

AGENCY 21. DEPARTMENT OF FINANCIAL REGULATION
SUB-AGENCY 030. SECURITIES DIVISION
CHAPTER 001. VERMONT SECURITIES REGULATIONS (S-2016-01)

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CHAPTER 1
TITLE, AUTHORITY, AND DEFINITIONS

V.S.R. § 1-1. Title; Authority.

Regulations V.S.R. § 1-1 through V.S.R. § 8-4 (the “Vermont Securities Regulations”) are promulgated pursuant to the provisions of the Vermont Uniform Securities Act (2002) (the “Act”), codified at Chapter 150, Title 9 of the Vermont Statutes Annotated, and the powers of the commissioner of the Department of Financial Regulation. To the extent any provision or requirements under the Act are not contained within these regulations, such provision is construed as the commissioner’s policy position with respect to the subject of such provision.

V.S.R. § 1-2. Definition of Terms.

The following terms as used in the Act, these regulations, forms, instructions, and orders of the commissioner have the meaning set forth in this regulation, unless the context indicates otherwise.

(a) “3(c)(1) fund” means a qualifying private fund exempt from the definition of an investment company pursuant to 15 U.S.C. § 80a-3(c)(1).

(b) “3(c)(7) fund” means a private fund exempt from the definition of an investment company pursuant to 15 U.S.C. § 80a-3(c)(7).

(c) “Accredited investor” means an accredited investor as defined in Rule 501 of Regulation D of the Securities Act of 1933 (15 U.S.C. 77b(a)(15)(ii); 17 C.F.R. § 230.501).

(d) “Adjusted net worth” means the excess of total assets over total liabilities as determined in conformity with GAAP and adjusted by excluding the following assets and liabilities:

(1) Prepaid expenses, deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discounts and expenses, and all other assets of an intangible nature;

(2) Advances or loans to a controlling person or employee of the investment adviser; and

(3) Homes, home furnishings, automobiles, and any other personal assets of a sole proprietor that would not be liquidated in the ordinary course of business.

(e) “Affiliate” means a person who directly or indirectly controls, is controlled by, or is under common control with another person.

(f) “Agency cross transaction” for an investment advisory client as used in V.S.R. § 7-3(g) means a transaction in which a person acts as an investment adviser in relation to a transaction in which such investment adviser, or any person controlling, controlled by, or under common control with the investment adviser, including an investment adviser representative, acts as a broker for both the advisory client and another person on the other side of the transaction. A person acting in this capacity is required to be registered as a broker-dealer in this state unless excluded from the definition of broker-dealer under 9 V.S.A. § 5102(3).

(g) “Authentication” means the allowed activities of legitimate users, mediating every attempt by a user to access a resource in a given system.

(h) “Bad actor” means an issuer; any predecessor of an issuer; any affiliated issuer; any director, executive officer, other officer participating in an offering, general partner or managing member of the issuer; any beneficial owner of twenty percent (20%) or more of the issuer’s outstanding voting equity securities, calculated on the basis of voting power; any promoter connected with the issuer in any capacity at the time of such sale (including any director, executive officer, other officer participating in the offering, general partner or managing member of the promoter); any investment manager of an issuer that is a pooled investment fund; any person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with such sale of securities; any general partner or managing member of any such investment manager or solicitor; or any director, executive officer or other officer participating in the offering of any such investment manager or solicitor or general partner or managing member of such investment manager or solicitor; who:

(1) Was convicted, within ten (10) years before such sale (or five (5) years, in the case of issuers, their predecessors and affiliated issuers), of any felony or misdemeanor:

(A) In connection with the purchase or sale of any security;

(B) Involving the making of any false filing with the commissioner or the SEC; or

(C) Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities;

(2) Is subject to any order, judgment or decree of any court of competent jurisdiction, entered within five (5) years before such sale that, at the time of such sale, restrains or enjoins such person from engaging or continuing to engage in any conduct or practice:

(A) In connection with the purchase or sale of any security;

(B) Involving the making of any false filing with the commissioner or the SEC; or

(C) Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities;

(3) Is subject to a final order of a state securities administrator (or an agency or officer of a state performing like functions); a state authority that supervises or examines banks, savings associations, or credit unions; a state insurance commission (or an agency or officer of a state performing like functions); any foreign financial regulatory authority or supervisory agency; an appropriate federal banking agency; the U.S. Commodity Futures Trading Commission; or the National Credit Union Administration that:

(A) At the time of such sale, bars the person from:

(i) Association with an entity regulated by such commission, authority, agency, or officer;

(ii) Engaging in the business of securities, insurance or banking; or

(iii) Engaging in savings association or credit union activities; or

(B) Constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct entered within ten (10) years before such sale;

(4) Is subject to an order of the SEC entered pursuant to 15 U.S.C. § 78o(b) or (c) or 15 U.S.C. § 80b-3(e) or (f) that, at the time of such sale:

(A) Suspends or revokes such person's registration as a broker, dealer, municipal securities dealer or investment adviser;

(B) Places limitations on the activities, functions or operations of such person; or

(C) Bars such person from being associated with any entity or from participating in the offering of any penny stock;

(5) Is subject to any order of the SEC entered within five (5) years before such sale that, at the time of such sale, orders the person to cease and desist from committing or causing a violation or future violation of:

(A) Any scienter-based antifraud provision of the federal securities laws, including without limitation 15 U.S.C. § 77q(a)(1), 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5, 15 U.S.C. § 78o(c)(1) and 15 U.S.C. § 80b-6(1), or any other rule or regulation thereunder; or

(B) 15 U.S.C. § 77e;

(6) Is suspended or expelled from membership in, or suspended or barred from association with a member of a registered national securities exchange or a registered national, or affiliated securities association or any foreign securities exchanges and SROs that enforce financial and sales practice requirements for their members for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade;

(7) Has filed (as a registrant or issuer), or was or was named as an underwriter in, any registration statement or Regulation A offering statement filed with the SEC that, within five (5) years before such sale, was the subject of a refusal order, stop order, or order suspending the Regulation A exemption, or is, at the time of such sale, the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued; or

(8) Is subject to a United States Postal Service false representation order entered within five (5) years before such sale, or is, at the time of such sale, subject to a temporary restraining order or preliminary injunction with respect to conduct alleged by the United States Postal Service to constitute a scheme or device for obtaining money or property through the mail by means of false representations;

(A) Subdivision (8) above does not apply:

(i) Upon a showing of good cause and without prejudice to any other action by the commissioner, if the commissioner determines that it is not necessary under the circumstances that an exemption be denied;

(ii) If, before the relevant sale, the court or regulatory authority that entered the relevant order, judgment or decree advises in writing (whether contained in the relevant judgment, order or decree or separately to the commissioner) that disqualification under subdivision (8) above should not arise as a consequence of such order, judgment or decree; or

(iii) If the issuer establishes that it did not know and, in the exercise of reasonable care, could not have known that a disqualification existed under subdivision (8) above;

(iv) Instruction to subdivision (8) above: An issuer will not be able to establish that it has exercised reasonable care unless it has made, in light of the circumstances, factual inquiry into whether any disqualifications exist. The nature and scope of the factual inquiry will vary based on the facts and circumstances concerning, among other things, the issuer and the other offering participants;

(B) For purposes of subdivision (8) above, events relating to any affiliated issuer that occurred before the affiliation arose will be not considered disqualifying if the affiliated entity is not:

(i) In control of the issuer; or

(ii) Under common control with the issuer by a third party that was in control of the affiliated entity at the time of such events;

(9) Is subject to court-imposed sanctions in the United States or in any foreign jurisdiction within a five (5) year period before such sale due to a conviction on state, federal or international criminal charges for tax evasion or tax fraud, or subject to any of the following in connection with such conviction:

(i) Tax liens;

(ii) Court ordered judgements;

(iii) Wage garnishments;

(iv) Bank levies; or

(v) Treasury or refund offsets.

(i) “Blank check company” means a company that is a development stage company that has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

(j) “Branch office”

(1) “Broker-dealer branch office” means any location where one (1) or more agents regularly conduct business on behalf of a broker-dealer or that is held out as such a location, with the exception of the following locations:

(A) Any location that is established solely for customer service or back office-type functions, where no sales activities are conducted, and that is not held out to the public as a branch office;

(B) Any location that is the agent’s primary residence if all of the following conditions are met:

(i) Only agents who reside at the location and are members of the same immediate family conduct business at the location;

(ii) The location is not held out to the public as an office, and the agent does not meet with customers at the location;

(iii) Neither customer funds nor securities are handled at the location;

(iv) The agent is assigned to a designated branch office, and the designated branch office is reflected on all business cards, stationery, advertisements, and other communications to the public by the agent or investment adviser representative;

(v) The agent's correspondence and communications with the public are subject to the supervision of the broker-dealer with which the agent is associated;

(vi) Electronic communications are made through the electronic system of the broker-dealer;

(vii) All orders for securities are entered through the designated branch office or an electronic system established by a broker-dealer;

(viii) Written supervisory procedures pertaining to supervision of activities conducted at residence locations are maintained by the broker-dealer; and

(ix) A list of all residence locations is maintained by the broker-dealer;

(C) Any location, other than a primary residence, that is used for securities or investment advisory business for less than thirty (30) business days in any one (1) calendar year, if the broker-dealer complies with the provisions of subdivisions (ii)-(viii) above. For purposes of this subdivision, a business day does not include any partial business day if the agent spends at least four (4) hours of the business day at the agent's designated branch office during the hours that the office is normally open for business;

(D) Any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, that is not held out to the public as an office;

(E) Any location that is used primarily to engage in non-securities activities and from which the agents effect no more than twenty-five (25) securities transactions in any one (1) calendar year, if any advertisement or sales literature identifying the location also sets forth the address and telephone number of the location from which the agents conducting business at the non-branch locations are directly supervised;

(F) The floor of a registered national securities exchange where a broker-dealer conducts a direct access business with public customers; and

(G) A temporary location established in response to the implementation of a business continuity plan;

(2) “Investment adviser branch office” means a place of business as defined in 9 V.S.A. § 5102(21).

(k) “Business continuity plan” means written processes and procedures reasonably designed to ensure that critical business functions continue through a disaster or other significant business interruption and mitigate the risk of adverse effects on the investment adviser’s clients resulting from the unexpected loss or death of key personnel.

(l) “CFTC” means the U.S. Commodity Futures Trading Commission.

(m) “Close family relationship” means either a person within the third degree of relationship, by blood or adoption, or a spouse, stepchild, or fiduciary of a person within the third degree of relationship.

(n) “Commissioner” has the same meaning as defined in 9 V.S.A. § 5102(4), or the commissioner’s designee.

(o) “Control” means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. A presumption of control exists for any person who:

(1) Is a director, general partner, member, or manager of a limited liability company, or officer exercising executive responsibility (or has similar status or functions);

(2) Has the right to vote twenty percent (20%) or more of a class of voting securities or the power to sell or direct the sale of twenty percent (20%) or more of a class of voting securities; or

(3) In the case of a partnership or limited liability company, has the right to receive upon dissolution, or has contributed, twenty percent (20%) or more of the capital.

(p) “CRD” means the FINRA Central Registration Depository, the central licensing and registration system for the U.S. securities industry and its regulators.

(q) “Current brochure” and “current brochure supplement” mean the most recent versions of the brochure or brochure supplements, including all sticker amendments.

(r) “Custody” means holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them or the ability to appropriate them.

(s) “Cybersecurity” is the protection of investor and firm information from compromise through the use—in whole or in part—of electronic digital media, (e.g., computers, mobile devices or

Internet protocol-based telephony systems). ‘Compromise’ refers to a loss of data confidentiality, integrity or availability.

(t) “Depository Institution” shall have same meaning as in 9 V.S.A. § 5102(5).

(u) “Designated security” for purposes of V.S.R. § 3-2(g) (Prohibited Conduct. Designated Security Transactions) means any equity security other than securities:

(1) Registered, or approved for registration upon notice of issuance, on a national securities exchange;

(2) Authorized, or approved for authorization upon notice of issuance, for listing on the national market system of the NASDAQ stock market;

(3) Issued by an investment company registered under The Investment Company Act of 1940;

(4) That is a put option or call option issued by the options clearing corporation; or

(5) Whose issuer has net tangible assets in excess of four million dollars (\$ 4,000,000) as demonstrated by financial statements dated within the previous fifteen (15) months that the broker-dealer has reviewed and has a reasonable basis to believe are true and complete in relation to the date of the transaction with the person, if either of the following conditions is met:

(A) The issuer is not a foreign private issuer, and the financial statements are the most recent financial statements for the issuer that have been audited and reported on by a certified public accountant in accordance with the provisions of 17 C.F.R. § 210.2-02; or

(B) The issuer is a foreign private issuer, and the financial statements are the most recent financial statements for the issuer that have been filed with the SEC; furnished to the SEC pursuant to 17 C.F.R. § 240.12g3-2(b); or prepared in accordance with GAAP in the country of incorporation, audited in compliance with the requirements of that jurisdiction, and reported on by an accountant duly registered and in good standing in accordance with the regulations of that jurisdiction.

(v) “Eligible privately held company” for purposes of V.S.R. § 3-4 (Registration Exemption for Merger and Acquisition Broker-Dealers) means a company meeting the following conditions:

(1) The company does not have any class of securities registered, or required to be registered, with the SEC under Section 12 of the Securities Exchange Act of 1934, 15 U.S.C. § 78l, or with respect to which the company files, or is required to file, periodic information, documents, and reports under 15 U.S.C. § 78o(d); and

(2) In the fiscal year ending immediately before the fiscal year in which the services of the merger and acquisition broker are initially engaged with respect to the securities transaction, the company meets either or both of the following conditions (determined in accordance with the historical financial accounting records of the company):

(A) The earnings of the company before interest, taxes, depreciation, and amortization are less than twenty-five million dollars (\$ 25,000,000); or

(B) The gross revenues of the company are less than twenty hundred and fifty million dollars (\$ 250,000,000).

(3) Inflation Adjustment. On the date that is five (5) years after the date of the enactment of this section, and every five (5) years thereafter, each dollar amount in subdivisions (2)(A)-(B) above must be adjusted by:

(A) Dividing the annual value of the Employment Cost Index For Wages and Salaries, Private Industry Workers (or any successor index), as published by the Bureau of Labor Statistics, for the calendar year preceding the calendar year in which the adjustment is being made by the annual value of such index (or successor) for the calendar year ending December 31, 2012; and

(B) Multiplying such dollar amount by the quotient obtained under subdivision (1).

(4) Rounding. Each dollar amount determined under subdivision (2) above must be rounded to the nearest multiple of one hundred thousand dollars (\$ 100,000).

(w) “Eligible adult” means:

(1) An individual sixty-five (65) years of age or older; or

(2) An individual eighteen (18) years of age or older who the reporting person reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests.

(x) “Encryption” is the protection of the confidentiality of data by ensuring that only approved users can view the data.

(y) “Entering Into,” in reference to an investment advisory contract under V.S.R. § 7-6 does not include an extension or renewal unless the extension or renewal involves a material change to the contract.

(z) “FDIC” means the Federal Deposit Insurance Corporation.

(aa) “Financial exploitation” means:

(1) The wrongful or unauthorized taking, withholding, appropriation, or use of money, assets or property of an eligible adult; or

(2) Any act or omission taken by a person, including through the use of a power of attorney, guardianship, or conservatorship of an eligible adult, to:

(A) Obtain control, through deception, intimidation or undue influence, over the eligible adult's money, assets or property to deprive the eligible adult of the ownership, use, benefit, or possession of his or her money, assets or property; or

(B) Convert money, assets or property of the eligible adult to deprive such eligible adult of the ownership, use, benefit or possession of his or her money, assets, or property.

(bb) "FINRA" means the Financial Industry Regulatory Authority. FINRA is the successor to the National Association of Securities Dealers, Inc. (NASD) and the member regulation, enforcement, and arbitration operations of the New York Stock Exchange.

(cc) "GAAP" means Generally Accepted Accounting Principles in the United States.

(dd) "General solicitation" means an offer to one (1) or more persons by any of the following means or as a result of contact initiated through any of these means:

(1) Television, radio, or any broadcast medium;

(2) Newspaper, magazine, periodical, or any other publication of general circulation;

(3) Poster, billboard, internet posting, or other communication posted for the general public;

(4) Brochure, flier, handbill, or similar communication, unless the offeror has a substantial preexisting business relationship or close family relationship with each of the offerees;

(5) Seminar or group meeting, unless the offeror has a substantial preexisting business relationship or close family relationship with each of the offerees; or

(6) Telephone, facsimile, mail, delivery service, or electronic communication, unless the offeror has a substantial preexisting business relationship or close family relationship with each of the offerees.

(ee) "IARD" means the NASAA Investment Adviser Registration Depository.

(ff) "Independent party" for purposes of V.S.R. §§ 7-2 and 7-5 means a person that meets the following conditions:

(1) Is engaged by an investment adviser to act as a gatekeeper for the payment of fees, expenses, and capital withdrawals from a pooled investment;

(2) Does not control, is not controlled by, and is not under common control with the investment adviser; and

(3) Does not have, and has not had within the past two (2) years, a material business relationship with the investment adviser.

(gg) “Independent representative” means a person who meets the following conditions:

(1) Acts as an agent for an advisory client, which may include a person who acts as an agent for limited partners of a pooled investment vehicle structured as a limited partnership, members of a pooled investment vehicle structured as a limited liability company, or other beneficial owners of another type of pooled investment vehicle;

(2) Is obliged by law or contract to act in the best interest of the advisory client or the limited partners, members, or other beneficial owners;

(3) Does not control, is not controlled by, and is not under common control with the investment adviser; and

(4) Does not have, and has not had within the past two (2) years, a material business relationship with the investment adviser.

(hh) “Insolvent” shall have the same meaning as in 9A V.S.A. § 1-201(b)(23), and, in addition, in the case of broker-dealers, a broker-dealer shall be deemed insolvent if it does not demonstrate compliance with the SEC’s net capital rule (17 CFR § 240.15c3-3) or with the SEC’s customer protection rule (17 CFR § 240.15c3-3).

(ii) “Investment-related” for purposes of V.S.R. § 7-3 (Dishonest and Unethical Practices of Investment Advisers, Investment Adviser Representatives, and Federal Covered Investment Advisers) means pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, investment company, investment adviser, government securities broker or dealer, municipal securities dealer, bank, savings and loan association, entity or person required to be registered under the Commodity Exchange Act 7 U.S.C. § 1 et seq. or fiduciary).

(jj) “Investment supervisory services” for purposes of V.S.R. § 7-2 (Recordkeeping Requirements for Investment Advisers) means the giving of continual advice about the investment of funds on the basis of each client’s individual needs.

(kk) “Management person” means a person with power to exercise, directly or indirectly, a controlling influence over the management or policies of an investment adviser that is a company or to determine the general investment advice given to clients.

(ll) “Merger and acquisition broker-dealer” means any broker-dealer and any person associated with a broker-dealer engaged in the business of effecting securities transactions solely in connection with the transfer of ownership of an eligible privately held company, regardless of whether that broker-dealer acts on behalf of a seller or buyer, through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the eligible privately held company if:

(1) the merger and acquisition broker-dealer reasonably believes that upon consummation of the transaction, any person acquiring securities or assets of the eligible privately held company, acting alone or in concert, will control and, directly or indirectly, will be active in the management of the eligible privately held company or the business conducted with the assets of the eligible privately held company; and

(2) any person offered securities in exchange for securities or assets of the eligible privately held company, prior to becoming legally bound to consummate the transaction, will receive or have reasonable access to the most recent fiscal year-end financial statements of the issuer of the securities as customarily prepared by its management in the normal course of operations and, if the financial statements of the issuer are audited, reviewed, or compiled, any related statement by the independent accountant; a balance sheet dated not more than one hundred twenty (120) days before the date of the exchange offer; and information pertaining to the management, business, results of operations for the period covered by the foregoing financial statements, and any material loss contingencies of the issuer.

(mm) “NASAA” means the North American Securities Administrators Association, Inc.

(nn) “NASDAQ” means the Nasdaq stock market, comprising the Nasdaq National Market (“NMS”), which trades large, active securities and the Nasdaq SmallCap Market that trades emerging growth companies.

(oo) “National securities exchange” means a securities exchange that has registered with the SEC as a national securities exchange under 15 U.S.C. § 78f.

(pp) “NCUA” means the National Credit Union Administration.

(qq) “Networking arrangement” and “brokerage affiliate arrangement” mean a contractual or other arrangement between a broker-dealer or investment adviser and a depository institution pursuant to which the broker-dealer or investment adviser conducts broker-dealer or investment advisory services for customers of the depository institution and the general public on the premises of such depository institution where retail deposits are taken.

(rr) “Officer” means a person charged with managerial responsibility or control over a person, including the president, vice president, secretary, treasurer, partner, and any other controlling person.

(ss) “Predecessor” means a person, a major portion of whose business, assets, or control has been acquired by another.

(tt) “Private fund adviser” means an investment adviser who solely provides advice to one (1) or more qualifying private funds.

(uu) “Promoter” means a person who, acting alone or in conjunction with one (1) or more other persons, directly or indirectly founds, organizes, reorganizes, or controls the business, financing, or operations of an issuer.

(vv) “Prospectus” means any prospectus defined in 15 U.S.C. § 77b(a)(10). This term does not include any communication meeting the requirements of 9 V.S.A. § 5202(16) or 17 C.F.R. § 230.134.

(ww) “Public Shell Company” for purposes of V.S.R. § 3-4 (Registration Exemption for Merger and Acquisition Broker-Dealers) means a company that at the time of a transaction with an eligible privately held company:

(1) Has any class of securities registered, or required to be registered, with the SEC under 15 U.S.C. § 78o(b), or with respect to which the company files, or is required to file, periodic information, documents, and reports under 15 U.S.C. § 78o(d);

(2) Has no or nominal operations; and

(3) Has:

(A) No or nominal assets;

(B) Assets consisting solely of cash and cash equivalents; or

(C) Assets consisting of any amount of cash and cash equivalents and nominal other assets.

