professional designations: 1. Certified Financial Planner (TM) or CFP® awarded by the Certified Financial Planner Board of Standards, Inc.; 2. Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, PA; 3. Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants; 4. Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts; 5. Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.

(Specific Authority 517.03(1) FS. Law Implemented 517.12(8) FS. History—New 12-5-79, Amended 9-20-82, Formerly 3E-600.05, Amended 8-1-91, 1-11-93, 4-18-96, 4-2-00, 10-30-03, Formerly 3E-600.005.)

Texas

Administrative codes, Title 7, Part 7, Chapter 116, Rule 116.3, found by the link [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=7&pt=7&ch=116&rl=3](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=7&pt=7&ch=116&rl=3) is as follows:

(c) Waivers of examination requirements.

(1) All persons who were registered in Texas on August 23, 1963, are not required to take any examinations.

(2) A full waiver of the examination requirements of the Texas Securities Act, §13.D, is granted by the Board to the following classes of persons:

(A) a person who was registered as an investment adviser or investment adviser representative on or before December 31, 1999, provided the person has maintained a registration as an investment adviser or investment adviser representative with any state securities administrator that has not lapsed for more than two years from the date of the last registration;

(B) applicants who are certified by the Association for Investment Management and Research, or its predecessors, the Federation of Chartered Financial Analysts or by the Institute of Chartered Financial Analysts, to be chartered financial analysts (CFA);

(C) applicants who are certified by the Certified Financial Planner Board of Standards, Inc., to use the mark "CERTIFIED FINANCIAL PLANNER" (CFP);

(D) applicants who are designated by the American Institute of Certified Public Accountants as accredited personal financial specialists (PFS);

(E) applicants who are designated by the Investment Counsel Association of America, Inc., as Chartered Investment Counsel (CIC);

(F) applicants who are designated by the American College, Bryn Mawr, Pennsylvania, as chartered financial consultants (ChFC); or

(G) a person who completed the examinations required under subsection (b) of this section, but whose registration has lapsed for more than two years and who has been continually employed in a securities-related position with an entity which was not required to be registered.

(3) The Association for Investment Management and Research, the Certified Financial Planner Board of Standards, Inc., the American Institute of Certified Public Accountants, the American College, and the Investment Counsel Association of America, Inc., are required to submit to the Securities Commissioner any changes to their certification programs as such changes occur.

California

Corporate Code, contains similar wording as Florida, according to the following link provided by the Office of Administrative Law (OAL): http://ccr.oal.ca.gov/cgi-bin/om_isapi.dll?clientID=144497&advquery=financial%20planner%20series%2065%20CFA&infobase=ccr&record={29298}&softpage=Search_Frame_Pg42&x=30&y=18&zz

TITLE 10. Investment

Chapter 3. Commissioner of Corporations

Subchapter 2. Corporate Securities

Article 10. Licensing and Regulation of Investment Advisers

§260.236. Qualifications of Investment Advisers and Investment Adviser Representatives.

References to an investment adviser representative shall mean both an investment adviser representative and an associated person of an investment adviser, as those terms are defined in Section 25009.5(a) and (b) of the Code.

(a) **Qualification Requirements.** An investment adviser and each investment adviser representative shall pass, within two years prior to the date of filing the application for an investment adviser certificate or becoming engaged as an investment adviser representative:

(1) the Series 65/Uniform Investment Adviser Law Examination in effect on January 1, 2000 (2000 Series 65 Examination), or

(2) the Series 7/General Securities Representative Examination (Series 7 Examination) and the Series 66/Uniform Combined State Law Examination (2000 Series 66 Examination).

(b) **Waivers:** The requirements of subsection (a) do not apply to:

(1) Any investment adviser or individual employed or engaged as an investment adviser representative registered, reported or licensed in any state of the United States as of December 31, 1999. However, the Commissioner may require additional examinations for any individual found to have violated the Corporate Securities Law of 1968 or the rules promulgated thereunder.

(2) Any investment adviser or investment adviser representative who has been actively and continuously engaged in the securities business as a broker-dealer, an agent of a broker-dealer, an investment adviser, or an investment adviser representative without substantial interruption (two or more years) since passing the qualifying examination(s) and who has:

(A) passed the Series 2 Examination (SECO/NASD Nonmember General Securities Examination) or passed the Series 7 Examination before January 1, 1998, or

(B) passed the Series 65 Examination or Series 66 Examination before January 1, 2000 and has passed the Series 7 Examination.

