

OF BUSINESS WHICH OPERATES OR WOULD OPERATE AS A FRAUD OR DECEIT ON THE OTHER PERSON.

(B) EXTENSION OF AN INVESTMENT ADVISORY CONTRACT.

(1) IT IS UNLAWFUL FOR ANY INVESTMENT ADVISOR 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 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, WILL BE ONLY A MINORITY OF THE MEMBERS AND WILL HAVE ONLY A MINORITY INTEREST IN THE BUSINESS.

(C) TAKING OR HAVING CUSTODY OF ANY SECURITIES OR FUNDS OF A CLIENT.

IT IS UNLAWFUL FOR ANY INVESTMENT ADVISER TO TAKE OR HAVE CUSTODY OF ANY SECURITIES OR FUNDS OF ANY CLIENT IF:

(1) THE COMMISSIONER BY RULE PROHIBITS CUSTODY; OR

(2) IN THE ABSENCE OF RULE, THE INVESTMENT