(xx) “Qualified client” means a qualified client as defined in 17 C.F.R. § 275.205-3.

(yy) “Qualified custodian” means any of the following independent institutions or entities:

(1) A bank or savings association that has deposits insured by the FDIC;

(2) A broker-dealer registered under the Act who holds client assets in customer accounts;

(3) A futures commission merchant registered under 7 U.S.C. § 6f, who holds client assets in customer accounts, but only with respect to clients’ funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity and options of the commodity for future delivery; and

(4) A foreign financial institution that customarily holds financial assets for its customers, if the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

(zz) "Qualified individual", as used in V.S.R. § 8-4 (Protection of Vulnerable Adults from Financial Exploitation) means any broker-dealer agent, investment adviser representative or person who serves in a supervisory, compliance, or legal capacity for a broker-dealer or investment adviser.

(aaa) "Qualifying private fund" means a private fund that meets the definition of a qualifying private fund in 17 C.F.R. § 275.203(m)-1(d)(5).

(bbb) "Registrant" means a person registered under the Act.

(ccc) "Sales and advertising literature" means the following, if intended for distribution to prospective investors:

(A) Any advertisement, pamphlet, circular, brochure, form letter, or other written or electronic sales literature or material; and

(B) Any script for an oral advertisement or promotional effort.

(ddd) "SCOR" means Small Company Offering Registration.

(eee) "SEC" means the U.S. Securities and Exchange Commission.

(fff) "Solicitor" means any individual, person, or entity who, directly or indirectly, receives a cash fee or any other economic benefit for soliciting, referring, offering or otherwise negotiating for the sale or selling of investment advisory services to clients or prospective clients on behalf of an investment adviser.

(ggg) "Sponsor" of a wrap fee program as used in V.S.R. § 7-6(b)(4) means an investment adviser that is compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting or providing advice to clients regarding the selection of other investment advisers in the program.

(hhh) "Third party portal" means an entity engaging in activities limited to operating an internet website or platform effecting securities transactions.

(iii) "Tombstone advertisement" means sales and advertising literature in which the content is limited to the information specified in 17 C.F.R. § 230.134(a).

(jjj) "Venture capital fund" means a private fund that meets the definition of a venture capital fund in 17 C.F.R. § 275.203(l)-1.

(kkk) “Vermont certified investor” as used in V.S.R. § 5-11 (Vermont Crowdfunding) means any person who comes within any of the following categories, or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person:

(1) Any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in between two million five hundred thousand dollars (\$ 2,500,000) and five million dollars (\$ 5,000,000); any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as described in 29 U.S.C. § 1002, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in between two million five hundred thousand dollars (\$ 2,500,000) and five million dollars (\$ 5,000,000) or, if a self-directed plan, with investment decisions made solely by persons that are certified investors;

(2) Any organization described in 26 U.S.C. § 501(c)(3), corporation, Massachusetts Trust or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in between two million five hundred thousand dollars (\$ 2,500,000) and five million dollars (\$ 5,000,000);

(3) Any natural person whose individual liquid net worth, or joint net worth with that person's spouse, exceeds five hundred thousand dollars (\$ 500,000);

(A) Except as provided in paragraph (3)(B) below, for purposes of calculating net worth under this paragraph (3)(A):

(i) The person's primary residence is not included as an asset;

(ii) Indebtedness that is secured by the person's primary residence, up to the estimated fair market value of the primary residence at the time of the sale of securities, is not included as a liability (except that if the amount of such indebtedness outstanding at the time of sale of securities exceeds the amount outstanding sixty (60) calendar days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess is included as a liability); and

(iii) Indebtedness that is secured by the person's primary residence in excess of the estimated fair market value of the primary residence at the time of the sale of securities is included as a liability;

(B) Paragraph (3)(A) above does not apply to any calculation of a person's net worth made in connection with a purchase of securities in accordance with a right to purchase such securities, provided that:

- (i) Such right was held by the person on July 20, 2010;
- (ii) The person qualified as an accredited investor on the basis of net worth at the time the person acquired such right; and
- (iii) The person held securities of the same issuer, other than such right, on July 20, 2010.

(4) Any natural person who had an individual income in excess of one hundred thousand dollars (\$ 100,000) in each of the two (2) most recent years or joint income with that person's spouse in excess of one hundred fifty thousand dollars (\$ 150,000) in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(5) Any trust, with total assets between two million five hundred thousand dollars (\$ 2,500,000) and five million dollars (\$ 5,000,000), not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in 17 C.F.R. § 230.506(b)(2)(ii); and

(6) Any entity in which all of the equity owners are Vermont certified investors.

(III) “Vermont main street investor” as used in V.S.R. § 5-11 (Vermont Crowdfunding) means any person who does not come within the definition of “Vermont certified investor” or “accredited investor.”

(mmm) “Wrap fee program” means an advisory program under which one (1) or more specified fees, not based directly upon transactions in a client’s account, are charged for investment advisory services and the execution of client transactions. The investment advisory services may include portfolio management or advice concerning the selection of other investment advisers.

(Authorized by and implementing 9 V.S.A. § 5605(a)(2).)

CHAPTER 2 INCORPORATION BY REFERENCE

V.S.R. § 2-1. Statutes Incorporated by Reference.

(a) Federal Statutes. The following federal statutes, including subsequent amendments, are hereby incorporated by reference:

- (1) The Commodity Exchange Act - 7 U.S.C. § 1 through § 27f;
- (2) Registration and Financial Requirements; Risk Assessment - 7 U.S.C. §6f;
- (3) Schedule of Information Required in Registration Statement - 15 U.S.C. §77aa;

- (4) Definitions; Promotions of Efficiency, Competition, and Capital formation - 15 U.S.C. § 77b;
- (5) Classes of Securities under this Subchapter - 15 U.S.C. § 77c;
- (6) Exempted Transactions - 15 U.S.C. § 77d;
- (7) Prohibitions Relating to Interstate Commerce and the Mails - 15 U.S.C. § 77e;
- (8) Fraudulent Interstate Transactions - 15 U.S.C. § 77q;
- (9) Exemption from State Regulation of Securities Offerings - 15 U.S.C. § 77r;
- (10) Definitions and Application - 15 U.S.C. § 78c;
- (11) National Securities Exchanges - 15 U.S.C. § 78f;
- (12) Manipulative and Deceptive Devices - 15 U.S.C. § 78j;
- (13) Trading by Members of Exchanges, Brokers, and Dealers - 15 U.S.C. § 78k;
- (14) Registration Requirements for Securities - 15 U.S.C. § 78l;
- (15) Periodical and Other Reports - 15 U.S.C. § 78m;
- (16) Registration and Regulation of Brokers and Dealers - 15 U.S.C. § 78o;
- (17) Investment Company Act of 1940 - 15 U.S.C. § 80a-1 et seq.;
- (18) Definition of Investment Company - 15 U.S.C. § 80a-3;
- (19) Subclassification of Management Companies - 15 U.S.C. § 80a-5;
- (20) Registration of Investment Advisers - 15 U.S.C. § 80b-3;
- (21) Prevention of Misuse of Nonpublic Information - 15 U.S.C. § 80b-4a;
- (22) Investment Advisory Contracts - 15 U.S.C. § 80b-5;
- (23) Prohibited Transactions by Investment Advisers - 15 U.S.C. § 80b-6;
- (24) Validity of Contracts - 15 U.S.C. § 80b-15;
- (25) Exemption from Tax on Corporations, Certain Trusts, Etc. - 26 U.S.C. § 501;

- (26) Special Rules for Credits and Deductions - 26 U.S.C. § 642;
- (27) Charitable Remainder Trusts - 26 U.S.C. § 664; and
- (28) Employee Retirement Income Security Act Definitions - 29 U.S.C. § 1002.

(b) State Statutes. The following state statutes, including subsequent amendments, are hereby incorporated by reference:

- (1) Vermont Public Records Act - 1 V.S.A. § 315 et seq.;
- (2) Vermont Accounting Definitions - 26 V.S.A. § 13; and
- (3) Reports of Abuse of Vulnerable Adults - 33 V.S.A. § 6901 through § 6964.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. § 5608.)

V.S.R. § 2-2. Regulations and Rules Incorporated by Reference.

(a) Federal Regulations. The following federal regulations, including subsequent amendments, are hereby incorporated by reference:

- (1) Broker-Dealer Credit Account - 12 C.F.R. § 220.7;
- (2) Accountants' Reports and Attestations - 17 C.F.R. § 210.2-02;
- (3) Communications Not Deemed a Prospectus - 17 C.F.R. § 230.134;
- (4) Intrastate Offers and Sales - 17 C.F.R. § 230.147;
- (5) Conditional Small Issues Exemption - 17 C.F.R. §§ 230.251 et seq.;
- (6) Rules Governing the Limited Offer and Sale of Securities Without Registration Under the Securities Act of 1933 - 17 C.F.R. §§ 230.501 et seq.;
- (7) Form S-1, Registration Statement under the Securities Act of 1933 - 17 C.F.R. § 239.11;
- (8) Hypothecation of Customers' Securities - 17 C.F.R. § 240.8c-1;
- (9) Employment of Manipulative and Deceptive Devices - 17 C.F.R. § 240.10b-5;
- (10) Confirmation of Transactions - 17 C.F.R. § 240.10b-10;
- (11) Exemptions for American Depositary Receipts and Certain Foreign Securities - 17

C.F.R. § 240.12g3-2;

(12) Hypothecation of Customer's Securities - 17 C.F.R. § 240.15c2-1;

(13) Customer Protection - Reserves and Custody of Securities - 17 C.F.R. § 240.15c3-3;

(14) Records to be Made by Certain Exchange Members, Brokers, and Dealers - 17 C.F.R. § 240.17a-3;

(15) Records to be Preserved by Exchange Members, Brokers, and Dealers - 17 C.F.R. § 240.17a-4;

(16) Reports to be Made by Certain Brokers and Dealers - 17 C.F.R. § 240.17a-5;

(17) Notification Provisions for Brokers and Dealers - 17 C.F.R. § 240.17a-11;

(18) Distribution of Shares by Registered Open-End Management Investment Company - 17 C.F.R. § 270.12b-1;

(19) Venture Capital Fund Defined - 17 C.F.R. § 275.203(l)-1;

(20) Private Fund Adviser Exemption - 17 C.F.R. § 275.203(m)-1;

(21) Exemption from the Compensation Prohibition of Section 205(a)(1) for Investment Advisers - 17 C.F.R. § 275.205-3; and

(22) Advertisements by Investment Advisers - 17 C.F.R. § 275.206(4)-1.

(b) FINRA Rules. The following FINRA rules, including subsequent amendments, are hereby incorporated by reference:

(1) Duties and Conflicts - FINRA Rules § 2000;

(2) Supervision and Responsibilities Relating to Associated Persons - FINRA Rules § 3000; and

(3) Books, Records, and Reports - FINRA Rules § 4500.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. § 5608.)

V.S.R. § 2-3. Forms Incorporated by Reference. The following forms, including subsequent amendments, are hereby incorporated by reference:

(a) Form 1-A: Regulation A Offering Statement Under the Securities Act of 1933;

- (b) Form ADV: Uniform Application for Investment Adviser Registration;
- (c) Form ADV-W: Uniform Request for Withdrawal of Investment Adviser Registration;
- (d) Form BD: Uniform Application for Broker-Dealer Registration;
- (e) Form BDW or BD-W: Uniform Request for Withdrawal from Registration as a Broker-Dealer;
- (f) Form BR: Uniform Branch Office Registration Form;
- (g) Form C: Under federal Regulation Crowdfunding;
- (h) Form D: Notice of Sale of Securities Pursuant to Regulation D, Section 4(6);
- (i) Form F-7: Registration Statement for Securities of Certain Canadian Issuers Offered for Cash Upon the Exercise of Rights Granted to Existing Security Holders;
- (j) Form F-8: Registration Statement for Securities of Certain Canadian Issuers to be issued in Exchange Offers or a Business Combination;
- (k) Form F-10: Registration Statement for Securities of Certain Canadian Issuers;
- (l) Form N-1A: Registration Form Used by Open-End Management Investment Companies;
- (m) Form NF: Uniform Investment Company Notice Filing Form;
- (n) Form NF-UIT: Unit Investment Trust Notice Filing Form;
- (o) Form S-1: Registration Statement under Securities Act of 1933;
- (p) Form U-1: Uniform Application to Register Securities;
- (q) Form U-2: Uniform Consent to Service of Process;
- (r) Form U-2A: Uniform Corporate Resolution;
- (s) Form U-4: Uniform Application for Securities Industry Registration or Transfer;
- (t) Form U-5: Uniform Termination Notice for Securities Industry Registration;
- (u) Form U-7: Uniform Small Company Offering Registration Form;
- (v) Form U-SB: Uniform Surety Bond Form;
- (w) Solicitation of Interest Form; and

(x) Uniform Notice Regulation A - Tier 2 Offering Form.

V.S.R. § 2-4. NASAA Statements of Policy Incorporated by Reference. The following NASAA Statements of Policy, including subsequent amendments, are hereby incorporated by reference:

(a) NASAA Statements of Policy Regarding Church Bonds;

(b) NASAA Statement of Policy Regarding Church Extension Fund Securities;

(c) NASAA Statement of Policy Regarding Dishonest or Unethical Business Practices by Broker-Dealers and Agents in Connection with Investment Company Shares; and

(d) NASAA Statement of Policy Regarding the Small Company Offering Registration (“SCOR”).

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. § 5608.)

CHAPTER 3

REGISTRATION OF BROKER-DEALERS AND AGENTS

V.S.R. § 3-1. Registration Procedures for Broker-Dealers and Agents.

(a) General Provisions.

(1) An applicant must be at least eighteen (18) years of age. If the applicant is not an individual, then the directors, officers, and managing partners of the applicant must be at least eighteen (18) years of age.

(2) An agent must not register in association with more than one (1) broker-dealer or issuer at any time, unless management and control of the broker-dealers or issuers are substantially identical. If an agent is associated with or employed by more than one (1) broker-dealer or issuer (i.e., this is predicated on management and control of each such broker-dealer or issuer being substantially identical), then each such broker-dealer or issuer must be duly registered or exempt from registration, and the agent must be registered separately for each such broker-dealer or issuer.

(3) Supervision: Every registered broker-dealer must employ at its principal office and at each office of supervisory jurisdiction (OSJ) in this state, at least one person designated to act in a supervisory capacity, who is registered as an agent in this state and has satisfied the supervisory examination requirements of FINRA. For any other office in this state, not designated as an OSJ, a supervisor must be designated to supervise the office; however, the supervisor need not be located in this state, but must be registered in this state as an agent and satisfy the supervisory examination requirements of FINRA.

Failure to abide by this subsection for more than 30 days may result in the revocation or suspension of the registered broker-dealer's registration until such time as the broker-dealer comes into compliance with this rule.

(4) A broker-dealer must have at least one (1) agent registered in Vermont.

(5) An applicant must be an approved FINRA member, unless exempt from FINRA registration.

(6) An applicant not domiciled in Vermont must be registered with the securities administrator of the state in which it is domiciled.

(b) Registration Requirements for Broker-Dealers.

(1) Initial Application for FINRA Members and Prospective FINRA Members.

(A) FINRA members and prospective FINRA members must file the following with the CRD:

(i) A completed Form BD;

(ii) The filing fee specified in 9 V.S.A. § 5410(a);

(iii) A Form BR for every broker-dealer branch office in Vermont as defined in V.S.R. § 1-2(i), and the filing fee specified in 9 V.S.A. § 5410(a); and

(iv) Any reasonable fee charged by FINRA for filing with the CRD system.

(B) FINRA members and prospective FINRA members must file the following directly with the commissioner:

(i) A completed Affidavit of Broker-Dealer Activity Form; and

(ii) For applicants that have been in business longer than six (6) months, a copy of the firm's most recent FOCUS report (Parts I and II or IIA). For those applicants that are in the process of FINRA membership but not yet approved, the firm's most recent trial balance, balance sheet, supporting schedules and computation of capital as filed with FINRA; and

(iii) If a broker-dealer indicates on Form BD that the firm plans to offer investment advisory services, the firm must indicate, in writing, whether these services are solely incidental to the broker-dealer's business and describe what, if any, additional compensation the broker-dealer receives for such services.

(2) Initial Application for Non-FINRA Members. Non-FINRA member broker-dealers must file all materials listed in subdivisions (1)(A) and (B) above directly with the commissioner and must comply with all requirements of this chapter. In lieu of a FOCUS report, non-FINRA member applicants must provide audited financial statements for the applicant's most recent fiscal year and interim financial statements that may be unaudited for the current fiscal year through the most recently completed fiscal quarter. The financial statements must include a statement of financial condition and disclosure of net capital or a supplemental schedule of net capital, as required by V.S.R. § 3-3(b).

(3) Effective Date of Registration. A registration will be effective forty-five (45) calendar days after the applicant files a complete application unless approved earlier by the commissioner. If the commissioner gives written notice of deficiencies in the application, the application will not be considered complete until the applicant resolves all deficiencies.

(4) Expiration and Annual Renewal of Registration. Broker-dealer registration expires on December 31 of every year, regardless of when the application was approved. A broker-dealer must file an application for renewal prior to the CRD filing deadline or, if the broker-dealer is not a FINRA member, by December 15 of each year. An application for renewal must include the filing fee specified in 9 V.S.A. § 5410(a) and any reasonable fee charged by FINRA for filing with the CRD system.

(5) Updates and Amendments. A broker-dealer must file an amendment to Form BD with the CRD or, if the broker-dealer is not a FINRA member, with the commissioner whenever there is any material change to its last filed Form BD within thirty (30) calendar days of the material change. A material change includes but is not limited to:

(A) A change in firm name, ownership, management, or control of a broker-dealer, or a change in any of its partners, officers, or persons in similar positions; a change of business address; or the creation or termination of a broker-dealer branch office in Vermont;

(B) A change in the type of entity, general plan, or nature of a broker-dealer's business, method of operation, or type of securities in which it is dealing or trading;

(C) Insolvency, dissolution, liquidation, or a material adverse change or impairment of working capital, or noncompliance with the minimum net capital as required by V.S.R. § 3-3(d);

(D) Termination of business or discontinuance of activities as a broker-dealer;

(E) The filing of a criminal charge or civil action against a registrant, or a partner or officer, in which a fraudulent, dishonest, or unethical act is alleged or a violation of a securities law is involved; or

(F) The entry of an order or proceeding by any court or administrative agency against a registrant denying, suspending, or revoking a registration, or threatening to do so, or enjoining the registrant from engaging in or continuing any conduct or practice in the securities business.

(6) Withdrawing from Active Registration. A broker-dealer that voluntarily terminates an active registration in Vermont must file the Form BDW with the CRD or, if the broker-dealer is not a FINRA member, with the commissioner within thirty (30) calendar days of such termination.

(A) Effective Date. Registration termination is effective thirty (30) calendar days after filing of the Form BDW or within such shorter period of time as the commissioner may determine. When a proceeding to revoke, suspend, or impose conditions upon termination is pending or instituted within sixty (60) calendar days after the Form BDW is filed, the termination becomes effective at such time and upon satisfaction of such conditions as the commissioner determines by order.

(B) Post-Effective Action. The commissioner may institute a revocation or suspension proceeding under 9 V.S.A. § 5412 up to one (1) year after voluntary termination becomes effective and enter a revocation or suspension order as of the last date on which registration is effective.

(7) Withdrawn Applications. An applicant for broker-dealer registration that voluntarily withdraws their application must immediately file Form BDW with the CRD or, if the broker-dealer is not a FINRA member, with the commissioner. Such withdrawal is effective upon filing.

(8) Abandoned Applications. If an applicant for registration as a broker-dealer does not respond in writing within sixty (60) calendar days after receiving a written inquiry or deficiency letter from the commissioner or the applicant takes no action on a pending application and fails to communicate in writing with the commissioner for sixty (60) calendar days, the commissioner will deem the application abandoned. An applicant must file a new, complete application, as well as the appropriate filing fee to obtain further consideration of an abandoned application.

(c) Registration Requirements for Agents.

(1) Initial Application for Broker-Dealer Agents.

(A) Initial Application for FINRA Member Broker-Dealer Agents. The following must be filed with the CRD for any initial application for FINRA member broker-dealer agents:

(i) A complete Form U-4;

(ii) The filing fee specified in 9 V.S.A. § 5410(b);

(iii) Any reasonable fee charged by FINRA for filing with the CRD system; and

(iv) Proof of a valid passing score on the appropriate FINRA qualification examination(s). Agents registered in Vermont as of June 30, 2016 are exempt from the Series 63 examination requirement.

(B) Initial Application for Non-FINRA Member Broker-Dealer Agents. For non-FINRA member broker-dealer agents, all materials listed in this subdivision (1) above must be filed directly with the commissioner.

(2) Initial Application for Issuer Agent Registration.

(A) Issuers must file the following with the commissioner for all agent registration applications:

(i) A completed Form U-4;

(ii) The filing fee specified in 9 V.S.A. § 5410(b);

(iii) A passport sized photo of the applicant.

(3) Effective Date of Registration. Registration is effective forty-five (45) calendar days after the broker-dealer or issuer files a complete application on behalf of the applicant for agent registration, unless approved earlier by the commissioner. If the commissioner gives written notice of deficiencies in the application, the application will not be considered complete until an amendment is filed to resolve the deficiencies.