(c) Exemptions. Subsection (a) shall not apply to:

(1) any individual who has been registered as an investment adviser or employed or engaged as an investment adviser representative in any state for two consecutive years immediately before the date of filing an application or notice pursuant to Corporations Code Section 25230(b) or 25230.1(c) in this state. This provision shall not apply to an individual using the exemption in subsection (c)(2).

(2) any investment adviser representative employed by or engaged by an investment adviser only to offer or negotiate for the sale of investment advisory services of the investment adviser.

(3) any individual who currently holds one of the following professional designations:

(A) Chartered Financial Analyst (CFA) granted by the Association for Investment Management and Research;

(B) Chartered Financial Consultant (ChFC) awarded by The American College, Bryn Mawr, Pennsylvania;

(C) Certified Financial Planner (CFP) issued by the Certified Financial Planner Board of Standards, Inc.;

(D) Chartered Investment Counselor (CIC) granted by the Investment Counsel Association of America; or

(E) Personal Financial Specialist (PFS) administered by the American Institute of Certified Public Accountants.

(d) An individual who has not been registered in any state for a period of two years shall be required to comply with the examination requirements of this rule. This provision shall not apply to an individual using the exemption in subsection (c)(2) or (c)(3).

NOTE

Authority cited: Sections 25236(a) and 25610, Corporations Code.
Reference: Sections 25230, 25230.1 and 25236, Corporations Code.

*Section of California Law defining Investment Adviser:

Source:<http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=01232412636+0+0+0&WAISaction=retrieve>

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 25009 of the Corporations Code is amended to read:

25009. (a) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities, or who, for compensation and as a part of a regular business, publishes analyses or reports concerning securities. "Investment adviser" does not include (1) a bank, trust company or savings and loan association; (2) an attorney at law, accountant, engineer or teacher whose performance of these services is solely incidental to the practice of his or her profession; (3) an associated person of an investment adviser; (4) a broker-dealer or agent of a broker-dealer whose performance of these services is solely incidental to the conduct of the business of a broker-dealer and who receives no special compensation for them; or (5) a publisher of any bona fide newspaper, news magazine or business or financial publication of general, regular and paid circulation and the agents and servants thereof, but this paragraph (5) does not exclude any such person who engages in any other activity which would constitute that person an investment adviser within the meaning of this section.

(b) "Investment adviser" also includes any person who uses the title "financial **planner**" and who, for compensation, engages in the business, whether principally or as part of another business, of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities, or who, for compensation and as part of a regular business, publishes analyses or reports concerning securities. This subdivision does not apply to: (1) a bank, trust company, or savings and loan association; (2) an attorney at law, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his or her profession, so long as these individuals do not use the title "financial **planner**;" (3) an associated person of an investment adviser where the investment adviser is licensed or exempt from licensure under this law; (4) an agent of a broker-dealer where the broker-dealer is licensed or exempt from licensure under this law, so long as (A) the performance of these services by the agent is solely incidental to the conduct of the business of the broker-dealer, and (B) the agent receives no special compensation for the performance of these services; or (5) a publisher set forth in paragraph (5) of subdivision (a), so long as the publisher or the agents and servants of the publisher are not engaged in any other activity which would constitute that person an investment adviser within the meaning of

this section.

25009.5. (a) "Investment adviser representative" or "associated person of an investment adviser" means any partner, officer, director of (or a person occupying a similar status or performing similar functions) or other individual, except clerical or ministerial personnel, who is employed by or associated with, or subject to the supervision and control of, an investment adviser that has obtained a certificate or that is required to obtain a certificate under this law, and who does any of the following:

(1) Makes any recommendations or otherwise renders advice regarding securities.

(2) Manages accounts or portfolios of clients.

(3) Determines which recommendation or advice regarding securities should be given.

(4) Solicits, offers, or negotiates for the sale or sells investment advisory services.

(5) Supervises employees who perform any of the foregoing.

(b) "Investment adviser representative" means, with respect to an investment adviser subject to Section 25230.1, a person defined as an investment adviser representative by Rule 203A-3 of the Securities and Exchange Commission (17 C.F.R. 275.203A-3) and who has a place of business in this state.