

## ATTESTATION FORM

Use of "Adviser" or "Advisor" in Firm Name

I, \_\_\_\_\_, on behalf of

\_\_\_\_\_  
(such entity, or any successor entity, the "Firm"), hereby attest to the following:

1. I am or will be listed as a "Control Person" on Schedule A of the Firm's Uniform Application for Broker-Dealer Registration ("Form BD") and I am duly authorized to make the attestations in this form on behalf of the Firm.
2. The Firm intends to register with the Financial Industry Regulatory Authority, Inc. ("FINRA") and the U.S. Securities and Exchange Commission ("SEC") as a broker-dealer.
3. The Firm intends to use the term "adviser" or "advisor" in its name.
4. The Firm is aware of the obligations under Regulation Best Interest (17 C.F.R. 240.15I-1) ("Reg BI"), including the requirements under the "Disclosure Obligation" (17 C.F.R. 240.15I-1(a)(2)). The Firm is further aware of the SEC's position, expressed in the [Reg BI Adopting Release](#)<sup>1</sup> that "the use of the terms 'adviser' and 'advisor' in a name or title by [...] a broker-dealer that is not also registered as an investment adviser" creates a presumption of a violation of the capacity disclosure obligation under Reg BI. However, a broker-dealer that is not also registered as an investment adviser may use such terms when they are acting in a role specifically defined by federal statute that does not entail providing investment advisory services to retail customers, such as acting as a municipal advisor,<sup>2</sup> commodity trading advisor,<sup>3</sup> or advisor to a "special entity."<sup>4</sup> See *id.*; [SEC Staff FAQs on Regulation Best Interest](#) addressing the use of the terms "adviser" and "advisor."
5. I attest that the Firm's use of the term "adviser" or "advisor" in its name, at all times, will not violate Reg BI because the Firm, at all times, will fall under one or more of the following categories by no later than the date on which the firm's registration becomes effective (check all that apply):

☐ The Firm is not subject to Reg BI because the firm does not and will not have any "retail customers" as that term is defined under Reg BI.<sup>5</sup>

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<sup>1</sup> See 84 FR 33318, 33352-33353.

<sup>2</sup> See 15 U.S.C. 78o-4(e)(4).

<sup>3</sup> See 15 U.S.C. 80b-2(a)(29).

<sup>4</sup> See 15 U.S.C. 78o-10(h)(2).

<sup>5</sup> 17 C.F.R. 240.15I-1(b)(1) ("**Retail customer** means a natural person, or the legal representative of such natural person, who: (i) Receives a recommendation of any securities transaction or investment strategy involving securities from a broker, dealer, or a natural person who is an associated person of a broker or dealer; and (ii) Uses the recommendation primarily for personal, family, or household purposes.)

[\*\*\*Please note the definition of “retail customer” does not exclude high-net worth natural persons and natural persons that are accredited investors, nor is there a “friends and family” exclusion.]

☐ The Firm is not subject to Reg BI. Although the firm may offer services to retail investors, the firm does not make any recommendations to retail investors.

[\*\*\*Please note that whether a broker-dealer has made a recommendation that triggers application of Reg BI turns on the facts and circumstances of the particular situation and therefore, whether a recommendation has taken place is not susceptible to a bright line definition.<sup>6</sup>]

☐ The Firm is also registered as an investment adviser with the SEC or with one or more state authorities.

☐ The Firm is also registered as a Municipal Advisor.

☐ The Firm is also registered as a Commodity Trading Advisor.

☐ The Firm is also an advisor to a special entity.

☐ Other (please specify): \_\_\_\_\_

[\*\*\*Please note that if you checked “Other” and no other category above, your name reservation may be significantly delayed, and FINRA may require you to obtain guidance from the SEC staff permitting the use of these terms before completing its review.]

6. The Firm acknowledges that if these attestations are inaccurate or untrue, at any time, the Firm may be in violation of Reg BI, and subject to regulatory action.
7. The Firm acknowledges that the attestations and this form in no way preclude, prohibit or otherwise limit FINRA from making any finding or imposing any penalty, sanction, remedial order, or other disciplinary action, with respect to the Firm or its affiliates’ compliance with Reg BI or with any other provision of the federal securities laws, rules or regulations, or with FINRA rules, including a finding that the Firm has violated Reg BI due to the use of “adviser” or “advisor” in the Firm's name. The Firm further acknowledges that this attestation relates solely to the treatment of the terms “adviser” and “advisor” under Reg BI, and not to any other restrictions on such terms or similar terms that may exist under other regulations, including state laws.
8. The Firm assumes all risk associated with the use of “adviser” or “advisor” in a broker-dealer's name. To the fullest extent permitted by applicable law or regulation, FINRA and its officers, personnel, successors, assigns, and affiliates shall not be liable for any and all claims, damages, liabilities, costs, expenses, attorneys fees, fines or loss of any kind including but not limited to, indirect, punitive, incidental, special, or consequential damages (including loss of profits, data, business, or goodwill) arising from, related to, or resulting from this attestation form, whether or not liability is based on breach of contract, tort, strict liability, breach of warranty, failure of essential purpose or otherwise, even if FINRA has been advised of the possibility of such losses or damages.

9. The Firm agrees to promptly notify FINRA in writing within 30 days of any changes in the Firm's status or activities that may affect the Firm's eligibility to use "adviser" or "advisor" in the Firm's name.
10. This attestation form constitutes the entire agreement between FINRA and the Firm as to the subject matter discussed herein, and supersedes all prior agreements, understandings and representations with respect thereto.
11. This attestation form shall be governed by, and construed in accordance with, the laws of the state of New York applicable to agreements made, and fully to be performed, therein by residents thereof.

*[Signature Page Follows]*

By signing below, I have caused this attestation form to be executed by a duly authorized representative of the Firm and certify on behalf of the Firm that the information provided in this attestation is true, complete, and accurate to the best of my knowledge and agree to promptly notify FINRA in the event of any development that changes the truthfulness, completeness or accuracy of the above attestations.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Entity Name: \_\_\_\_\_