(4) Expiration and Annual Renewal of Registration. Agent registration expires on December 31 of every year, regardless of when the application was approved. An application for renewal must be filed prior to the CRD filing deadline or, if the broker-dealer or issuer is not a FINRA member, by December 15. An application for renewal must include the filing fee specified in 9 V.S.A. § 5410(b) and any reasonable fee charged by FINRA for filing with the CRD system.

(5) Updates and Amendments. Amendments to Form U-4 must be filed on behalf of an agent with the CRD or, if the broker-dealer or issuer is not a FINRA member, with the commissioner whenever there is any material change to the last filed Form U-4 within thirty (30) calendar days of the material change. Material changes include, but are not limited to, changes in:

(A) Registrant's name;

(B) Residential address;

(C) Office of employment address; and

(D) Matters disclosed in the “disclosure questions” portion of Form U-4.

(6) Withdrawal, Cancellation, or Termination of an Agent’s Employment with a Broker-Dealer or Issuer.

(A) A Form U-5 must be filed with the CRD or, if the broker-dealer or issuer is not a FINRA member, with the commissioner within thirty (30) calendar days when an agent’s employment by or association with the broker-dealer or issuer is discontinued or terminated. The U-5 must specify all reasons for an involuntary termination. If the agent commences employment by or association with another broker-dealer or issuer, an initial application for registration must be filed.

(B) A broker-dealer or issuer is responsible and subject to disciplinary action for the acts, practices, and conduct of its agent in connection with the purchase and sale of securities until such time as the agent has been properly terminated as provided in these regulations.

(C) Termination of a broker-dealer’s registration for any reason automatically constitutes termination of any associated agent’s registrations.

(7) Withdrawn Applications. A partial Form U-5 must be filed with the CRD or, if the broker-dealer or issuer is not a FINRA member, with the commissioner on behalf of an applicant for agent registration within thirty (30) calendar days in order to voluntarily withdraw the agent’s application, which is effective upon filing.

(8) Abandoned Applications. Each application that has been on file for sixty (60) calendar days without any action taken by the applicant will be considered withdrawn and abandoned. If a broker-dealer or issuer does not respond on behalf of an applicant for agent registration in writing within sixty (60) calendar days after receiving a written inquiry or deficiency letter from the commissioner or the broker-dealer takes no action on a pending application and fails to communicate in writing with the commissioner for sixty (60) calendar days, the commissioner will deem the application abandoned. A broker-dealer must file a new, complete application to obtain further consideration of an abandoned application.

(Authorized by 9 V.S.A. § 5406 and 5605(a); implementing 9 V.S.A. §§ 5406 - 5409)

V.S.R. § 3-2. Unethical and Fraudulent Conduct.

(a) Unethical Conduct. “Dishonest or unethical practices,” as used in 9 V.S.A. § 5412(d)(13) includes but is not limited to the conduct listed in subsections (e)-(h) below.

(b) Fraudulent Conduct. “An act, practice, or course of business that operates or would operate as a fraud or deceit,” as used 9 V.S.A. § 5501(3) includes but is not limited to the conduct prohibited in subsections (e)(9)(A)-(B), (e)(10)-(11), (e)(14)-(18), (20)-(21), (24), and (27), (f)(1)-(6), and (g) below.

(c) General Standard of Conduct. Broker-dealers and agents must observe high standards of commercial honor and just and equitable principles of trade in conducting their business. Particular attention should be given to actual conflicts of interest and the appearance of conflicts with respect to broker-dealers and agents and the customers of such broker-dealers and agents, as well as how the broker-dealers and agents handle any such conflicts.

(d) Conduct Rules. A registered broker-dealer or agent must comply with any applicable fair practice or ethical standard promulgated by FINRA, the SEC, the CFTC or a self-regulatory organization approved by either the SEC or the CFTC, or any other governmental regulatory body or their approved self-regulatory organization.

(e) Prohibited Conduct. Sales and Business Practices. A broker-dealer and/or agent must adhere to the following practices in conducting their business. For purposes of this subsection (e), a security includes any security as defined by 9 V.S.A. § 5102(28) or 15 U.S.C. § 77b.

(1) Delays in Execution, Delivery, or Payment. A broker-dealer must not engage in a pattern of unreasonable and unjustifiable delays in execution of orders, liquidation of customers’ accounts, delivery of securities purchased by any of the broker-dealer’s customers, or in the payment upon request of free credit balances reflecting completed transactions of any of its customers.

(2) Excessive trading. A broker-dealer or agent must not engage in trading or otherwise induce trading of securities in a customer’s account that is excessive in size or frequency in view of the financial resources and character of the account.

(3) Unsuitable Recommendations. A broker-dealer or agent must not recommend to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that the transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer’s investment objectives, financial situation, risk tolerance, financial and other needs, and any other relevant information known by the broker-dealer or agent.

(4) Unauthorized Trading. A broker-dealer or agent must not execute a transaction on behalf of a customer without authorization to do so.

(5) Improper Use of Discretionary Authority. A broker-dealer or agent must not exercise any discretionary power in effecting a transaction for a customer’s account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders.

(6) Failure to Obtain Margin Agreement. A broker-dealer or agent must not execute or

clear any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account.

(7) Failure to Segregate. A broker-dealer must not hold securities carried for the account of any customer that have been fully paid for or that are excess margin securities, unless the securities are segregated and identified by a method that clearly indicates the interest of the customer in those securities.

(8) Improper Hypothecation. A broker-dealer must not hypothecate a customer's securities beyond its own interest in such securities unless the customer properly executed written consent, except as permitted by 17 C.F.R. § 240.8c-1 or 17 C.F.R. § 240.15c2-1.

(9) Unreasonable Charges. A broker-dealer or agent must not:

(A) Enter into a transaction with or for a customer at a price not reasonably related to the current market price of the security;

(B) Receive an unreasonable commission or profit; or

(C) Charge unreasonable and inequitable fees for services performed, including but not limited to the collection of monies due for principal, dividends, or interest; exchange or transfer of securities; appraisals; safekeeping or custody of securities; and other miscellaneous services related to the broker-dealer's securities business.

(10) Failure to Timely Deliver Prospectus. By the date of confirmation of the transaction, a broker-dealer or agent must deliver a final prospectus or a preliminary prospectus and additional documentation that includes all information set forth in the final prospectus to a customer purchasing securities in an offering.

(11) Contradicting Prospectus. A broker-dealer or agent must not contradict or negate the importance of any information contained in a prospectus or any other offering materials with the intent to deceive or mislead.

(12) Non-Bona Fide Offers. A broker-dealer or agent must not offer to buy from or sell to any person any security at a stated price, unless the broker-dealer is prepared to purchase or sell at the price and under the conditions that are stated at the time of the offer to buy or sell.

(13) Misrepresentation of Market Price. A broker-dealer or agent must not represent that a security is being offered to a customer "at the market" price or at a price relevant to the market price, unless the broker-dealer or agent knows or has reasonable grounds to believe that a market for the security exists other than a market made, created, or controlled by the broker-dealer or agent, any person for whom the broker-dealer or agent is acting or with whom the broker-dealer or agent is associated in the distribution of securities, or any person controlled by, controlling, or under common control with the

broker-dealer or agent.

(14) Market Manipulation. A broker-dealer or agent must not effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive, or fraudulent device, practice, plan, program, design, or contrivance, including the following:

(A) Effecting any transaction in a security that involves no change in its beneficial ownership;

(B) Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of the same security for substantially the same volume, time, and price have been or will be entered for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security. However, nothing in this subdivision prohibits a broker-dealer from entering bona fide agency cross transactions for the broker-dealer's customers;

(C) Effecting, alone or with one (1) or more other persons, a series of transactions in any security creating actual or apparent active trading in the security or raising or depressing the price of the security for the purpose of inducing the purchase or sale of the security by others;

(D) Engaging in general solicitation and using aggressive, high-pressure, or deceptive marketing tactics to affect the market price of the security; and

(E) Using fictitious or nominee accounts.

(15) Guarantees against Loss. A broker-dealer or agent must not guarantee a customer against loss in any securities account of the customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer or agent.

(16) Deceptive Advertising. A broker-dealer or agent must not use any advertising or sales presentation in a manner that is deceptive or misleading, including the following:

(A) Using words, pictures, or graphs in an advertisement, brochure, flyer, or display to present any nonfactual data or material; any conjecture, unfounded claims or assertions, or unrealistic claims or assertions; or any information that supplements, detracts from, supersedes or defeats the purpose or effect of any prospectus or disclosure; and

(B) Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind that purports to report any transaction as a purchase or sale of any security unless the broker-dealer or agent believes that the transaction was a bona fide purchase or sale of the security or that purports to quote the bid price or asked

price for any security unless the broker-dealer or agent believes that the quotation represents a bona fide bid for or offer of the security.

(17) Failure to Disclose Conflicts of Interest. A broker-dealer or agent must disclose to any customer that the broker-dealer is controlled by, controlling, affiliated with, or under common control with the issuer of a security that is offered or sold to the customer. The disclosure must be made before entering into any contract with or for the customer for the purchase or sale of the security, and if the disclosure is not made in writing, the disclosure must be supplemented by the giving or sending of written disclosure before the completion of the transaction.

(18) Withholding Securities. A broker-dealer must make a bona fide public offering of all of the securities allotted to the broker-dealer for distribution, whether acquired as an underwriter, as a selling group member, or from a member participating in the distribution as an underwriter or selling group member. The following are examples of prohibited conduct without limit:

(A) Parking or withholding securities; and

(B) Transferring securities to a customer, another broker-dealer, or a fictitious account with the understanding that those securities will be returned to the broker-dealer or the broker-dealer's nominees.

(19) Failure to Respond to Customer. Upon reasonable request, a broker-dealer or agent must deliver to a customer information to which the customer is entitled. A broker-dealer or agent must respond to a formal written request or complaint by or from a customer within fourteen (14) calendar days.

(20) Misrepresenting the Possession of Nonpublic Information. A broker-dealer or agent must not falsely lead a customer to believe that the broker-dealer or agent is in possession of material, nonpublic information that would impact the value of a security.

(21) Contradictory Recommendations. A broker-dealer or agent must not engage in a pattern or practice of making contradictory recommendations to different investors of similar investment objectives for some to sell and others to purchase the same security, at or about the same time, if not justified by the particular circumstances of each investor.

(22) Lending, Borrowing, or Maintaining Custody. An agent must not lend or borrow money or securities from a customer, or act as a custodian for money, securities, or an executed stock power of a customer.

(23) Selling Away. An agent must not effect a securities transaction that is not recorded on the regular books or records of the broker-dealer that the agent represents, unless the transaction is authorized in writing by the broker-dealer before the execution of the transaction.

(24) Fictitious Account Information. An agent must not establish or maintain an account containing fictitious information or establish or maintain a nominee account in order to execute a transaction which would otherwise be prohibited.

(25) Unauthorized Profit-Sharing. An agent must not share directly or indirectly in the profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer that the agent represents.

(26) Commission Splitting. An agent must not divide or otherwise split the agent's commissions, profits, or other compensation from the purchase or sale of securities with any person who is not also registered as an agent for the same broker-dealer or a broker-dealer under direct or indirect common control.

(27) Misrepresenting Solicited Transactions. A broker-dealer or agent must not mark any order ticket or confirmation as unsolicited if the transaction was solicited.

(28) Failure to Provide Account Statements. A broker-dealer or agent must provide to each customer, for any month in which activity has occurred in a customer's account and at least every three (3) months, a statement of account that contains a value for each over-the counter non-NASDAQ equity security in the account based on the closing market bid on a date certain, if the broker-dealer has been a market maker in the security at any time during the period covered by the statement of account.

(29) Solvency and Other Requirements. A broker-dealer or agent must not operate a securities business while unable to meet current liabilities, or violating any statutory provision, rule or order relating to minimum capital, surety bond, record-keeping and reporting requirements, or the use, commingling or hypothecation of customers' money or securities.

(30) Arranging for Credit. A broker-dealer or agent must not extend, arrange for, or participate in arranging for credit to a customer in violation of any federal law or regulation, including but not limited to 15 U.S.C. § 78k(d) or 12 C.F.R. § 220.7.

(31) Misleading Representation. An agent must not hold itself out as representing any person other than the broker-dealer with whom the agent is associated. In the case of an agent whose normal place of business is not on the premises of the broker-dealer, such agent must conspicuously disclose the name of the broker-dealer with whom the agent is associated when representing the broker-dealer in effecting or attempting to effect purchases or sales of securities.

(32) Other Conduct. Engaging in other conduct such as forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices may also be grounds for denial, suspension or revocation of registration.

(f) Prohibited Conduct. Over-the-Counter Transactions. A broker-dealer or agent must not

engage in the following conduct in connection with the solicitation of a purchase or sale of an over-the-counter, unlisted non-NASDAQ equity security:

- (1) Failing to disclose to a customer, at the time of solicitation and on the confirmation, any and all compensation related to a specific securities transaction to be paid to the agent, including commissions, sales charges, and concessions;
- (2) In connection with a principal transaction by a broker-dealer that is a market maker, failing to disclose to a customer, both at the time of solicitation and on the confirmation, the existence of a short inventory position in the broker-dealer's account of more than three percent (3%) of the issued and outstanding shares of that class of securities of the issuer;
- (3) Conducting sales contests in a particular security;
- (4) Failing or refusing to promptly execute sell orders after a solicited purchase by a customer in connection with a principal transaction;
- (5) Soliciting a secondary market transaction if there has not been a bona fide distribution in the primary market;
- (6) Engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same security; and
- (7) Failing to promptly provide the most current prospectus or the most recently filed periodic report filed under 15 U.S.C. § 78m when requested to do so by the customer.

(g) Prohibited Conduct. Designated Security Transactions.

- (1) Except as specified in subdivision (2), in connection with the solicitation of a designated security, a broker-dealer or agent must not:
 - (A) Fail to disclose to the customer the bid and ask prices at which the broker-dealer effects transactions of the security with individual retail customers, as well as the price spread in both percentage and dollar amounts at the time of solicitation and on the trade confirmation documents; and

(B) Fail to include with the confirmation a written explanation of the bid and ask prices in a form that substantially complies with the following:

IMPORTANT CUSTOMER NOTICE-READ CAREFULLY. You have just entered into a solicited transaction involving a security which may not trade on an active national market. The following should help you understand this transaction and be better able to follow and protect your investment.

Q. What is meant by the BID and ASK prices and the spread?

A. The BID is the price at which you could sell your security at this time. ASK is the price at which you bought. Both are noted on your confirmation. The difference between these prices is the “spread,” which is also noted on the confirmation, in both a dollar amount and a percentage relative to the ASK price.

Q. How can I follow the price of my security?

A. For the most part, you are dependent on broker-dealers that trade in your security for all price information. You may be able to find a quote in the newspaper or online, but you should keep in mind that the quote you see will be for dealer-to-dealer transactions (essentially wholesale prices) and will not necessarily be the prices at which you could buy or sell.

Q. How does the spread relate to my investments?

A. The spread represents the profit made by your broker-dealer and is the amount by which your investment must increase (the BID must rise) for you to break even. Generally, a greater spread indicates a higher risk.

Q. How do I compute the spread?

A. If you bought 100 shares at an ASK price of \$ 1.00, you would pay \$ 100.00. (100 shares x \$ 1.00 = \$ 100). If the BID price at the time you purchased your stock was \$.50, you could sell the stock back to the broker-dealer for \$ 50.00 (100 shares x \$ 0.50 = \$ 50.). In this example, if you sold at the BID price, you would suffer a loss of fifty percent (50%).

Q. Can I sell at any time?

A. Maybe. Some securities are not easy to sell because there are few buyers, or because there are no broker-dealers who buy or sell them on a regular basis.

Q. Why did I receive this notice?

A. Vermont requires your broker-dealer or sales agent to disclose the BID and ASK prices on your confirmation and include this notice in some instances. If the BID and ASK were not explained to you at the time you discussed this investment with your broker, you may have further rights and remedies under both state and federal law.

Q. Where do I go if I have a problem?

A. If you cannot work the problem out with your broker-dealer you may contact the Securities Division of Vermont’s Department of Financial Regulation, the

U.S. Securities and Exchange Commission, or the Financial Industry Regulatory Authority.

(2) Exceptions. Subdivision (1) above does not apply to the following transactions:

(A) Transactions in which the price of the designated security is five dollars (\$ 5) or more, exclusive of costs or charges. However, if the designated security is a unit composed of one (1) or more securities, the unit price divided by the number of components of the unit other than warrants, options, rights, or similar securities must be five dollars (\$ 5) or more. Any component of the unit that is a warrant, option, right, or similar securities, or a convertible security must have an exercise price or conversion price of five dollars (\$ 5) or more;

(B) Transactions that the broker-dealer or agent did not recommend;

(C) Transactions by a broker-dealer whose commissions, commission equivalents, and markups from transactions in designated securities during each of the immediately preceding three (3) months, and during eleven (11) or more of the preceding twelve (12) months did not exceed five percent (5%) of its total commissions, commission-equivalents, and markups from transactions in securities during those months and who has not executed principal transactions in connection with the solicitation to purchase the designated security that is the subject of the transaction in the immediately preceding twelve (12) months; and

(D) Any transaction or transactions that, the commissioner conditionally or unconditionally exempts from the scope of subpart (1) above upon prior written request or upon the commissioner's own motion.

(h) Prohibited Conduct. Investment Company Shares.

(1) A broker-dealer or agent must not engage in the following conduct in connection with the solicitation of a purchase or sale of investment company shares:

(A) Failing to adequately disclose to a customer all sales charges, including asset-based and contingent deferred sales charges, that could be imposed with respect to the purchase, retention, or redemption of investment company shares;

(B) Stating or implying to a customer, orally or in writing that the shares are sold without a commission, are no load, or have no sales charge if any of the following are associated with the purchase of the shares:

(i) A front-end charge; a contingent deferred sales charge;

(ii) A 12b-1 fee or any service fee that in total exceeds twenty five hundredths of a percent (0.25%) of average net fund assets per year; or

(iii) In the case of closed-end investment company shares, underwriting fees, commissions, or other offering expenses;

(C) Failing to disclose to a customer any relevant sales charge discount on the purchase of shares in dollar amounts at or above a breakpoint, or failing to disclose any relevant letter of intent feature, if available, that will reduce the sales charges;

(D) Recommending to a customer the purchase of a specific class of investment company shares in connection with a multiclass sales charge or fee arrangement without reasonable grounds to believe that the sales charge or fee arrangement associated with the class of shares is suitable and appropriate based on the customer's investment objectives, financial situation, other securities holdings, and the associated transaction or other fees;

(E) Recommending to a customer the purchase of investment company shares that results in the customer's simultaneously holding shares in different investment company portfolios having similar investment objectives and policies without reasonable grounds to believe that the recommendation is suitable and appropriate based on the customer's investment objectives, financial situation, other securities holdings, and any associated transaction charges or other fees;

(F) Recommending to a customer the liquidation or redemption of investment company shares for the purpose of purchasing shares in a different investment company portfolio having similar investment objectives and policies without reasonable grounds to believe that the recommendation is suitable and appropriate based on the customer's investment objectives, financial situation, other securities holdings, and any associated transaction charges or other fees;

(G) Stating or implying to a customer the fund's current yield or income without disclosing the fund's average annual total return, as stated in the fund's most recent Form N-1A filed with the SEC, for one (1) year, five (5) year, and ten (10) year periods and without fully explaining the difference between current yield and total return. However, if the fund's registration statement under the Securities Act of 1933 has been in effect for less than one (1), five (5), or ten (10) years, the time during which the registration statement was in effect must be substituted for the periods otherwise prescribed;

(H) Stating or implying to a customer that the investment performance of an investment company portfolio is comparable to that of a savings account, certificate of deposit, or other bank deposit account without disclosing to the customer the fact that the shares are not insured or otherwise guaranteed by the FDIC, NCUA, or any other government agency and the relevant differences regarding risk, guarantees, fluctuation of principal or return or both, and any other factors that are necessary to ensure that the comparisons are fair, complete, and not misleading;

(I) Stating or implying to a customer the existence of insurance, credit quality, guarantees, or similar features regarding securities held, or proposed to be held, in the investment company's portfolio without disclosing to the customer the other kinds of relevant investment risks, including interest rate, market, political, liquidity, and currency exchange risks, that could adversely affect investment performance and result in loss or fluctuation of principal notwithstanding the creditworthiness of the portfolio securities;

(J) Stating or implying to a customer that the purchase of shares shortly before an ex dividend date is advantageous to the customer unless there are specific, clearly described tax or other advantages to the customer, or stating or implying that a distribution of long-term capital gains by an investment company is part of the income yield from an investment in the shares; and

(K) Making projections of future performance, statements not warranted under existing circumstances, or statements based upon nonpublic information.

(2) In connection with the solicitation of investment company shares, the delivery of a prospectus must not be dispositive that the broker-dealer or agent has given the customer full and fair disclosure or has otherwise fulfilled the duties specified in this subsection (h).

(3) Otherwise failing to comply with the NASAA Statement of Policy Regarding Dishonest or Unethical Business Practices by Broker-Dealers and Agents in Connection with Investment Company Shares.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. § 5412(d)(13) and 9 V.S.A. § 5501(3))

V.S.R. § 3-3. Supervisory, Financial Reporting, Recordkeeping, Net Capital, and Operational Requirements for Broker-Dealers.

(a) Supervision.

(1) Annual Review. A broker-dealer must conduct an annual review of the businesses in which it engages. The review must be reasonably designed to assist in detecting and preventing violations of and achieving compliance with the Act, these regulations, and other applicable laws, regulations, and rules of self-regulatory organizations.

(2) Supervisory Procedures. A broker-dealer must establish and maintain supervisory procedures reasonably designed to assist in detecting violations of, preventing violations of, and achieving compliance with the Act, these regulations, and other applicable laws, regulations, and rules of self-regulatory organizations. In determining whether

supervisory procedures are reasonably designed, relevant factors including the following may be considered by the commissioner:

- (A) The firm's size;
- (B) The firm's organizational structure;
- (C) The scope of the firm's business activities;
- (D) The number and location of the firm's offices;
- (E) The nature and complexity of products and services the firm offers;
- (F) The volume of the firm's business;
- (G) The number of agents assigned to a location;
- (H) The presence of an on-site principal at a location;
- (I) The firm's use of internet communications;
- (J) The firm's cybersecurity measures;
- (K) The specification of the office as a non-branch location; and
- (L) The disciplinary history of the registered agents.

(3) Supervision of Non-Broker-Dealer Branch Offices. The procedures established and the reviews conducted must provide sufficient supervision at remote offices to ensure compliance with all applicable securities laws and regulations and self-regulatory organization rules. Based on the factors specified in subdivision (2) above, certain non-broker-dealer branch offices may require more frequent reviews or more stringent supervision.

(4) Failure to Supervise. A broker-dealer who fails to comply with this subsection (a) is deemed to have "failed to reasonably supervise" its agents under 9 V.S.A. § 5412(d)(9).

(b) Annual Reports. A broker-dealer must make and maintain an annual report for the broker-dealer's most recent fiscal year.

(1) Filing. A broker-dealer must file the annual report with the commissioner within five (5) calendar days of a request by the commissioner.

(2) Contents of Annual Report. Each annual report must contain financial statements that include the following:

(A) A statement of financial condition and notes to the statement of financial condition presented in conformity with GAAP; and

(B) Disclosure of the broker-dealer's net capital, which must be calculated in accordance with subsection (d) below.

(3) Auditing. Unless otherwise permitted, an independent certified public accountant must audit the financial statements in accordance with GAAP.

(4) Recognition of Federal Standards. For purposes of uniformity, a copy of audited financial statements in compliance with 17 C.F.R. § 240.17a-5(d) is deemed to comply with subdivisions (2) and (3) above.

(c) Books and Records. A broker-dealer must maintain and preserve records in compliance with 17 C.F.R. §§ 240.17a-3 and 240.17a-4 and the FINRA Rules 4510-70.

(d) Minimum Net Capital Requirements.

(1) A broker-dealer must comply with:

(A) 17 C.F.R. § 240.15c3-1; and

(B) 17 C.F.R. § 240.15c3-3.

(2) A broker-dealer must comply with 17 C.F.R. § 240.17a-11 and must simultaneously file with the commissioner copies of notices and reports required by that rule.

(e) Confirmations. At or before completion of each transaction with a customer, the broker-dealer must give or send to the customer a written notification that conforms to 17 C.F.R. § 240.10b-10.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. § 5411, 9 V.S.A. § 5412(d)(9), and 9 V.S.A. § 5605(c))

V.S.R. § 3-4. Registration Exemption for Merger and Acquisition Broker-Dealers.

(a) Scope of Exemption. Except as provided in subsections (b) and (c), under this section, a merger and acquisition broker-dealer is exempt from registration under 9 V.S.A. § 5401(a).

(b) Excluded Activities. A merger and acquisition broker-dealer is not exempt from registration under this section if the merger and acquisition broker-dealer:

(1) Directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives, holds, transmits, or has custody of the funds or

securities to be exchanged by the parties to the transaction;

(2) Engages on behalf of an issuer in a public offering of any class of securities that is registered, or is required to be registered, with the SEC under 15 U.S.C. § 78o(b) or with respect to which the issuer files, or is required to file, periodic information, documents, and reports under 15 U.S.C. § 78o(d); or

(3) Engages on behalf of any party in a transaction involving a public shell company.

(c) Disqualifications. A merger and acquisition broker-dealer is not exempt from registration under this section if the merger and acquisition broker-dealer is subject to:

(1) Suspension or revocation of registration under 15 U.S.C. § 78o(b)(4);

(2) A statutory disqualification described in 15 U.S.C. § 78c(a)(39);

(3) A disqualification under the rules adopted by the SEC under 15 U.S.C. § 77d; or

(4) A final order described in 15 U.S.C. § 78o(b)(4)(H).

(d) Preservation of Authority. Nothing in this section limits any other authority of the commissioner to exempt any person or any class of persons from any provision of the Act, or from any provision of these regulations.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. § 5401(b)(3).)

CHAPTER 4 REGISTRATION OF SECURITIES

V.S.R. § 4-1. Securities Registration Requirements.

(a) Registration by Coordination. In addition to the requirements of 9 V.S.A. §§ 5303 and 5305, issuers must submit the following documents with each securities registration application:

(1) Form U-1;

(2) Form U-2 and, if applicable, Form U-2A; and

(3) Any other document or information requested by the commissioner.

(b) Registration by Qualification. In addition to the requirements of 9 V.S.A. §§ 5304 and 5305, issuers must submit the following documents with each securities registration application:

(1) All documents and exhibits enumerated in 9 V.S.A. §§ 5304(b)(1)-(18);

- (2) Form U-1;
- (3) Form U-2 and, if applicable, Form U-2A; and
- (4) Any other document or information requested by the commissioner.

(c) Regulation A Offerings. An offer made under Tier 1 of Regulation A for which an issuer filed an offering statement on Form 1-A with the SEC under 17 C.F.R. § 230.251, must register with the commissioner. Such issuer may file through registration by coordination under 9 V.S.A. § 5303 or registration by qualification under 9 V.S.A. § 5304 and subsection (b) above and/or through the Regulation A Coordinated Review process administered by NASAA.

(d) “Opt-in” Requirement for Automatic Reinvestment, Renewal, or Rollover Plan. An investor in securities registered under subsections (a), (b), or (c) may not be enrolled in an automatic reinvestment, renewal, or rollover plan unless the investor affirmatively and in writing “opts-in” to participate in such plan.

(e) Abandoned Applications. If an applicant for registration of securities does not respond in writing within six (6) months after receiving a written inquiry or deficiency letter from the commissioner or the applicant takes no action on a pending application and fails to communicate in writing with the commissioner for six (6) months, the application is deemed abandoned. To obtain further consideration of an abandoned application, the applicant must file a new, complete application, as well as the appropriate filing fee.

(f) Reporting Requirements.

(1) Every six (6) months from the registration effective date, issuers must file a report with the commissioner containing the number of transactions conducted in Vermont and the amount of securities sold in each transaction.

(2) The commissioner may require the issuer to file such reports as the commissioner deems appropriate or necessary in such manner and form required by the commissioner.

(Authorized by 9 V.S.A. § 5605(a), implementing 9 V.S.A. §§ 5301-5305)

V.S.R. § 4-2. Small Company Offering Registration (SCOR).

(a) Issuers may file any application for registration of securities by qualification using Form U-7 as the disclosure document if the issuer complies with the NASAA statement of policy regarding SCOR.

(b) The commissioner may review any SCOR application in coordination with one (1) or more securities administrators in other states where the issuer filed a SCOR application.

(c) The commissioner may allow a form of disclosure in a SCOR application other than Form U-

7, including an application for coordinated review under subsection (b) above, as provided under V.S.R. § 4-1 above.

(d) The fee set forth in 9 V.S.A. § 5305(b) must accompany a SCOR application.

(e) The commissioner may require the issuer to file such reports as the commissioner deems appropriate or necessary in such manner and form as may be required by the commissioner.

(Authorized by 9 V.S.A. § 5605(a) and 9 V.S.A. § 5203)

V.S.R. § 4-3. Notice Filing and Fees Payable with Respect to Federal Covered Securities.

(a) Federal Covered Securities under 15 U.S.C. § 77r(b)(3) and (b)(4)(A)-(B).

The following requirements apply with respect to the offer or sale or other transaction involving any federal covered security defined in 15 U.S.C. § 77r(b)(3)-(4), other than 15 U.S.C. § 77r(b)(4)(C) - (G), to the extent such security is not exempt from notice filing requirements under the Act:

(1) The issuer or broker-dealer, as applicable, must file a written notice that includes the identity of the issuer and any broker-dealer involved, a description of the transaction, and a statement of the applicable provision of 15 U.S.C. § 77r(b);

(2) The issuer or broker-dealer, as applicable, must pay the fee provided in 9 V.S.A. § 5302(e) or (f), as applicable; and

(3) At the request of the commissioner, the issuer or broker-dealer, as applicable, must file with the commissioner any other information or document filed with the SEC.

(b) Notice Filing for Federal Covered Securities issued under Rule 506 described in 15 U.S.C. § 77r(b)(4)(F).

(1) Filing Requirements.

An issuer offering or selling a security that is a federal covered security pursuant to 9 V.S.A. § 5302 and 17 C.F.R. § 230.506 must submit notice of such on Form D and the filing fee described in 9 V.S.A. § 5302(c) to the commissioner within fifteen (15) calendar days of the first sale of such federal covered security in Vermont. The form must be signed by a person duly authorized by the issuer. If the end of the fifteen (15) calendar day time period falls on a Saturday, Sunday, or a federal or State of Vermont holiday, the due date will be the first business day following that Saturday, Sunday, or such holiday.

(2) Electronic Filing Depository (“EFD”).

(A) Designation. The commissioner designates the EFD to receive and store all Form D notice filings and amendments and collect related fees on behalf of the

commissioner.

(B) Electronic Filing. Form D notice filings and related fees, as well as a Form NF-UIT and related fees for each series of a unit investment trust, must be filed electronically with EFD. In addition, the commissioner, in his or her discretion, may require that any other filings required to be made to the commissioner must be filed electronically with EFD. Any documents or fees required to be filed with the commissioner that are not permitted to be filed with, or cannot be accepted by, EFD must be filed directly with the commissioner.

(C) Electronic Signature. A duly authorized representative of the issuer may affix their electronic signature to the Form D filing by typing their name in the appropriate fields and submitting the filing to EDGAR. Submission of a filing in this manner constitutes irrefutable evidence of legal signature by any individual whose name is typed on the filing.

(c) Notice Filings and Fees for Offerings of Investment Company Securities Described in 15 U.S.C. § 77r(b)(2).

(1) Before the initial offer in this state of a security of an investment company that is a federal covered security as described in 15 U.S.C. § 77r(b)(2), an investment company must file the following for each portfolio or series:

(A) A notice of intention to sell on Form NF; and

(B) The filing fee as set forth in 9 V.S.A. § 5302(e).

(2) The commissioner may request an investment company that filed a registration statement of the SEC to file a Form U-2 and a copy of any other document that is part of that registration statement or any amendments thereto.

(3) A notice filed under this subsection (c) is effective for one (1) year as provided by 9 V.S.A. § 5302(b). The notice may be renewed on or before expiration by filing a Form NF and the appropriate fee as specified under subdivision (1)(B) above.

(4) If an investment company that files a notice under this subsection (c) and the name of the company, portfolio, or series changes, then the investment company must file an additional Form NF for each portfolio or series of the investment company affected by a name change before the initial offering of a security under the new name in Vermont. The investment company must indicate the former name of the investment company, portfolio, or series on the new Form NF.

(5) If an investment company wants to receive confirmation of filing or effectiveness of a Form NF, then the investment company must file an additional copy of Form NF with an addressed return envelope or obtain confirmation through an electronic filing system as provided under subdivision (6) below.

(6) Any investment company may file notice filings and fees electronically through a centralized securities registration depository or other electronic filing system, in accordance with the procedures and controls established by that depository or system and approved by the commissioner.

(d) Notice Filing for Regulation A Tier 2 Offerings. The following provisions apply to offerings made under Tier 2 of federal Regulation A and 15 U.S.C. § 77r(b)(3):

(1) Initial Filing. An issuer planning to offer and sell securities in Vermont in an offering exempt under Tier 2 of federal Regulation A must submit the following at least 21 calendar days prior to the initial sale:

(A) A completed Regulation A - Tier 2 Notice Filing Form;

(B) Copies of all documents filed with the SEC; and

(C) The filing fee as set forth in 9 V.S.A. § 5302(e).

(2) Renewal. The initial notice filing is effective for twelve (12) months. For each additional twelve (12) month period in which the same offering is continued, prior to expiration, an issuer may renew its notice filing by filing:

(A) The Regulation - Tier 2 Notice Filing Form marked “renewal” or a cover letter requesting renewal; and

(B) The renewal fee as set forth in 9 V.S.A. § 5302(e).

(e) Notice Filing Requirement for Federal Crowdfunding Offerings. The following provisions apply to offerings made under federal Regulation Crowdfunding 17 C.F.R. § 227 and 15 U.S.C. § 77d(a)(6) and § 77r(b)(4)(C):

(1) Initial filing. An issuer that offers and sells securities in Vermont in an offering exempt under federal Regulation Crowdfunding, and that either has its principal place of business in Vermont or sells fifty percent (50%) or greater of the aggregate amount of the offering to residents of Vermont, must file the following with the commissioner:

(A) A completed Uniform Notice of Federal Crowdfunding Offering form or copies of all documents filed with the SEC; and

(B) A consent to service of process on Form U-2 if not filing on the Uniform Notice of Federal Crowdfunding Offering form.

The notice filing shall be effective for twelve (12) months from the date of the filing with the commissioner.

(2) Timing of filing. If the issuer has its principal place of business in this state, the filing required under subdivision (1) shall be filed with the commissioner when the issuer makes its Form C filing with the SEC. If the issuer does not have its principal place of business in this state but residents of this state have purchased 50% or greater of the aggregate amount of the offering, the filing required under subdivision (1) shall be filed when the issuer becomes aware that such purchases have met this threshold and in no event later than thirty (30) days from the date of completion of the offering.

(3) Renewal. For each additional twelve (12) month period in which the same offering is continued, an issuer conducting an offering under federal Regulation Crowdfunding may renew its notice filing by filing a completed Uniform Notice of Federal Crowdfunding Offering form marked “renewal” and/or a cover letter or other document requesting renewal on or before the expiration of the notice filing.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. § 5302)

V.S.R. § 4-4. Multijurisdictional Disclosure Statement (MJDS).

(a) This section applies to offers registered in Vermont under 9 V.S.A. § 5303 and with the SEC in accordance with the MJDS adopted in SEC Release Number 33-6902.

(b) Offerings filed on SEC Form F-7, Form F-8, or Form F-10, become effective the later of three (3) calendar days after filing, or the effective date with the SEC, provided the application for registration is filed contemporaneously with the SEC registration application.

(c) In a rights offering, SEC Form F-7 will be accepted in lieu of any state form required to claim an exemption for any transaction pursuant to an offer to existing securities holders.

(d) After the SEC declares an issuer’s Form F-8 or Form F-10 registration statement effective, a non-issuer transaction in any class of the issuer’s securities is exempt from registration, whether or not the transaction is effected through a broker-dealer.

(Authorized by V.S.A. § 5605(a); implementing 9 V.S.A. §§ 5203 and 5303(c)(2))

CHAPTER 5 SECURITIES REGISTRATION EXEMPTIONS

V.S.R. § 5-1. Commercial Paper Exemption.

An exemption is available for any commercial paper which arises out of a current transaction or the proceeds of which are used for current transactions and which evidences an obligation to pay cash within nine (9) months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal,

provided that:

- (a) The commercial paper must be prime quality commercial paper;
- (b) The commercial paper must be discounted at the member banks of the Federal Reserve System; and
- (c) The commercial paper must be negotiable paper.

(Authorized by 9 V.S.A. § 5606(a); implementing 9 V.S.A. § 5201)

V.S.R. § 5-2. Depository Institution Exemption.

The exemption under 9 V.S.A. § 5201(3)(C) applying to “any other depository institution” is available to depository institutions that are:

- (a) Organized under the laws of the United States or one of its states and subject to the general regulation and oversight of an agency of the United States or one of its states (i.e., other than the commissioner); or
- (b) Designated by order of the commissioner.

(Authorized by 9 V.S.A. § 5606(a); implementing 9 V.S.A. § 5201(3)(C))

V.S.R. § 5-3. Charitable Gift Annuities and Fund Exemption.

(a) The following transactions are exempt from the provisions of 9 V.S.A. §§ 5301-5306:

(1) Any offer or sale of a charitable gift annuity within the meaning of and maintained in compliance with 9 V.S.A. §§ 2517-18; or

(2) Any offer or sale of a security of a fund, other than a charitable gift annuity, that is excluded from the definition of an investment company under 15 U.S.C. § 80a-3(c)(10)(B) and which satisfies all of the following:

(A) The fund qualifies as a pooled income fund under section 26 U.S.C. § 642(c)(5) or a charitable remainder annuity trust or a Charitable Remainder Unitrust under 26 U.S.C. § 664(d) and is maintained by an eligible charitable organization.

(B) Donors receive written information describing the material terms of the operation of the fund.

(b) The following persons are exempt from registration and notice filing provisions to the extent

their activities are limited to the offer or sale of any security, or the solicitation of a donation, described in V.S.R. § 5-3(a):

(1) A broker-dealer that does not have a place of business in Vermont is exempt from the registration requirements of 9 V.S.A. § 5401(a);

(2) An agent is exempt from the registration requirements of 9 V.S.A. § 5402(a);

(3) An investment adviser is exempt from the registration requirements of 9 V.S.A. § 5403(a);

(4) An investment adviser representative is exempt from the registration requirements of 9 V.S.A. § 5404(a); and

(5) A federal covered investment adviser is exempt from the notice filing requirements of 9 V.S.A. § 5405(a). A person is not exempt as described in any of the preceding V.S.R. § 5-3(b)(1)-(4) to the extent such person receives commissions or other remuneration based on the number or value of sales or contributions made in connection with the transactions described in V.S.R. § 5-3(a).

(c) The commissioner may deny, revoke or further condition this exemption if, in the commissioner's opinion, the availability of this exemption to a person would work a fraud or imposition upon the purchaser.

(d) This exemption does not exempt or waive any antifraud provisions of the Act or this regulation.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. § 5203)

V.S.R. § 5-4. Nonprofit Securities Exemption.

(a) Securities Exempt. With respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness, the exemption from registration provided in 9 V.S.A. § 5201(7), applies only where the maximum aggregate amount in cash and other consideration from all sales of securities sold under this exemption within any twelve (12) month period does not exceed one million dollars (\$ 1,000,000) and where the offer or sale is made without payment of a commission or consulting fee.

(b) Securities Not Exempt. The offer or sale of a note, bond, debenture, or other evidence of indebtedness by a person described in 9 V.S.A. § 5201(7) who does not qualify for the exemption under subsection (a) above, must be registered under 9 V.S.A. § 5304.

(c) Notice Information and Requirements. An issuer who qualifies under subsection (a) above must request authorization and file a notice with the commissioner at least thirty (30) calendar days before the first offering or sale under the exemption. Such exemption becomes effective

thirty (30) calendar days after a complete filing if the commissioner has not disallowed the exemption. The notice must specify:

- (1) The material terms of the proposed offer or sale;
- (2) The identity of the issuer;
- (3) The amount and type of securities to be sold pursuant to the exemption;
- (4) A description of the use of proceeds from the offering;
- (5) The name, business address, and a brief description of the employment responsibilities of each agent who will represent the organization in the offer or sale of the securities in Vermont;
- (6) Any offering document, prospectus, and/or trust indenture;
- (7) A consent to service of process (Form U-2 and, if necessary, a Form U-2A);
- (8) The fee required by 9 V.S.A. § 5305(k); and
- (9) Any other information requested by the commissioner.

(d) Sales and Advertising Literature. At least five (5) business days before initial use in Vermont, an issuer or applicant must file a copy of all advertising intended for publication or mass distribution with the commissioner. No advertisement may be published or distributed if the commissioner notifies the issuer not to use such material.

(e) Scope of the Exemption. The exemption will be effective for a twelve (12) month period commencing after the thirty (30) day period required by subsection (c) above, unless the commissioner deems it effective earlier. An issuer may renew the offering for additional twelve (12) month periods by filing an update to the information required in subsection (c) above and an additional fee as required by 9 V.S.A. § 5305(k).

(f) Reporting Requirement. Every six (6) months from the date of the first sale, the issuer must file a report with the commissioner containing the number of transactions conducted in Vermont and the amount of securities sold in each transaction.

(g) “Opt-in” Requirement for Automatic Reinvestment, Renewal, or Rollover Plan. An investor in securities governed by this section may not be enrolled in an automatic reinvestment, renewal, or rollover plan unless the investor affirmatively and in writing “opts-in” to participate in such plan.

(h) Waiver. The commissioner may waive any term or condition set forth in V.S.R. § 5-4.

(Authorized by 9 V.S.A. § 5605(a), implementing 9 V.S.A. § 5201(7))

V.S.R. § 5-5. Church Bond Exemption.

(a) Exemption. Church bonds and church extension bonds are exempt from registration as long as they comply with this section and the applicable NASAA statements of policy. Accordingly, issuers must apply the NASAA Statements of Policy Regarding Church Bonds and the NASAA Statement of Policy Regarding Church Extension Fund Securities, as applicable, to the proposed offer or sale of such securities. Failure to comply with the provisions of an applicable NASAA Statement of Policy is grounds for disallowance of the exemption from registration provided by 9 V.S.A. § 5201(7).

(b) Notice Information and Requirements. An issuer who qualifies under this section must request authorization and file a notice with the commissioner at least thirty (30) calendar days before the first offering or sale under the exemption. Such exemption becomes effective thirty (30) calendar days after a complete filing if the commissioner has not disallowed the exemption. The notice must specify:

- (1) The material terms of the proposed offer or sale;
- (2) The identity of the issuer;
- (3) The amount and type of securities to be sold pursuant to the exemption;
- (4) A description of the use of proceeds from the offering;
- (5) The name, business address, and a brief description of the employment responsibilities of each agent who will represent the organization in the offer or sale of the securities in Vermont;
- (6) Any offering document, prospectus, and/or trust indenture;
- (7) A consent to service of process (Form U-2 and, if necessary, a Form U-2A) must be included as a part of the notice;
- (8) The fee required by 9 V.S.A. § 5305(k); and
- (9) Any other information requested by the commissioner.

(c) Reporting Requirement. Every six (6) months from the date of the first sale the issuer must file a report with the commissioner containing the number of transactions conducted in Vermont and the amount of securities sold in each transaction.

(d) “Opt-in” Requirement for Automatic Reinvestment, Renewal, or Rollover Plan. An investor in securities governed by this section may not be enrolled in an automatic reinvestment, renewal, or rollover plan unless the investor affirmatively and in writing “opts-in” to participate in such plan.

(e) Waiver. The commissioner may waive any term or condition set forth in V.S.R. § 5-5.

(Authorized by 9 V.S.A. § 5605(a), implementing 5201(7))

V.S.R. § 5-6. Non-Issuer Transaction Exemption.

The following non-issuer transactions are exempt from registration under the Act:

(a) No Registered Broker-Dealer. Isolated non-issuer transactions completed without a registered broker-dealer are limited to a maximum of three (3) sales of the security in Vermont during a twelve (12) month period. General solicitation is not allowed for non-issuer transactions.

(b) Registered Broker-Dealer. Any offer or sale that is effected by or through a registered broker-dealer and that satisfies all of the following conditions:

(1) Sales are made only to accredited investors;

(2) Sales are not made by means of general solicitation or general advertising; and

(3) The issuer is a going concern engaged in a valid business activity and is not:

(A) In an organizational or developmental stage;

(B) A blank check or shell company; or

(C) In bankruptcy or receivership.

(4) All potential buyers and sellers are provided information about the issuer, including:

(A) A description of the issuer’s business or operations;

(B). The names of the issuer’s officers and directors;

(C) An audited balance sheet of the issuer dated within 18 months of the date of the transaction; and

(D). Audited profit and loss statements for each of the issuer’s two fiscal years immediately preceding the date of such balance sheet (such statements to be prepared in accordance with U.S. or Foreign GAAP).

(Authorized by 9 V.S.A. § 5606(a); implementing 9 V.S.A. § 5202(2))

V.S.R. § 5-7. Vermont Accredited Investor Exemption.

(a) Exemption. Any offer and sale of a security by an issuer in a transaction that meets the requirements of this rule is exempted from the requirements of 9 V.S.A. §§ 5301 and 5504 if:

(1) Issuers only make sales of securities to persons who are, or the issuer reasonably believes after inquiry are, accredited investors;

(2) The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for a sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within six (6) months of sale is presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under 9 V.S.A. § 5305(h) or to an accredited investor pursuant to an exemption available under 9 V.S.A. § 5202;

(3) Each communication with a prospective investor must meet the requirements of subsection (c) below; and

(4) The issuer must file a notice of transaction with the commissioner on the NASAA model Accredited Investor Exemption Uniform Notice Of Transaction, a consent to service of process, a copy of the general announcement, and the applicable exemption fee set forth in 9 V.S.A. § 5305(k) within fifteen (15) calendar days after the first sale in Vermont.

(b) Disqualification. This exemption will not be available for offerings involving a bad actor.

(c) Communication with Prospective Investors. General solicitation and advertising will be allowed provided such communications contain a statement that sales will only be made to accredited investors.

(Authorized by 9 V.S.A. § 5605(a); implementing §§ 5202(13)(C) and 5203)

V.S.R. § 5-8. Manual Exemption.

(a) For the purposes of the manual exemption set forth in 9 V.S.A. § 5202(2)(D), the following securities manuals, or portions of the manuals, are recognized in both electronic and hard copy formats:

(1) Mergent's Industrial Manual;

(2) Mergent's International Manual;

- (3) OTCQX Best Market Manual; and
- (4) Any other manual the commissioner designates by order.

(b) In order for the manual exemption to be available:

- (1) The issuer must not be in the organizational stages, bankruptcy or receivership; and
- (2) All potential buyers and sellers must be provided information about the issuer, including:
 - (A) A description of the issuer's business; and
 - (B) The issuer's balance sheet prepared in accordance with GAAP for the past two fiscal years.

(Authorized by 9 V.S.A. § 5606(a); implementing 9 V.S.A. § 5202(2)(D))

V.S.R. § 5-9. Cooperative Association Exemption.

A member's or owner's interest, a retention certificate, or like security given in lieu of a cash patronage dividend issued by a cooperative organized and operated as a for-profit membership cooperative under the cooperative laws of Vermont, but not a member's or owner's interest, retention certificate, or like security sold to persons other than bona fide members of the cooperative are exempt from the registration requirements of 9 V.S.A. §§ 5301-5305.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. § 5203)

V.S.R. § 5-10. Canadian Trading Exemption.

(a) Exemption from Broker-Dealer Registration. A broker-dealer that is a resident of Canada and has no place of business in Vermont is exempt from registration under 9 V.S.A. § 5401 if the broker-dealer:

- (1) Registers with or is a member of a self-regulatory organization, stock exchange, or the Bureau des Services Financiers in Canada;
- (2) Maintains good standing in its provincial or territorial registration and its registration with or membership in a self-regulatory organization, stock exchange, or the Bureau des Services Financiers in Canada; and
- (3) Effects or attempts to effect transactions in securities only with or for the following individuals:

(A) A permanent resident of Canada who temporarily resides in or is visiting Vermont, and with whom the broker-dealer had a bona fide customer relationship before the individual entered the state; or

(B) An investor present in Vermont and whose transactions are in a Canadian self-directed tax advantaged retirement account of which the individual is the holder or contributor.

(b) Exemption from Agent Registration. An agent who represents a Canadian broker-dealer meeting the conditions specified in V.S.R. § 5-10(a) is exempt from the registration requirements of 9 V.S.A. § 5402 if the agent maintains good standing in the agent's provincial or territorial registration and the agent effects or attempts to effect transactions in Vermont only as permitted for a broker-dealer under V.S.R. § 5-10(a).

(c) Transactional Exemption from Securities Registration. An offer or sale of a security effected by a Canadian broker-dealer or agent exempt from registration under V.S.R. § 5-11(a) or (b) is exempt from the requirements of 9 V.S.A. §§ 5301.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. § 5203)

V.S.R. § 5-11. Vermont Crowdfunding.

(a) 2017 Vermont Investor Exemption. Securities offered or sold in Vermont are exempt from the Act's registration requirements provided the requirements of this subsection and V.S.R. § 5-11(d) are satisfied:

(1) New Offerings.

(A) An issuer must be either (i) registered with the Vermont Secretary of State; or (ii) authorized to transact business in Vermont by the Vermont Secretary of State;

(B) Sales of securities must only be made to residents of Vermont;

(C) All offering and marketing materials must specify the offering is for Vermont residents only;

(D) An issuer must pay the fee prescribed in 9 V.S.A. § 5305(k); and

(E) An offering must meet all other requirements of the federal exemption for intrastate offerings pursuant to 17 C.F.R. 230.147A.

(2) Existing Offerings. An offering previously exempt under the Vermont Small Business Offerings Intrastate Exemption and currently effective can qualify under this section for the remainder of the offer's term and renew consistent with V.S.R. § 5-11(d)(6) by

providing notice to the commissioner certifying that the requirements of this section and V.S.R. § 5-11(d) remain satisfied.

(b) 1974 Vermont Investor Exemption. Securities offered or sold in Vermont are exempt from the Act's registration requirements provided the requirements of this subsection and V.S.R. § 5-11(d) are satisfied:

- (1) An issuer must be an entity formed under the laws of Vermont and registered with the Vermont Secretary of State;
- (2) Offers and sales of the securities must only be made to residents of Vermont;
- (3) Prior to the commencement of any advertising, an issuer must file any advertising materials intended for mass distribution with the commissioner. An issuer may commence their advertising if the offering is effective and an issuer has not received comments to the advertising materials within five (5) business days of filing with the commissioner;
- (4) All offering and marketing materials must specify the offering is for Vermont residents only; and
- (5) An issuer must pay the fee prescribed in 9 V.S.A. § 5305(k); and
- (6) An offering must meet all other requirements of the federal exemption for intrastate offerings pursuant to 15 U.S.C. § 77c(a)(11).

(c) Interstate Investor Registration. Securities offered or sold in Vermont meet the requirements of 9 V.S.A. § 5304 provided the requirements of this subsection and V.S.R. § 5-11(d) are satisfied:

- (1) An issuer may be formed under the laws of any State or the District of Columbia and must be either (i) registered with the Vermont Secretary of State; or (ii) authorized to transact business in Vermont by the Vermont Secretary of State;
- (2) An issuer must file the fee prescribed in 9 V.S.A. § 5305(b); and
- (3) An offering must meet all other requirements of the federal exemption for limited offerings and sales of securities pursuant to 17 C.F.R. § 230.504.

(d) General Requirements

An issuer utilizing V.S.R. § 5-11(a)-(c) must also satisfy the following:

- (1) Aggregate Offering Limit. The maximum aggregate amount in cash and other consideration from all sales of securities sold under this exemption within any twelve (12) month period must not exceed:

(A) One million dollars (\$ 1,000,000), if an issuer has not undergone and made available to each prospective investor and the commissioner the documentation resulting from a financial audit with respect to its most recently completed fiscal year and meeting GAAP; or

(B) Five million dollars (\$ 5,000,000), if:

(i) An issuer has undergone and made available to each prospective investor and the commissioner the documentation resulting from a financial audit with respect to its most recently completed fiscal year and meeting GAAP; or

(ii) An issuer has entered into an enforceable revenue producing contract that is satisfactory to the commissioner.

(2) Individual Investment Limit. Sales to Vermont investors must conform to the following limitations:

(A) Accredited investors have no individual investment limit;

(B) Vermont certified investors are limited to twenty-five thousand dollars (\$ 25,000) per offering; and

(C) Vermont main street investors are limited to ten thousand dollars (\$ 10,000) per offering.

(3) Minimum Offering Raise. An issuer must set aside all funds raised as part of an offering in a separate bank account to be held until such time as the minimum offering amount is reached. An issuer must file proof of such account to the commissioner. The minimum offering amount must be no less than twenty-five percent (25%) of the maximum offering amount set by an issuer and disclosed in the offering document. An issuer may increase the aggregate offering amount once if it reaches full subscription. An issuer must notify the commissioner and any previously subscribed investors of the amount of the increase and the intended use of additional proceeds. All investor funds must be returned to investors within thirty (30) calendar days if:

(A) An issuer is unable to raise the minimum offering amount during the initial twelve (12) month period from the effective date of the offering without the minimum offering amount having been received by the depository institution; or

(B) The commissioner by order, suspends or revokes the effectiveness of the offering.

(4) Filing Requirements.

Offering Materials. Prior to an offering's commencement, an issuer must file the following with the commissioner:

(i) A certificate of good standing issued by an issuer's domiciliary state; and if an issuer is not domiciled in Vermont, a certificate of authority issued by the Vermont Secretary of State, both of which must be issued within thirty (30) days of filing with the commissioner;

(ii) A copy of the offering document;

(iii) Name, address, telephone number and social security number for all of the issuer's officers, directors, partners, members, twenty percent (20%) shareholders and promoters presently connected with the issuer in any capacity;

(iv) The primary contact person for communication with the commissioner and that person's phone number and e-mail address; and

(v) The filing fee prescribed above.

(5) Effective Date of Offering. Unless the commissioner provides written comment or clears the offering earlier, each offering will be effective fifteen (15) business days after an issuer files all required documents.

(6) Offering Period. The offering period must not exceed twelve (12) months. An issuer may extend the offering in twelve (12) month increments by renewing its initial filing, including payment of a renewal fee as specified above, unless the minimum offering raise is not met in the first twelve (12) month period.

(7) Offering Document. An issuer must deliver an offering document to each offeree at least twenty-four (24) hours prior to any sale of securities under this regulation. The offering document does not have a prescribed format; however, an issuer must fully disclose all material information and not make any factual misstatements or omissions. Further, an issuer must attempt to balance any discussion of the potential rewards of the offering with a discussion of possible risks. A duly authorized representative of an issuer must sign the offering document certifying that reasonable efforts were made to verify the material accuracy and completeness of the information contained therein.

(8) Limitation on Use. The exemptions set forth in subsection (a) and (b) and the registration procedure set forth in (c) shall be unavailable for:

(A) Offerings involving a bad actor;

(B) Offerings in which it is proposed to issue debt, stock, or other equity interest in a development stage company without a specific business plan or purpose, or in which an issuer has indicated that its business is to engage in a merger or

acquisition with an unidentified company or companies, or other unidentified entities or persons, or without an allocation of proceeds to sufficiently identifiable properties or objectives (i.e., “blind pool” or “blank check” offerings);

(C) Offerings involving petroleum exploration or production, mining, or other extractive industries; and

(D) Offerings involving an investment company as defined and classified under 15 U.S.C. § 80a-3(a).

(9) Antifraud Provisions. Nothing in this section relieves issuers, broker-dealers and their agents, or investment advisors and their representatives from the antifraud and enforcement provisions of the Act, this regulation, federal securities laws, the securities laws of other states or the rules of any government approved self-regulatory organization.

(10) Investor Knowledge. An issuer and any agents must reasonably believe that the purchaser, either alone or through a representative, has sufficient knowledge and is capable of evaluating the merits and the risks of the investment.

(11) Reporting to the Commissioner. Within thirty (30) calendar days after the expiration of an offering, an issuer must file a sales report with the commissioner, indicating the aggregate dollar amount of securities sold and the number of investors. The commissioner may require an issuer to file periodic reports to keep reasonably current the information contained in the notice and to disclose the progress of an offering.

(e) Use of the Internet or Third Party Portal. The use of the internet or a third party portal to conduct or help facilitate an offering is voluntary. When engaging a third party portal, an issuer must ensure the third party portal is properly registered with the state.

(1) Third Party Portal Registration. A third party portal must register with the commissioner by filing:

(A) A certificate of good standing issued by the Vermont Secretary of State within thirty (30) days of the filing indicating the third party portal is an entity formed under the laws of any State or Territory of the United States or the District of Columbia and authorized to transact business within Vermont;

(B) Name, address, telephone number and social security number for any of the third party portal’s officers, directors, partners, members, twenty percent (20%) shareholders and promoters presently connected with the issuer in any capacity.

(C) The primary contact person for communication with the commissioner and that person’s phone number and e-mail address;

(D) Except as provided below in V.S.R. § 5-11(e)(2) & (3), evidence that the third party portal is registered as a broker-dealer under 9 V.S.A. § 5406; and

(E) If the third party portal is exempt under V.S.R. 5-11(e)(2) or (3), the filing fee prescribed in 9 V.S.A. § 5410(a).

(2) Non-Broker-Dealer Third Party Portals. A third party portal is not required to register as a broker-dealer under 9 V.S.A. § 5406 if all of the following apply with respect to the third party portal:

(A) It does not offer investment advice or recommendations;

(B) It does not solicit purchases, sales, or offers to buy the securities offered or displayed on the Internet site;

(C) It does not compensate employees, agents, or other persons for the solicitation or sale of securities displayed or referenced on the Internet site;

(D) It does not receive compensation based on the amount of securities sold, and it does not hold, manage, possess, or otherwise handle investor funds or securities;

(E) The fee it charges an issuer for an offering of securities on the Internet site is a fixed amount for each offering, a variable amount based on the length of time that the securities are offered on the Internet site, or a combination of such fixed and variable amounts; and

(F) Neither the third party portal, nor any director, executive officer, general partner, managing member, or other person with management authority over the third party portal, is disqualified as a bad actor.

(3) Federally Registered Broker-Dealers or Funding Portal. A third party portal is not required to register as a broker-dealer under 9 V.S.A. § 5406 if the third party portal is:

(A) Registered as a broker-dealer under 15 U.S.C. § 78o; or

(B) A funding portal registered under 15 U.S.C. § 77d-1 and the SEC has adopted rules under authority of 15 U.S.C. § 78c(h) governing funding portals.

(4) Records. The third-party portal must maintain records of all offers and sales of securities effected through the internet site and must provide the commissioner with ready access to the records upon request. The commissioner may access, inspect, and review any internet site registered under this V.S.R. § 5-11(d) as well as its records.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. §§ 5203, 5307 & 5406)

CHAPTER 6
COMMUNICATIONS

V.S.R. § 6-1. Prospectus.

(a) Filing. Each application for the registration of securities must include the prospectus to be used in connection with the proposed securities offering.

(b) Form and Content.

(1) Registration by Coordination. Each prospectus for a securities offering filed for registration by coordination pursuant to 9 V.S.A. § 5303 must contain the information required in part I of Form S-1 as required by 15 U.S.C. § 77aa and 17 C.F.R. § 239.11, unless the commissioner modifies or waives the requirements pursuant to 9 V.S.A. § 5307.

(2) Registration by Qualification. Each prospectus for a securities offering filed for registration by qualification under 9 V.S.A. § 5304 must contain the information required by that statute unless the commissioner modifies or waives the requirements pursuant to 9 V.S.A. § 5304 or 9 V.S.A. § 5307. The prospectus may be submitted on one (1) of the following forms that is applicable to the type of securities offering:

(A) Part II of Form 1-A;

(B) Part I of Form S-1;

(C) Form U-7 if the issuer meets the requirements of V.S.R. § 4-2; or

(D) Any other form the commissioner allows.

(c) Delivery Requirements. As a condition of registration under 9 V.S.A. § 5304 the issuer must deliver a copy of the entire prospectus to each person to whom an offer is made a minimum of twenty (24) hours prior to the earliest of the events specified in 9 V.S.A. § 5304(e)(1)-(4).

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. §§ 5303 and 5304)

V.S.R. § 6-2. Internet Communication.

(a) General Communications. Communication concerning a security directed generally to anyone having access to the internet is not deemed an offer under 9 V.S.A. § 5301 if:

(1) The internet communication indicates that the security is not being offered to residents of Vermont;

(2) The internet communication indicates that the security is only being offered to

residents of states where the offer is registered or exempt from registration, if the communication originates within Vermont;

(3) The internet communication is limited to the dissemination of general information on an investment opportunity;

(4) The internet communication does not result in the rendering of personalized investment advice in states where the offer is registered or exempt;

(5) The internet communication contains a mechanism designed to prevent residents of states where the offer is not registered or exempt from registration from viewing the full offering materials; and

(6) No sale of the security is made in a state where the securities offering is not registered or exempt from registration as a direct or indirect result of the internet communication. For the purpose of determining whether the security is exempt, each sale made in Vermont as a direct or indirect result of the internet communication is deemed to be made through a general solicitation.

(b) Communication by Broker-Dealers, Agents, Investment Advisers and Investment Adviser Representatives. A person who distributes information on available products and services through internet communications directed generally to anyone having access to the internet is not deemed to be transacting business in Vermont for purposes of 9 V.S.A. §§ 5401-5404 based solely on the internet communication if:

(1) The internet communication contains a legend in which the following information is clearly stated:

(A) The person cannot transact business in this state as a broker-dealer, agent, investment adviser, or investment adviser representative unless the person is properly registered under the Act or exempt from registration; and

(B) The person cannot provide individualized communications or responses to prospective customers or clients in this state to effect or attempt to effect transactions in securities, or to render personalized investment advice for compensation, unless the person is properly registered under the Act or exempt from registration;

(2) The internet communication contains a mechanism to ensure that, before any direct communication with prospective customers or clients, the person is properly registered or exempt from registration under applicable securities laws.

(3) The internet communication is limited to the dissemination of general information on products and services and does not involve effecting or attempting to effect transactions in securities or the rendering of personalized investment advice in this state.

(4) For an agent or investment adviser representative, the following conditions are met:

(A) The affiliation of the agent or investment adviser representative with a broker-dealer or investment adviser is prominently disclosed within the internet communication.

(B) The broker-dealer or investment adviser with whom the agent or investment adviser representative is associated retains responsibility for reviewing and approving the content of any internet communication by the agent or investment adviser representative.

(C) The broker-dealer or investment adviser with whom the agent or investment adviser representative is associated first authorizes the distribution of information on the particular products and services through the internet communication.

(D) In disseminating information through the internet communication, the agent or investment adviser representative acts within the scope of the authority granted by the broker-dealer or investment adviser.

(c) “Other electronic communication” under 9 V.S.A. § 5610(e), does not include internet communication.

(d) Antifraud and Enforcement. Nothing in this regulation creates an exemption from the antifraud provisions, or from the requirements of any other provision, of the Act or these regulations.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. § 5203)

V.S.R. § 6-3. Advertising.

(a) Filing Requirement. Except as provided in subsection (c), all sales and advertising literature proposed to be used in connection with the sale of securities in Vermont must be filed with the commissioner at least seven (7) calendar days before its proposed use.

(b) False or Misleading Advertisements. Sales and advertising literature must not contain any statement that is false or misleading in a material respect or that is inconsistent with information contained in a registration statement or offering document. In addition, the sales and advertising literature must not omit to state any material fact necessary to make a statement made, in the light of the circumstances under which the statement was made, not false or misleading. Sales and advertising literature is deemed to be false and misleading if it contains any exaggerated statements, emphasizes positive information while minimizing negative information, or compares alternative investments without disclosing all material differences between the investments, including expenses, liquidity, safety, and tax features.

(c) Exception. A tombstone advertisement placed in a newspaper, periodical, or other medium is not subject to the requirements of subsection (a) if the tombstone advertisement contains the following information:

(1) A statement that the advertisement does not constitute an offer to sell or the solicitation of an offer to buy a security; and

(2) The name and address of a person from whom a written prospectus can be obtained.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. § 5504)

V.S.R. § 6-4. Solicitations of Interest Prior to the Filing of the Registration Statement.

(a) Applicability. An offer, but not a sale, of a security made by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving a prospectus (or its equivalent) for such security is exempt from 9 V.S.A. §§ 5301-05 if the following conditions are satisfied:

(1) The issuer is or will be a business entity organized under the laws of, and with a principal place of business in, a State or Territory of the United States, the District of Columbia or a Province of Canada; and

(2) The offeror intends to register the security or file pursuant to an exemption in Vermont and conduct its offering pursuant to either 15 U.S.C. § 77c(a)(11), 17 C.F.R. § 230.147, 17 C.F.R. § 230.147A, 17 C.F.R. § 230.251(a)(1), or 17 C.F.R. § 230.504

(b) General Requirements.

(1) Initial Filing. Twenty-one (21) calendar days prior to the initial solicitation of interest under this rule, the offeror must file with the commissioner:

(A) A Solicitation of Interest Form;

(B) The script of any broadcast to be made and a copy of any notice to be published; and

(C) Any other materials to be used to conduct solicitations of interest.

(2) Amendments. Seven (7) calendar days prior to usage, the offeror must file with the commissioner any amendments to the foregoing materials or additional materials to be used to conduct solicitations of interest, except for materials provided to a particular offeree pursuant to a request by that offeree.

(3) Unapproved Materials. An offeror must not distribute or use any materials that the commissioner denied or did not approve for use to solicit indications of interest.

(4) Sales. During the solicitation of interest period, the offeror must not solicit or accept money, subscription, or commitment to purchase securities.

(5) Offeree Holding Period. An offeror must not make any sale until at least seven (7) calendar days after delivering a final offering document to any offeree solicited under this rule.

(6) Waiting Period. Issuers on whose behalf indications of interest are solicited under this rule may not make offers or sales, or communications until thirty (30) calendar days after the last communication with a prospective investor made pursuant to this rule.

(7) Waiver. The commissioner may waive any condition of this exemption, upon written request by the offeror describing cause and need for the waiver. Unless the commissioner expressly waives any provision of this rule then all provisions apply to each offeror.

(c) Communications. The offeror must comply with the requirements set forth below. Failure to comply will not result in the loss of the exemption from the requirements of 9 V.S.A. §§ 5301-5305, but is a violation and actionable by the commissioner under 9 V.S.A. §§ 5603-5604 and constitute grounds for denying or revoking the exemption as to a specific security or transaction.

(1) Legend. Any published notice or script for broadcast must contain at least the identity of the chief executive officer of the issuer, a brief and general description of its business and products, and the following legends:

(A) NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED;

(B) NO SALES OF THE SECURITIES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED UNTIL DELIVERY OF AN OFFERING DOCUMENT THAT INCLUDES COMPLETE INFORMATION ABOUT THE ISSUER AND THE OFFERING;

(C) AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND; and

(D) THIS OFFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE FEDERAL AND/OR STATE SECURITIES LAWS. NO SALE MAY BE MADE UNTIL THE OFFERING STATEMENT IS QUALIFIED BY THE SEC AND IS REGISTERED IN THIS STATE.

(2) Extemporaneous Communications. Except for scripted broadcasts and published notices, the offeror does not communicate with any offeree about the contemplated offering unless the offeree is provided with the most current Solicitation of Interest Form at or before the time of the communication or within seven (7) calendar days from the communication.

(d) Disqualifications. This exemption is not available for:

(1) Offerings involving a bad actor;

(2) Offerings in which it is proposed to issue stock or other equity interest in a development stage company without a specific business plan or purpose, or in which the issuer has indicated that its business is to engage in a merger or acquisition with an unidentified company or companies, or other unidentified entities or persons, or without an allocation of proceeds to sufficiently identifiable properties or objectives (i.e., “blind pool” or “blank check” offerings);

(3) Offerings involving petroleum exploration or production, mining, or other extractive industries; and

(4) A hedge fund, commodity pool, private equity fund, or similar investment vehicle.

(e) Effect of Non-Compliance. A failure to comply with any condition of subsections (b) or (c) of this section will not result in the loss of this exemption from the requirements of 9 V.S.A. §§ 5301-05 of this Act for any offer to a particular individual or entity if the offeror shows:

(1) The failure to comply did not pertain to a condition directly intended to protect that particular individual or entity;

(2) The failure to comply was insignificant with respect to the offering as a whole; and

(3) A good faith and reasonable attempt was made to comply with all applicable condition of subsections (b) and (c).

(f) Waiver. The commissioner may waive any condition of this exemption upon written application by an issuer showing cause. Compliance, attempted compliance, a lack of objection or order by the commissioner with respect to any solicitation of interest under this exemption does not constitute a waiver of any condition or confirm the availability of this exemption.

(g) Enforcement Authority. An exemption from registration established only through reliance upon section (e) above does not render the failure to comply with this rule un-actionable as a violation and is enforceable by the commissioner under 9 V.S.A. §§ 5603-5604 and constitute grounds for denying or revoking the exemption as to a specific security or transaction under 9 V.S.A. § 5306.

V.S.R. § 6-5. Policy Regarding Use of Electronic Offering Documents, Electronic Subscription Agreements, and Electronic Signatures.

(a) The following terms are defined as follows for purposes of this section:

(1) “Offering Documents” include, but are not limited to, the registration statement, prospectus, applicable agreements, charter, by-laws, opinion of counsel and other opinions, specimen, indenture, consent to service of process and associated resolution, sales materials, subscription agreement, and applicable exhibits; and

(2) “Sales Materials” include only those materials to be used in connection with the solicitation of purchasers of the securities and approved as sales literature or other related materials by the SEC, FINRA, and the state of Vermont, as applicable.

(b) Use of Electronic Offering Documents and Subscription Agreements

(1) An issuer of securities or agent acting on behalf of the issuer may deliver Offering Documents over the Internet or by other electronic means, including electronic storage devices, provided:

(A) Each Offering Document:

(i) Is prepared, updated, and delivered in compliance with state and federal securities laws;

(ii) Satisfies the formatting requirements applicable to printed documents, such as font size and typeface, and which is identical in content to the printed version (other than electronic instructions and/or procedures as may be displayed and non-substantive updates to daily net asset value which can be updated more efficiently in the electronic version);

(iii) Is delivered as a single, integrated document or file; when delivering multiple Offering Documents, the documents must be delivered together as a single package or list;

(iv) Where a hyperlink to documents or content that is external to the offering documents is included, provides notice to investors or prospective investors that the document or content being accessed is provided by an external source;

(v) Is delivered in an electronic format that intrinsically enables the recipient to store, retrieve, and print the documents; and

(B) The issuer or agent acting on behalf of the issuer:

(i) Obtains informed consent from the investor or prospective investor to receive Offering Documents electronically;

(ii) Ensures that the investor or prospective investor receives timely, adequate, and direct notice when an electronic Offering Document has been delivered;

(iii) Employs safeguards to ensure that delivery of offering documents occurred at or before the time required by law in relation to the time of sale; and

(iv) Maintains evidence of delivery by keeping records of its electronic delivery of Offering Documents and makes those records available on demand by the Vermont Department of Financial Regulation.

(2) Subscription Agreements may be provided by an issuer or agent acting on behalf of the issuer electronically for review and completion, provided the subscription process is administered in a manner that is similar to the administration of subscription agreements in paper form, as follows:

(A) Before completion of any Subscription Agreement, the issuer or agent acting on behalf of the issuer must review with the prospective investor all appropriate documentation related to the prospective investment including documents and instructions on how to complete the Subscription Agreement;

(B) Mechanisms are established to ensure a prospective investor reviews all required disclosures and scrolls through the document in its entirety prior to initialing and/or signing; and

(C) Unless otherwise allowed by the Department, a single Subscription Agreement is used to subscribe a prospective investor in no more than one offering.

(3) Delivery requires that the Offering Documents be conveyed to and received by the investor or prospective investor, or that the storage media in which the offering documents are stored be physically delivered to the investor or prospective investor in accordance with subsection (b)(1).

(4) Each electronic document shall be preceded by or presented concurrently with the following notice: **“Clarity of text in this document may be affected by the size of the screen on which it is displayed.”**

(5) Informed consent to receive Offering Documents electronically pursuant to (b)(2)(A) in this section may be obtained in connection with each new offering or globally, either by the issuer or by an agent acting on behalf of the issuer. The investor may revoke this consent at any time by informing the party to whom the consent was given, or, if such party is no longer available, the issuer.

(6) Investment opportunities shall not be conditioned on participation in the electronic Offering Documents and Subscription Agreements initiative.

(7) Investors or prospective investors who decline to participate in an electronic Offering Documents and Subscription Agreements initiative shall not be subjected to higher costs—other than the actual direct cost of printing, mailing, processing, and storing Offering Documents and subscription agreements—as a result of their lack of participation in the initiative, and no discount shall be given for participating in an electronic Offering Documents and Subscription Agreements initiative.

(8) Entities participating in an electronic initiative shall maintain, and shall require participating underwriters, dealer-managers, placement agents, broker-dealers, and/or other selling agents to maintain, written policies and procedures covering the use of electronic Offering Documents and Subscription Agreements.

(9) Entities and their contractors and agents having custody and possession of electronic Offering Documents, including electronic subscription agreements, shall store them in a non-rewriteable and non-erasable format.

(10) This section does not change or waive any other requirement of law concerning registration or presale disclosure of securities offerings.

(c) Policy Regarding Use of Electronic Signatures

(1) An issuer of securities or agent acting on behalf of the issuer may provide for the use of electronic signatures provided:

(A) The process by which electronic signatures are obtained:

(i) Will be implemented in compliance with the Electronic Signatures in Global and National Commerce Act (“Federal E-Sign”) and the Uniform Electronic Transactions Act, including an appropriate level of security and assurances of accuracy, and where applicable, required state and federal disclosures;

(ii) Will employ an authentication process to establish signer credentials;

(iii) Will employ security features that protect signed records from alteration; and

(iv) Will provide for retention of electronically signed documents in compliance with applicable laws and regulations, by either the issuer or agent acting on behalf of the issuer;

(B) An investor or prospective investor shall expressly opt in to the electronic signature initiative, and participation may be terminated at any time; and

(C) Investment opportunities shall not be conditioned on participation in the electronic signature initiative.

(2) Entities that participate in an electronic signature initiative shall maintain, and shall require underwriters, dealer-managers, placement agents, broker-dealers, and other selling agents to maintain, written policies and procedures covering the use of electronic signatures.

(3) An election to participate in an electronic signature initiative pursuant to (c)(1)(B) in this section may be obtained by an issuer in connection with each new offering, or by an agent acting on behalf of the issuer. The investor may revoke this consent at any time by informing the party to whom the consent was given, or, if such party is no longer available, the issuer.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. § 5203)

CHAPTER 7 INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

V.S.R. § 7-1. Registration Procedures for Investment Advisers and Investment Adviser Representatives.

(a) General Provisions.

(1) An applicant must be at least eighteen (18) years of age. If the applicant is not an individual, then the directors, officers, and managing partners of the applicant must all be at least eighteen (18) years of age.

(2) An applicant must register or qualify to engage in business as an investment adviser or investment adviser representative in the State of the applicant's principal place of business.

(3) An investment adviser must have at least one (1) investment adviser representative registered in Vermont.

(b) Application Requirements for Investment Advisers.

(1) Initial Application.

(A) IARD Filing Requirements. An applicant for initial registration as an investment adviser must file with IARD/CRD:

(i) A complete Form ADV;

(ii) The fee required by 9 V.S.A. § 5410(c);

(iii) Any reasonable fee for filing through the IARD/CRD system;

(iv) A brochure written in accordance with V.S.R. § 7-6(b), unless the applicant intends to use Part 2A of Form ADV as its brochure; and

(v) For each investment adviser representative in an investment adviser branch office different than that listed on Form ADV, a Form BR and the branch office registration fee required in 9 V.S.A. § 5410(c).

(B) Direct Filing Requirements. An applicant for initial registration must also file the following documents with the commissioner:

(i) A copy of the investment adviser's surety bond and Form U-SB, if required under V.S.R. § 7-5(e);

(ii) The proposed client contract(s) written in accordance with V.S.R. § 7-3(d)(13);

(iii) A privacy policy written in accordance with V.S.R. § 7-3(d)(13)(B);

(iv) Certification of supervisory procedures written in accordance with V.S.R. § 7-6(a)(2);

(v) Financial statements that demonstrate compliance with the requirements of V.S.R. § 7-5(d);

(vi) A completed Affidavit of Investment Adviser Activity Form; and

(vii) Any other document the commissioner requests.

(2) Annual Requirements.

(A) Expiration and Renewal of Registration. Investment adviser registration expires on December 31 of every year, regardless of when the application was approved. An investment adviser must file an application for renewal prior to the IARD filing deadline. An application for renewal must include the filing fee specified in 9 V.S.A. § 5410(c) and any reasonable fee for filing through the IARD system.

(B) Annual Updating Amendment. Within ninety (90) calendar days after the end of an investment adviser's fiscal year, the investment adviser must file with the IARD an annual updating amendment to Form ADV.

(3) Periodic Amendments.

(A) Changes to Form ADV. An investment adviser must file any amendments to the investment adviser's Form ADV with the IARD within thirty (30) days of the

event that requires the filing of the amendment. Such changes include occurrences listed in the instructions of Form ADV.

(B) Change in Association. When an investment adviser representative's association with an investment adviser is discontinued or terminated, the investment adviser must immediately file a Form U-5 with the IARD/CRD. If the investment adviser representative commences association with another investment adviser, that investment adviser must file an initial application for registration for the investment adviser representative.

(4) Terminating/Withdrawing from Active Registration. An investment adviser that voluntarily terminates an active registration in Vermont must file and ADV-W with the IARD within thirty (30) calendar days.

(A) Effective Date. Registration termination is effective thirty (30) days after filing of the Form ADV-W or within such shorter period of time as the commissioner may determine. When a proceeding to revoke, suspend, or impose conditions upon termination is pending or instituted within sixty (60) calendar days after the Form ADV-W is filed, the termination becomes effective at such time and upon satisfaction of such conditions as the commissioner determines by order.

(B) Post-Effective Action. The commissioner may institute a revocation or suspension proceeding under 9 V.S.A. § 5412 up to one (1) year after voluntary termination becomes effective and enter a revocation or suspension order as of the last date on which registration is effective.

(5) Withdrawn Applications. An applicant for investment adviser registration that voluntarily withdraws their application must immediately file form ADV-W with the IARD/CRD. Such withdrawal is effective upon filing.

(c) Application Requirements for Investment Adviser Representatives.

(1) Initial Application. Except as otherwise provided by order of the commissioner, an applicant for initial registration as an investment adviser representative must file the following through the IARD/CRD:

(A) A completed Form U-4;

(B) Proof of compliance by the investment adviser representative with the examination requirements of subdivision (4) below, unless exempt under subdivision (4)(B) below;

(C) The filing fee required by 9 V.S.A. § 5410(d);

(D) Any reasonable fee for filing through the IARD/CRD system; and

(E) A Form BR and the investment adviser branch office registration fee required by 9 V.S.A. § 5410(c) if different than the address listed on the investment adviser's Form ADV, unless the investment adviser filed Form BR on the investment adviser representative's behalf.

(2) Expiration and Renewal of Registration. Investment adviser representative registration expires on December 31 of every year, regardless of when the application was approved. An application for renewal must be filed prior to the IARD/CRD filing deadline. An application for renewal must include the filing fee specified in 9 V.S.A. § 5410(d) and any reasonable fee for filing through the IARD/CRD. Investment adviser representatives must also annually renew their investment adviser branch office registration as required in subdivision (1)(E) above.

(3) Updates and Amendments.

(A) Forms. Within thirty (30) calendar days of a change to Form U-4 and/or Form BR, each investment adviser representative or associated investment adviser must file:

(i) Any amendments to the investment adviser representative's Form U-4 with the IARD/CRD.

(ii) File any amendments to the investment adviser representative's Form BR with the IARD/CRD.

(B) Change in Association. When an investment adviser representative's association with an investment adviser is discontinued or terminated, the investment adviser must file a Form U-5 with the IARD/CRD within thirty (30) calendar days. If the investment adviser representative commences association with another investment adviser, that investment adviser must file an initial application for registration for the investment adviser representative.

(4) Examination Requirements for Investment Adviser Representatives.

(A) General Requirements. An individual applying to be registered as an investment adviser representative must provide the commissioner with evidence of a valid passing score on the appropriate FINRA qualification examinations.

(B) Exemptions.

(i) Individuals Registered as of January 1, 2000. An individual who was registered as an investment adviser or investment adviser representative in any jurisdiction in the United States as of January 1, 2000, need not satisfy the examination requirements for continued registration, except under either of the following conditions:

(I) The commissioner requires examinations for any individual found to have violated any state or federal securities law; or

(II) The commissioner requires examinations for any individual whose registration has lapsed, as specified in subdivision (C) below.

(ii) Professional Designation. The examination requirement does not apply to any individual who currently holds in good standing one (1) of the following professional designations:

(I) Certified Financial Planner (CFP), awarded by the Certified Financial Planner Board of Standards, Inc.;

(II) Chartered Financial Consultant (ChFC), awarded by the American College, Bryn Mawr, Pennsylvania;

(III) Personal Financial Specialist (PFS), awarded by the American Institute of Certified Public Accountants;

(IV) Chartered Financial Analyst (CFA), awarded by the Institute of Chartered Financial Analysts;

(V) Chartered Investment Counselor (CIC), awarded by the Investment Counsel Association Of America, Inc.; or

(VI) Any other professional designation that the commissioner may recognize by regulation or order as fulfilling this purpose.

(C) Waivers. The commissioner may wave or modify the examination requirement under extraordinary circumstances.

(D) Lapsed Registration. If an individual has met the examination requirements of subdivision (A) above, but has not been registered as an investment adviser representative in any jurisdiction for the previous two (2) years, the individual must comply with the examination requirements of subdivision (A) above again before applying for registration.

(E) Loss of Professional Designations. An investment adviser representative exempt from examination requirements under subdivision (B)(ii) above who subsequently loses or allows the lapse of such professional designation is no longer exempt and their registration will be temporarily suspended. The investment adviser representative must:

(i) Provide written notice to the commissioner immediately upon loss or lapse of designation including:

(I) An explanation of the facts and circumstances of such loss/lapse; and

(II) A plan for taking the examination or reestablishing professional designation; and

(ii) Before registration will be reinstated, renewed or transferred, the individual must:

(I) Fulfill the examination requirements in subdivision (A) above; or

(II) Reestablish one (1) of the professional designations listed under subdivision (B) above.

(d) Effective Date of Registration. An investment adviser and investment adviser representative registration will be effective (45) calendar days after the applicant files a complete application unless the commissioner approves earlier. If the commissioner gives written notice of deficiencies in the application, the application will not be considered complete until the applicant resolves all deficiencies.

(e) Abandoned Applications. An investment adviser or investment adviser representative registration application that has been on file for sixty (60) calendar days without any action taken by the applicant is considered abandoned and withdrawn. An applicant must file a new, complete application, as well as the appropriate filing fee to obtain further consideration of an abandoned application.

(f) Investment Advisor Representative Continuing Education.

(1) Every investment adviser representative registered under 9 V.S.A. § 5403 must complete the following IAR continuing education requirements each Reporting Period:

(A) IAR Ethics and Professional Responsibility Requirement. An investment adviser representative must complete six (6) Credits of IAR Regulatory and Ethics Content offered by an Authorized Provider, with at least three (3) hours covering the topic of ethics; and

(B) IAR Products and Practice Requirement. An investment adviser representative must complete six (6) Credits of IAR Products and Practice Content offered by an Authorized Provider.

(2) Agent of FINRA-Registered Broker-Dealer Compliance. An investment adviser representative who is also registered as an agent of a FINRA member broker-dealer and

who complies with FINRA's continuing education requirements is considered to be in compliance with the subrule (1)(B) IAR Products and Practice Requirement for each applicable Reporting Period so long as FINRA continuing education content meets all of the following baseline criteria as determined by NASAA:

(A) The continuing education content focuses on compliance, regulatory, ethical, and sales practices standards.

(B) The continuing education content is derived from state and federal investment advisory statutes, rules and regulations, securities industry rules and regulations, and accepted standards and practices in the financial services industry.

(C) The continuing education content requires that its participants demonstrate proficiency in the subject matter of the educational materials.

(3) Credentialing Organization Continuing Education Compliance. Credits of continuing education completed by an investment adviser representative who was awarded and currently holds a credential that qualifies for an examination waiver under Rule USA 2002 412(e)-1(d) comply with subrules (1)(A) and (1)(B) of this rule provided all of the following are true:

(A) The investment adviser representative completes the credits of continuing education as a condition of maintaining the credential for the relevant Reporting Period.

(B) The credits of continuing education completed during the relevant Reporting Period by the investment adviser representative are mandatory to maintain the credential.

(C) The continuing education content provided by the credentialing organization during the relevant Reporting Period is Approved IAR Continuing Education Content.

(4) IAR Continuing Education Reporting. Every investment adviser representative is responsible for ensuring that the Authorized Provider reports the investment adviser representative's completion of the applicable IAR continuing education requirements.

(5) No Carry-Forward. An investment adviser representative who completes Credits of continuing education in excess of the amount required for the Reporting Period may not carry forward excess credits to a subsequent Reporting Period.

(6) Failure to Complete or Report. An investment adviser representative who fails to comply with this rule by the end of a Reporting Period will renew as "CE Inactive" at the close of the calendar year in this state until the investment adviser representative completes and reports all required IAR continuing education Credits for all Reporting Periods as required by this rule. An investment adviser who is CE inactive at the close of the next calendar year is not eligible for investment adviser representative registration or renewal of an investment adviser representative registration.

(7) Discretionary Waiver by the Commissioner. The Commissioner may, in the Commissioner's discretion, waive any requirements of this rule.

(8) Home State. An investment adviser representative registered or required to be registered in this state who is registered as an investment adviser representative in the individual's Home State is considered to be in compliance with this rule provided that both of the following are true:

(A) The investment adviser representative's Home State has continuing education requirements that are at least as stringent as the NASAA Model Rule on Investment Adviser Representative Education.

(B) The investment adviser representative is in compliance with the Home State's investment adviser representative continuing education requirements.

(9) Unregistered Periods. An investment adviser representative who was previously registered under the Act and became unregistered must complete IAR continuing education for all reporting periods that occurred between the time that the investment adviser representative became unregistered and when the person became registered again under the Act unless the investment adviser representative takes and passes the examination or receives an examination waiver as required by Section 7-1(c)(2)(3)(C) in connection with the subsequent application for registration.

(10) Definitions. As used in V.S.R. § 7-1(f), the following terms mean:

(A) "Act" means the Vermont Uniform Securities Act (2002) (the "Act"), codified at Chapter 150, Title 9 of the Vermont Statutes Annotated.

(B) "Approved IAR Continuing Education Content" means the materials, written, oral, or otherwise that have been approved by NASAA or its designee and which make up the educational program provided to an investment adviser representative under this rule.

(C) "Authorized Provider" means a person that NASAA or its designee has authorized to provide continuing education content required by this rule.

(D) "Credit" means a unit that has been designated by NASAA or its designee as at least 50 minutes of educational instruction.

(E) "FINRA" means the Financial Industry Regulatory Authority.

(F) "Home State" means the state in which the investment adviser representative has its principal office and place of business.

(G) "IAR Ethics and Professional Responsibility Content" means Approved IAR Continuing Education Content that addresses an investment adviser representative's ethical and regulatory obligations.

(H) “IAR Products and Practice Content” means Approved IAR Continuing Education Content that addresses an investment adviser representative’s continuing skills and knowledge regarding financial products, investment features, and practices in the investment advisory industry.

(I) “Investment adviser representative” or “IAR” means an individual who meets the definition of “investment adviser representative” under the Act and an individual who meets the definition of “investment adviser representative” under 9 V.S.A. § 5102(16).

(J) “NASAA” means the North American Securities Administrators Association or a committee designated by its Board of Directors.

(K) “Reporting Period” means one twelve month (12) period as determined by NASAA. An investment adviser representative’s initial Reporting Period with this state commences the first day of the first full Reporting Period after the individual is registered or required to be registered with this state.

(g) Registration Exemption for Investment Advisers to Private Funds.

(1) Exemption for Private Fund Advisers. Subject to the additional requirements of V.S.R. § 7-1(g)(2), a private fund adviser is exempt from the registration requirements of 9 V.S.A. § 5403 if:

(A) Neither the private fund adviser nor any of its advisory affiliates are subject to an event that would disqualify an issuer under V.S.R. § 1-2(h);

(B) The private fund adviser files with the commissioner through the IARD each report and amendment thereto that an exempt reporting private fund adviser is required to file in accordance with instructions in Form ADV; and

(C) The private fund adviser pays the fees specified in 9 V.S.A. § 5410(c).

(2) Additional Requirements for Private Fund Advisers to Certain 3(c)(1) Funds. In order to qualify for the exemption described in subsection (a) above, a private fund adviser who advises at least one (1) 3(c)(1) fund that is neither a venture capital fund nor a 3(c)(7) fund, in addition to satisfying each of the conditions specified in subdivisions (a)(1)-(3) above, must comply with the following requirements:

(A) The private fund adviser may only advise those 3(c)(1) funds (other than venture capital funds or 3(c)(7) funds) whose outstanding securities (other than short-term paper) are beneficially owned entirely by persons who meet the definition of a qualified client at the time the securities are purchased from the issuer;

(B) At the time of purchase, the private fund adviser must disclose the following

in writing to each beneficial owner of a 3(c)(1) fund that is neither a venture capital fund nor a 3(c)(7) fund:

- (i) All services to be provided to individual beneficial owners;
- (ii) All duties the investment adviser owes to the beneficial owners; and
- (iii) Any other material information affecting the rights or responsibilities of the beneficial owners.

(C) With respect to each such 3(c)(1) fund's fiscal year end, the private fund adviser must obtain annual audited financial statements of each 3(c)(1) fund that is neither a venture capital fund nor a 3(c)(7) fund, and must deliver a copy of such audited financial statements to each beneficial owner of the fund within one hundred eighty (180) days of the fund's fiscal year end or such longer period as the commissioner may permit upon a showing of good cause.

(3) Federal Covered Investment Advisers. A private fund adviser registered with the SEC is not eligible for this exemption and must comply with the state notice filing requirements applicable to federal covered investment advisers in 9 V.S.A. § 5405.

(4) Investment Adviser Representatives. A person is exempt from the registration requirements of 9 V.S.A. § 5404 if they are employed by or associated with an investment adviser that is exempt from registration in Vermont pursuant to this section and does not otherwise act as an investment adviser representative.

(5) Electronic Filing. The report filings described in subdivision (a)(2) above must be made electronically through the IARD. A report is deemed filed when the report and the fee required by 9 V.S.A. § 5410 are filed and accepted by the IARD on Vermont's behalf.

(6) Transition. An investment adviser who becomes ineligible for the exemption provided by this section must comply with all applicable laws and rules requiring registration or notice filing within ninety (90) calendar days from the date the investment adviser's eligibility for this exemption ceases.

(7) Waiver Authority with Respect to Statutory Disqualification. Subdivision (b)(1) above does not apply upon a showing of good cause and without prejudice to any other action of the Department of Financial Regulation, if the commissioner determines that it is not necessary under the circumstances that an exemption be denied.

(8) Treatment of Private Fund Advisers with Non-Qualified Clients. A private fund

adviser to one (1) or more 3(c)(1) funds that is neither a venture capital fund nor a (3)(c)(7) fund and that has one (1) or more beneficial owners who are not qualified clients may nonetheless qualify for this exemption if: the subject fund(s) existed prior to Nov. 2, 2012; as of Nov. 2, 2012, the fund(s) ceased to accept beneficial owners who are/were not qualified clients, other than beneficial owners of such fund(s) as of Nov. 2, 2012; provided, however, that securities of a fund that are owned by persons or entities who received such securities from a person or entity that was a beneficial owner of such fund as of Nov. 2, 2012 as a gift or bequest, or in a case in which such transfer or assignment was caused by legal separation, divorce, death or other involuntary event or effected for estate planning purposes, is deemed to be owned by a beneficial owner of such fund.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. §§ 5203; 5404)

V.S.R. § 7-2. Recordkeeping Requirements for Investment Advisers.

(a) Every investment adviser registered or required to be registered under the Act shall make and keep true, accurate and current the following books, ledgers and records:

- (1) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.
- (2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.
- (3) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank, broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated. For purposes of this section, “discretionary power” shall not include discretion regarding the price or the time at which a transaction is to be effected if the client has directed or approved the purchase or sale of a definite amount of a particular security before the order is given by the investment adviser.
- (4) All check books, bank statements, canceled checks and cash reconciliations of the investment adviser.
- (5) All bills or statements (or copies of), paid or unpaid, relating to the investment

adviser's business as an investment adviser.

(6) All trial balances, financial statements prepared in accordance with generally accepted accounting principles, and internal audit working papers relating to the investment adviser's business as an investment adviser. For purposes of this subsection, "financial statements" shall mean a balance sheet prepared in accordance with generally accepted accounting principles, an income statement, a cash flow statement and a net worth computation, if applicable, as required by V.S.R. § 7-5(d).

(7) Originals of all written communications received and copies of all written communications sent by the investment adviser relating to (A) any recommendation made or proposed to be made and any advice given or proposed to be given, (B) any receipt, disbursement or delivery of funds or securities, or (C) the placing or execution of any order to purchase or sell any security, provided, however, (i) that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, and (ii) that if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 10 persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if the notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular or advertisement a memorandum describing the list and its source.

(8) A list or other record of all accounts which identifies the accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities, or transactions of any client.

(9) A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser.

(10) A copy in writing of each agreement entered into by the investment adviser with any client, and all other written agreements otherwise relating to the investment adviser's business as an investment adviser.

(11) A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser), and if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.

(12) (A) A record of every transaction in a security in which the investment adviser or any advisory representative (as defined in subdivision 12(B) herein) of the investment

adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except

(i) Transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and

(ii) Transactions in securities that are direct obligations of the United States.

The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e. purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(B) For purposes of this subdivision (12), the term “advisory representative” shall mean any partner, officer or director of the investment adviser; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations:

(i) Any person in a control relationship to the investment adviser;

(ii) Any affiliated person of a controlling person; and

(iii) Any affiliated person of an affiliated person.

(C) An investment adviser shall not be deemed to have violated the provisions of this subdivision (12) because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(13) (A) Notwithstanding the provisions of subdivision (12) above, where the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the

investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except:

- (i) Transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and
- (ii) Transactions in securities which are direct obligations of the United States.

The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e. purchase, sale, or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(B) An investment adviser is “primarily engaged in a business or businesses other than advising investment advisory clients” when, for each of its most recent three fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived, on an unconsolidated basis, more than 50% of

- (i) Its total sales and revenues, and
- (ii) Its income (or loss) before income taxes and extraordinary items, from such other business or businesses.

(C) For purposes of this subdivision (13), the term “advisory representative”, when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, shall mean any partner, officer, director or employee of the investment adviser who participates in any way in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons, who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of such recommendations or of the information concerning the recommendations:

- (i) Any person in a control relationship to the investment adviser;
- (ii) Any affiliated person of a controlling person; and

(iii) Any affiliated person of an affiliated person.

(D) An investment adviser shall not be deemed to have violated the provisions of this subdivision (13) because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(14) A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of the investment adviser in accordance with the provisions of V.S.R. § 7-6(b), and a record of the dates that each written statement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

(15) For each client that was obtained by the adviser by means of a solicitor:

(A) Evidence of a written agreement to which the adviser is a party related to the payment of such fee;

(B) A signed and dated acknowledgment of receipt from the client evidencing the client's receipt of the investment adviser's disclosure statement and a written disclosure statement of the solicitor; and,

(C) A copy of the solicitor's written disclosure statement. The written agreement, acknowledgment and solicitor disclosure statement will be considered to be in compliance if such documents are in compliance with Rule 275.206(4)-3 of the Investment Advisers Act of 1940.

(16) All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including but not limited to electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser); provided, however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this subdivision.

(17) A file containing a copy of all written communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee, and regarding any written customer or client complaint.

(18) Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.

(19) Written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

(20) A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self-regulatory organization and that pertains to the registrant or its investment adviser representatives as that term is defined in subdivision (12)(B) of this subsection, which file must contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

(21) Copies, with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form U-4 and each amendment to Disclosure Reporting Pages (DRPs U-4) must be retained by the investment adviser (filing on behalf of the investment adviser representative) and must be made available for inspection upon regulatory request.

(22) Where the adviser inadvertently held or obtained a client's securities or funds and returned them to the client within three business days of receiving them or has forwarded checks drawn by clients and made payable to third parties within three business days of receipt the adviser shall keep the following records:

A ledger or other listing of all securities or funds held or obtained, including the following information:

(A) Issuer;

(B) Type of security and series;

(C) Date of issue;

(D) For debt instruments, the denomination, interest rate and maturity date;

(E) Certificate number, including alphabetical prefix or suffix;

(F) Name in which registered;

(G) Date given to the adviser;

(H) Date sent to client or sender;

(I) Form of delivery to client or sender, or copy of the form of delivery to client or sender;

(J) Mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return; and

(K) Date each check was received by the adviser.

(23) If an investment adviser obtains possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving any public offering that comply with the exception from custody under V.S.R. § 7-5(b)(2)(B) the adviser shall keep the following records;

(A) A record showing the issuer or current transfer agent's name address, phone number and other applicable contract information pertaining to the party responsible for recording client interests in the securities; and

(B) A copy of any legend, shareholder agreement or other agreement showing that those securities are transferable only with the prior consent of the issuer or holders of the outstanding securities of the issuer.

(b) (1) If an investment adviser has custody, as that term is defined in V.S.R. § 7-5(a), the records required to be made and kept under subsection (a) above shall include:

(A) A copy of any and all documents executed by the client (including a limited power of attorney) under which the adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the adviser's instruction to the custodian.

(B) A journal or other record showing all purchases, sales, receipts, and deliveries of securities (including certificate numbers) for all accounts and all other debits and credits to the accounts.

(C) A separate ledger account for each client showing all purchases, sales, receipts, and deliveries of securities, the date and price of each purchase and sale, and all debits and credits.

(D) Copies of confirmations of all transactions effected by or for the account of any client.

(E) A record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount or interest of each client, and the location of each security.

(F) A copy of each of the client's quarterly account statements, as generated and delivered by the qualified custodian. If the adviser also generates a statement that is delivered to the client, the adviser shall also maintain copies of such

statements along with the date such statements were sent to the clients.

(G) If applicable to the adviser's situation, a copy of the special examination report verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination.

(H) A record of any finding by the independent certified public accountant of any material discrepancies found during the examination.

(I) If applicable, evidence of the client's designation of an independent representative.

(2) If an investment adviser has custody because it advises a pooled investment vehicle, as defined in V.S.R. § 7-5(a)(1)(C), the adviser shall also keep the following records:

(A) True, accurate, and current account statements;

(B) Where the adviser complies with V.S.R. § 7-5(b)(2)(C) the records required to be made and kept shall include:

(i) The date(s) of the audit;

(ii) A copy of the audited financial statements; and

(iii) Evidence of the mailing of the audited financial to all limited partners, members, or other beneficial owners within 120 days of the end of its fiscal year.

(C) Where the adviser complies with V.S.R. § 7-5(b)(1)(D)(iii) the records required to be made and kept shall include:

(i) A copy of the written agreement with the independent party reviewing all fees and expenses, indicating the responsibilities of the independent third party.

(ii) Copies of all invoices and receipts showing approval by the independent party for payment through the qualified custodian.

(c) Every investment adviser subject to subsection (a) of this section who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate, and current:

(1) Records showing separately for each client the securities purchased and sold, and the date, amount, and price of each purchase and sale.

(2) For each security in which any client has a current position, information from which the investment adviser can promptly furnish the name of each client, and the current amount or interest of the client.

(d) Any books or records required by this section may be maintained by the investment adviser in such manner that the identity of any client to whom the investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

(e) Every investment adviser subject to subsection (a) of this section shall preserve the following records in the manner prescribed:

(1) All books and records required to be made under the provisions of subsection (a) to (c)(1), inclusive, of this section (except for books and records required to be made under the provisions of subdivisions (a)(11) and (a)(16) of this section), shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser.

(2) Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.

(3) Books and records required to be made under the provisions of subdivisions (a)(11) and (a)(16) of this section shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in an appropriate office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated (including by electronic media), directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication.

(4) Books and records required to be made under the provisions of subdivisions (a)(17)-(22), inclusive, of this section shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser, or for the time period during which the investment adviser was registered or required to be registered in the state, if less.

(5) Notwithstanding other record preservation requirements of this section, the following records or copies shall be required to be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:

(A) Records required to be preserved under subdivisions (a)(3),(a)(7)-(10),

(a)(14)-(15), (a)(17)-(19), (b) and (c) inclusive, of this section; and

(B) The records or copies required under the provisions of subdivisions (a)(11) and (a)(16) of this section, which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business location's physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the period described in subsection (e) of this section.

(f) An investment adviser subject to subsection (a) of this section, before ceasing to conduct or discontinuing business as an investment adviser shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section, and shall notify the commissioner in writing of the exact address where the books and records will be maintained during the period.

(g) (1) Pursuant to V.S.R. § 7-2(e) the records required to be maintained and preserved may be immediately produced or reproduced, and maintained and preserved for the required time, by an investment adviser on:

(A) Paper or hard copy form, as those records are kept in their original form; or

(B) Micrographic media, including microfilm, microfiche, or any similar medium; or

(C) Electronic storage media, including any digital storage medium or system that meets the terms of this section.

(2) The investment adviser must:

(A) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

(B) Provide promptly any of the following that the commissioner (by its examiners or other representatives) may request:

(i) A legible, true, and complete copy of the record in the medium and format in which it is stored;

(ii) A legible, true, and complete printout of the record; and

(iii) Means to access, view, and print the records; and

(C) Separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section.

(3) In the case of records created or maintained on electronic storage media, the investment adviser must establish and maintain procedures:

(A) To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

(B) To limit access to the records to properly authorized personnel and the commissioner (including its examiners and other representatives); and

(C) To reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

(h) Any book or other record made, kept, maintained, and preserved in compliance with Rules 17a-3 [17 C.F.R. 240.17a-3] and 17a-4 [17 C.F.R. 240.17a-4] under the Securities Exchange Act of 1934, which is substantially the same as the book or other record required to be made, kept, maintained, and preserved under this section, shall be deemed to be made, kept, maintained, and preserved in compliance with this section.

(i) Every investment adviser registered or required to be registered in this state and that has its principal place of business in a state other than this state shall be exempt from the requirements of this section, provided the investment adviser is licensed in such state and is in compliance with such state's recordkeeping requirements.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. § 5411)

V.S.R. § 7-3. Dishonest and Unethical Practices of Investment Advisers, Investment Adviser Representatives, and Federal Covered Investment Advisers.

(a) Unethical Conduct. "Dishonest or unethical practices," as used in 9 V.S.A. § 5412(d)(13) includes but is not limited to the conduct prohibited in this section.

(b) Fraudulent Conduct. "An act, practice, or course of business that operates or would operate as a fraud or deceit," as used in 9 V.S.A. § 5502(a)(3) includes but is not limited to the conduct prohibited in subdivisions (d)(6) and (9)-(11) and subsections (e)-(h).

(c) General Standard of Conduct. Each investment adviser or investment adviser representative must observe high standards of commercial honor and just and equitable principles of trade in the conduct of the person's business. An investment adviser or investment adviser representative is a fiduciary and must act primarily for the benefit of its clients.

(d) Prohibited Conduct. Sales and Business Practices. An investment adviser or investment adviser representative must adhere to the provisions specified in this subsection in the conduct of the person's business.

(1) **Unsuitable Recommendations.** An investment adviser or investment adviser representative must not recommend the purchase, sale, or exchange of any security to any client to whom investment supervisory, management, or consulting services are provided without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation, financial needs, risk tolerance, and any other information known by the investment adviser or investment adviser representative;

(2) **Improper Use of Discretionary Authority.** An investment adviser or investment adviser representative must not exercise any discretionary power in placing an order for the purchase or sale of securities for any client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power is limited to the price and/or the time at which an order is executed for a definite amount of a specified security;

(3) **Excessive Trading.** An investment adviser or investment adviser representative must not induce trading in a client's account that is excessive in size or frequency in light of the financial resources, investment objectives, and character of the account;

(4) **Unauthorized Trading.** An investment adviser or investment adviser representative must not:

(A) Place an order to purchase or sell a security for the account of a client without authority to do so; or

(B) Place an order to purchase or sell a security for the account of a client upon instruction of a third party without first obtaining a written third-party trading authorization from the client;

(5) **Borrowing from or Lending to a Client.** An investment adviser or investment adviser representative must not:

(A) Borrow money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds; or

(B) Loan money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser;

(6) **Misrepresenting Qualifications, Services, or Fees.** An investment adviser or investment adviser representative must not misrepresent to any advisory client or prospective client:

(A) The qualifications of the investment adviser, investment adviser representative, or any employee of the investment adviser;

(B) The nature of the advisory services being offered or fees to be charged for the service; and

(C) A material fact, overtly or by omitting material facts necessary to make any statements made regarding qualifications, services, or fees not misleading in light of the circumstances in which the statement was made;

(7) Failure to Disclose Source of Report. An investment adviser or investment adviser representative must not provide a report or recommendation to any advisory client prepared by someone other than the investment adviser or investment adviser representative without disclosing that fact. This prohibition does not apply to published research reports or statistical analyses used to render advice or a research report is ordered in the normal course of providing service;

(8) Unreasonable Fees: An investment adviser or investment adviser representative must not charge a client an unreasonable fee.

(A) Advisory fees must be reasonable in relation to:

(i) The complexity and nature of the services provided;

(ii) Fees charged by other investment advisers or investment adviser representatives for similar services in the geographic area in which the client resides; and

(iii) The likelihood that the services provided by the investment adviser or investment adviser representative will result in returns in excess of the fee charged;

(B) An investment adviser must not charge commissions to a client for the sale of securities pursuant to the investment adviser or investment adviser representative's advice unless such fees or charges are credited toward any advisory fee charged by the investment adviser or investment adviser representative;

(9) Prohibited Conduct. Reverse Churning. An investment adviser and an investment adviser representative must ensure that a fee-based program is appropriate for a particular customer, taking into account the services provided, cost, trade volume, level and type of assets and customer preferences. Specifically, the following activity by an investment adviser or investment adviser representative may trigger suspicion of prohibited reverse churning:

(A) Purchase securities in a customer's brokerage account, then move such securities into a fee-based account, when the securities transaction could have been initially made in the fee-based account without paying a brokerage commission;

(B) Place or leave customers in a fee-based account when most of the investments in the account consist primarily of cash or cash equivalents; or

(C) Place or leave customers in a fee-based account, when very few, if any, trades are made in the account;

(10) Failure to Disclose Conflicts of Interest. Before rendering any advice to a client, an investment adviser or investment adviser representative must disclose in writing any material conflict of interest relating to the investment adviser, investment adviser representative, or any of the investment adviser's employees that could reasonably be expected to impair unbiased and objective advice, including but not limited to:

(A) Compensation arrangements connected with advisory services to the client that are in addition to compensation from the client for the advisory services; and

(B) Charging a client an advisory fee for rendering advice without disclosing that a commission for executing transactions pursuant to such advice will be received by the investment adviser or its investment adviser representative and that such commission will be credited toward any advisory fee charged;

(11) Guaranteeing Performance. An investment adviser or investment adviser representative must not guarantee a client that a specific result will occur with advice rendered;

(12) Deceptive Advertising. An investment adviser or investment adviser representative must not publish, circulate, or distribute any advertisement that does not comply with 17 C.F.R. § 275.206(4)-1, notwithstanding the fact that the investment adviser may be exempt from federal registration pursuant 15 U.S.C. § 80b-3(b);

(13) Failure to Protect Confidential Information.

(A) An investment adviser or investment adviser representative must not disclose the identity, affairs, or investments of any client unless required by law to do so or the client consents to the disclosure;

(B) An investment adviser must establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to 15 U.S.C. § 80b-4a, notwithstanding the fact that the investment adviser may be exempt from federal registration

pursuant to 15 U.S.C. § 80b-3(b); and

(C) An investment adviser must provide clients with a copy of its privacy policy on an annual basis;

(14) **Improper Advisory Contract.** An investment adviser must not enter into, extend, or renew any investment advisory contract, notwithstanding the fact that the investment adviser may be exempt from federal registration pursuant to 15 U.S.C. § 80b-3(b):

(A) Unless the contract is in writing and discloses:

(i) The services to be provided;

(ii) The term of the contract;

(iii) The advisory fee;

(iv) The formula for computing the fee;

(v) The amount of prepaid fee to be returned in the event of contract termination or nonperformance and the time period for returning such fee;

(vi) Whether the contract grants discretionary power to the investment adviser; and

(vii) That no assignment of the contract will be made by the investment adviser without the consent of any other party to the contract.

(B) Containing performance-based fees contrary to the provisions of 15 U.S.C. § 80b-5, except as permitted by 17 C.F.R. § 275.205-3; and

(C) That includes any condition, stipulation, or provision binding a person to waive compliance with any provision of the act or engage in any practice contrary to the provisions of 15 U.S.C. § 80b-15 or any other provision of the Investment Advisers Act of 1940.

(15) **Indirect Misconduct.** An investment adviser or investment adviser representative must not engage in any conduct or any act, indirectly or through or by another person, that would be unlawful for the person to do directly under the provisions of the Act or these regulations.

(e) **Prohibited Conduct. Failure to Disclose Financial Condition and Disciplinary History.**

(1) An investment adviser must disclose to any client or prospective client all material

facts with respect to:

(A) A failure to meet the minimum financial requirements of V.S.R. § 7-5(d);
or

(B) Any financial condition of the investment adviser or legal or disciplinary event that is material to an evaluation of the investment adviser's integrity or ability to meet contractual commitments to clients;

(2) A rebuttable presumption exists that the following legal or disciplinary events involving the investment adviser or a management person of the investment adviser are material to an evaluation of the investment adviser's integrity for a period of ten (10) years from the date of the event, unless the event was resolved in the investment adviser's or management person's favor or was subsequently reversed, suspended, or vacated:

(A) A criminal or civil action in a court of competent jurisdiction resulting in:

(i) The individual being convicted of a felony or misdemeanor, or is the named subject of a pending criminal proceeding, for a crime involving an investment-related business or fraud, false statements, omissions, wrongful taking of property, bribery, forgery, counterfeiting, extortion, or crimes of a similar nature;

(ii) The individual being found to be involved in a violation of an investment-related statute or regulation; or

(iii) The individual being the subject of any order, judgment, or decree permanently or temporarily enjoining the person or otherwise limiting the person from engaging in any investment-related activity;

(B) Any administrative proceedings before any federal or state regulatory agency resulting in:

(i) A finding that the individual caused an investment-related business to lose its authorization to do business; or

(ii) A finding that the individual violated an investment-related statute or regulation and was the subject of an order by the agency denying, suspending, or revoking the authorization of the person to act in, or barring or suspending the person's association with, an investment-related business, or otherwise significantly limiting the person's investment-related activities; and

(C) Any self-regulatory organization proceeding resulting in:

(i) A finding that the individual caused an investment-related business to lose its authorization to do business; or

(ii) A finding that the individual violated the self-regulatory organization's rules and was the subject of an order by the self-regulatory organization barring or suspending the person from association with other members, expelling the person from membership, fining the person more than two thousand five hundred dollars (\$ 2,500), or otherwise significantly limiting the person's investment-related activities.

(3) The information required to be disclosed by this subsection (e) must be disclosed to clients before further investment advice is given to the clients. The information must be disclosed to prospective clients at least forty-eight (48) hours before entering into any written or oral investment advisory contract, or no later than the time of entering into the contract if the client has the right to terminate the contract without penalty within five (5) business days after entering into the contract;

(4) For purposes of calculating the ten (10) year period during which events are presumed to be material under subdivision (2) above, the date of a reportable event is either:

(A) The date on which any rights of appeal from preliminary orders, judgments, or decrees lapsed; or

(B) The date on which the final order, judgment, or decree was entered.

(5) Compliance with this subsection does not relieve any investment adviser from any other disclosure requirement of any federal or state law.

(f) Prohibited Conduct. Cash Payment for Client Solicitations. Any person who acts as a solicitor for an investment adviser is deemed to be an investment adviser representative under the Act. An investment adviser or investment adviser representative must not engage a solicitor with respect to solicitation activities unless the solicitation arrangement meets the following requirements:

(1) The cash fee must be paid pursuant to a written agreement to which the investment adviser is a party. The written agreement to be kept as required by V.S.R. § 7-2(a)(15) must:

(A) Describe the solicitation activities to be engaged in by the solicitor on behalf of the investment adviser and the compensation received;

(B) Contain an undertaking by the solicitor to perform the solicitor's duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of the Act and these regulations; and

(C) Require the solicitor to provide the client with a current copy of the investment adviser's written disclosure statement required under the brochure delivery requirements of V.S.R. § 7-6(b) and a separate written disclosure document described in subdivision (4) below at the time of any solicitation activities for which compensation is paid.

(2) Before or when entering into any written or oral investment advisory contract with the client, the investment adviser receives a signed and dated acknowledgment of receipt of the investment adviser's written disclosure statement and the solicitor's written disclosure document from the client.

(3) The investment adviser makes a bona fide effort to ascertain whether the solicitor complies with the written agreement required by subdivision (4) below, and the investment adviser has a reasonable basis for believing that the solicitor complies with the agreement.

(4) The separate written disclosure a solicitor is required to furnish to a client must contain:

(A) The name of the solicitor;

(B) The name of the investment adviser;

(C) The nature of the relationship, including any affiliation, between the solicitor and the investment adviser;

(D) A statement that the solicitor will be compensated for the solicitation services by the investment adviser;

(E) The terms of the compensation arrangement, including a description of the compensation paid or to be paid to the solicitor; and

(F) The amount of any fee in addition to the advisory fee that the client will be charged for the costs of the solicitor's services, and any difference in fees paid by clients if the difference is attributable to a solicitation arrangement in which the investment adviser compensates the solicitor for soliciting clients.

(5) Nothing in this subsection relieves any person of any fiduciary or other obligation to which a person may be subject under any law.

(g) Prohibited Conduct. Agency Cross Transactions.

(1) An investment adviser must not effect an agency cross transaction for an advisory client unless:

(A) The advisory client executes a written consent prospectively authorizing the

investment adviser to effect agency cross transactions for the client;

(B) Before obtaining this written consent from the client, the investment adviser makes full written disclosure to the client that, with respect to agency cross transactions, the investment adviser will act as broker-dealer for both parties to the transaction, receive commissions from both parties, and have a potentially conflicting division of loyalties and responsibilities;

(C) At or before the completion of each agency cross transaction, the investment adviser sends the client a written confirmation. The written confirmation must include all of the following information:

(i) A statement of the nature of the transaction;

(ii) The date the transaction took place;

(iii) An offer to furnish, upon request, the time when the transaction took place; and

(iv) The source and amount of any other remuneration that the investment adviser will receive in connection with the transaction. In the case of a purchase in which the investment adviser was not participating in a distribution or a tender offer, the written confirmation may state whether the investment adviser will receive any other remuneration and that the investment adviser will furnish the source and amount of remuneration to the client upon the client's written request;

(D) At least annually, the investment adviser sends each client a written disclosure statement identifying the total number of agency cross transactions during the period since the date of the last disclosure statement and the total amount of all commissions or other remuneration that the investment adviser will receive in connection with agency cross transactions for the client during the period;

(E) Each written disclosure and confirmation required by this subsection includes a conspicuous statement that the client may revoke the written consent required under subdivision (A) above at any time by providing written notice to the investment adviser; and

(F) No agency cross transaction is effected in which the same investment adviser recommended the transaction to both any seller and any purchaser.

(2) Nothing in this subsection relieves any person of any fiduciary duty or other obligation to which a person may be subject under any law.

(h) Applicability to Federal Covered Investment Advisers. To the extent permitted by federal

law, the provisions of this regulation governing investment advisers also apply to federal covered investment advisers.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. §§ 5412(d)(13) and 5502)

V.S.R. § 7-4. Notice Filing Requirements for Federal Covered Investment Advisers.

(a) Initial Notice Filing. The notice filing for a federal covered investment adviser pursuant to 9 V.S.A. § 5405 must be filed on Form ADV with the IARD. A notice filing of a federal covered investment adviser is deemed filed when the fee required by 9 V.S.A. § 5410(e) and the Form ADV are filed with and accepted by the IARD.

(b) Part 2 of Form ADV. Until the IARD accepts the electronic filing of part 2 of Form ADV, part 2 is deemed to be filed if a federal covered investment adviser provides part 2 within five (5) business days of a request by the commissioner.

(c) Renewal Notice Filing. The annual renewal of the notice filing for a federal covered investment adviser pursuant to 9 V.S.A. § 5405 must be filed with the IARD. The renewal of the notice filing for a federal covered investment adviser is deemed filed when the fee required by 9 V.S.A. § 5410(e) is filed with and accepted by the IARD.

(d) Updates and Amendments. Each federal covered investment adviser must file with the IARD any amendments to the federal covered investment adviser's Form ADV.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. § 5405(c))

V.S.R. § 7-5. Custody of Client Funds or Securities; Financial Reporting; Minimum Net Worth; Bonding.

(a) "Custody" means holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them or the ability to appropriate them.

(1) Each of the following circumstances shall be deemed to constitute custody for purposes of this section:

(A) Possession of client funds or securities, unless the investment adviser receives them inadvertently and returns them to the sender within three (3) business days of receiving them and the investment adviser maintains the records required under V.S.R. § 7-2(a)(22);

(B) Any arrangement, including a general power of attorney, under which an investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser's instruction to the custodian;

(C) Any arrangement that gives an investment adviser or its supervised person legal ownership of or access to client funds or securities, which may include an arrangement in which the investment adviser or its supervised person is the trustee of a trust, the general partner of a limited partnership, the managing member of a limited liability company, or a comparable position for a pooled investment vehicle; and

(D) Where the investment adviser, or its representative, has obtained possession of the identification number and confidential password to a client's account, and this password access provides the investment adviser, or its representative, with the ability to withdraw funds or securities or transfer them to an account not in the client's name. However, the power to rebalance alone, without any means to withdraw or transfer the assets will not constitute custody.

(2) Receipt of a check drawn by a client and made payable to an unrelated third party does not meet the definition of custody if the investment adviser forwards the check to the third party within three (3) business days of receipt and the investment adviser maintains the records required under V.S.R. § 7-2(a)(22).

(b) Safekeeping of Client Funds and Securities.

(1) Requirements. An investment adviser shall not have custody of client funds or securities unless the investment adviser meets each of the conditions below. An "act, practice, or course of business that operates or would operate as a fraud or deceit," as used in 9 V.S.A. § 5502 and amendments thereto, shall include any violation of this subsection.

(A) Notice to Commissioner. An investment adviser must promptly notify the commissioner on Form ADV that the investment adviser has or will have custody.

(B) Qualified Custodian. A qualified custodian must maintain each client's funds and securities in a separate account under each client's name, or in accounts that contain only funds and securities of the investment adviser's clients under the name of the investment adviser as agent or trustee for each client.

(C) Notice to Clients. If an investment adviser opens an account with a qualified custodian on behalf of its client, either under the client's name or under the investment adviser's name as agent, the investment adviser must promptly notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained.

(D) Account Statements. The investment adviser must ensure that account statements are sent to each client for whom the investment adviser has custody of funds or securities.

(i) Statements Sent by the Qualified Custodian. If a qualified custodian maintains accounts containing funds or securities, the qualified custodian rather than the investment adviser may send account statements to clients only if the investment adviser has a reasonable basis for believing that the qualified custodian sends such account statement at least quarterly to each of the investment adviser's clients for whom the custodian maintains funds or securities. The investment adviser must have a reasonable basis for believing that the statement contains all transactions in the account during the period and identifies the amount of funds and amount of each security in the account at the end of the period.

(ii) Statements Sent by the Investment Adviser.

(I) If account statements are not sent by the qualified custodian in accordance with subdivision (i) above, the investment adviser must send an account statement at least quarterly to each client for whom it has custody of funds or securities. The account statement must contain all transactions in the account during the period and identify the amount of funds and amount of each security of which it has custody at the end of the period.

(II) Certified Public Accountant Attestation. At least once during each calendar year, the investment adviser must engage a certified public accounting firm that is registered and authorized to provide attest services in compliance with requirements of the state where the investment adviser is domiciled. The certified public accountant must attest to the accuracy, in all material respects, of the account statements sent to clients by the investment adviser based on a comparison with records of transactions and balances of funds and securities maintained by the qualified custodian. The certified public accountant must perform the attest services in accordance with attestation standards as specified in 26 V.S.A. § 13(1)(A). The certified public accounting firm must perform the attest engagement without prior notice or announcement to the investment adviser on a date that changes from year to year as chosen by the certified public accounting firm. The certified public accounting firm must file a copy of its independent accountant's report with the commissioner within thirty (30) days after the completion of the attest engagement. Upon finding any material exceptions during the course of the engagement, the certified public accounting firm must notify the commissioner of the finding within two (2) business days.

(iii) Pooled Investment Vehicles. If the investment adviser is a general partner of a pooled investment vehicle structured as a limited partnership, is a managing member of a pooled investment vehicle structured as a

limited liability company, or holds a comparable position for another type of pooled investment vehicle, the account statements required under this subsection must be sent to each limited partner, member, or other beneficial owner or that person's independent representatives.

(E) Independent Representatives. A client may designate an independent representative to receive notices and account statements as required in subdivisions (C) and (D) above on the client's behalf.

(F) Direct Fee Deduction. Each investment adviser with custody deducting fees directly from client accounts held by a qualified custodian must:

(i) Obtain prior written authorization from the client to deduct advisory fees from the account held with the qualified custodian.

(ii) Concurrently send the qualified custodian notice of the amount of the fee to be deducted from the client's account and send the client an invoice itemizing the fee each time a fee is directly deducted from a client account. Itemization must include the formula used to calculate the fee, the amount of assets under management on which the fee is based as calculated under Part 1A Instruction 5.b. of Form ADV, and the time period covered by the fee. Such notice may be provided electronically or in writing.

(iii) Notify the commissioner on Form ADV that the investment adviser intends to use the safeguards specified in this subsection.

(G) Pooled Investments. Each investment adviser with custody who does not meet the exception provided under subdivision (2)(C) below must:

(i) Hire an independent party to review all fees, expenses, and capital withdrawals from the pooled accounts.

(ii) Send all invoices or receipts to the independent party, detailing the amount of the fee, expenses, or capital withdrawal and the method of calculation so that the independent party can determine that the payment is in accordance with the agreement governing the pooled investment vehicle and approve invoice payment for the qualified custodian providing a copy to the investment adviser.

(iii) Notify the commissioner on Form ADV that the investment adviser intends to use the safeguards specified in this subsection.

(2) Exceptions.

(A) Shares of Mutual Funds. An investment adviser may use the mutual fund's

transfer agent in lieu of a qualified custodian for purposes of complying with subdivision (1) above with respect to shares of a mutual fund that is an open-end company as defined in 15 U.S.C. § 80a-5(a)(1).

(B) Certain Privately Offered Securities. An investment adviser is not required to comply with subdivision (1) above with respect to securities that are:

- (i) Acquired from the issuer in a transaction or chain of transactions not involving any public offering;
- (ii) Uncertificated, with ownership of the securities recorded only on the books of the issuer or its transfer agent in the name of the client; and
- (iii) Transferable only with the prior consent of the issuer or holders of the outstanding securities of the issuer.

(C) Limited Partnerships Subject to Annual Audit. An investment adviser is not required to comply with subdivision (1) above with respect to the account of a limited partnership, limited liability company, or other type of pooled investment vehicle that is subject to audit at least annually and that distributes its audited financial statements prepared in accordance with GAAP to all limited partners, members, or other beneficial owners within one hundred twenty (120) days after the end of its fiscal year. The investment adviser must notify the commissioner on Form ADV that the investment adviser intends to distribute audited financial statements.

(D) Registered Investment Companies. An investment adviser is not required to comply with subdivision (1) above with respect to the account of an investment company registered under 15 U.S.C. § 80a-1 et seq.

(E) Beneficial Trusts. An investment adviser is not required to comply with the safekeeping requirements of subdivision (1) above if the investment adviser has custody solely because the investment adviser or an investment adviser representative is the trustee for a beneficial trust and meets the following conditions for each trust:

- (i) The beneficial owner of the trust is a parent, grandparent, spouse, sibling, child, or grandchild of the investment adviser or investment adviser representative, including “step” relationships.
- (ii) The investment adviser provides a written statement to each beneficial owner of each account setting forth a description of the requirements of subdivision (1) above and the reasons why the investment adviser will not comply with those requirements.
- (iii) The investment adviser obtains from each beneficial owner a signed

and dated statement acknowledging the receipt of the written statement.

(iv) The investment adviser maintains a copy of both documents described in subdivisions (ii) and (iii) above until the account is closed or the investment adviser or investment adviser representative is no longer trustee.

(F) Upon written request and for good cause shown, the commissioner may waive the requirement to use a qualified custodian. As a condition of granting a waiver, the commissioner may require the investment adviser to perform the duties of a qualified custodian as specified in subdivision (1) above.

(c) Financial Reporting Requirements for Investment Advisers.

(1) Balance Sheet and Auditor's Report. An investment adviser with custody of client funds or securities and an investment adviser who accepts the payment of advisory fees at least six (6) months in advance and in excess of five hundred dollars (\$ 500) from any client must make and maintain a balance sheet dated the last day of the investment adviser's fiscal year. Each balance sheet must be:

(A) Audited by an independent certified public accountant in accordance with GAAP; and

(B) Accompanied by a report of the independent auditor containing an unqualified opinion that the balance sheet is a fair presentation of the investment adviser's financial position and is made in conformity with GAAP.

(2) Preparation and Filing Deadlines. The balance sheet and report required by subdivision (1) above must be prepared within ninety (90) days following the end of the investment adviser's fiscal year. The investment adviser must file the balance sheet and report with the commissioner within five (5) days after the commissioner requests them. Failure to timely file the balance sheet and report constitutes grounds for suspension of registration by emergency order under 9 V.S.A. § 5412(f).

(3) Exemptions. An investment adviser is exempt from the requirements of this subsection (c) if the investment adviser:

(A) Qualifies for an exception from the minimum adjusted net worth requirements of subdivision (d)(3); or

(B) Has its principal place of business in a state other than Vermont, is properly registered in that state, and satisfies the financial reporting requirements of that state.

(d) Minimum Financial Requirements.

(1) Positive Net Worth Requirement for Investment Advisers. An investment adviser must maintain a positive adjusted net worth at all times.

(2) Minimum Adjusted Net Worth for Investment Advisers with Discretionary Authority. An investment adviser with discretionary authority over client funds or securities must maintain a minimum adjusted net worth of ten thousand dollars (\$ 10,000) at all times, unless the investment adviser is subject to the greater requirements of subdivision (3) below.

(3) Minimum Adjusted Net Worth for Investment Advisers with Custody. An investment adviser with custody of client funds or securities must maintain a minimum adjusted net worth of thirty-five thousand dollars (\$ 35,000) at all times, except investment advisers with custody solely because the investment adviser:

(A) Has fees directly deducted from client accounts and the investment adviser complies with the safekeeping requirements in subdivisions (b)(1)(A)-(F) above and the recordkeeping requirements of V.S.R. § 7-2(b);

(B) Complies with the safekeeping requirements in subdivisions (b)(1)(A),(E) and (G) above and the recordkeeping requirements of V.S.R. § 7-2(b); and

(C) Is trustee for a beneficial trust, if the trust meets the conditions in subdivision (b)(2)(E) above.

(4) Notification. An investment adviser must notify the commissioner by the close of business on the next business day if the investment adviser's adjusted net worth is less than the minimum required by this subsection (d). After filing the notice, the investment adviser must file a report with the commissioner of its financial condition by the close of business on the business day following notice including:

(A) A trial balance of all ledger accounts;

(B) A statement of all client funds or securities that are not segregated;

(C) A computation of the aggregate amount of client ledger debit balances; and

(D) A statement indicating the number of client accounts.

(5) For purposes of this Rule an investment adviser shall not be deemed to be exercising discretion when it places trade orders with a broker-dealer pursuant to a third-party trading agreement if:

(A) The investment adviser has executed a separate investment adviser contract exclusively with its client which acknowledges that a third-party trading agreement will be executed to allow the investment adviser to effect securities transactions for the client in the client's broker-dealer account; and

(B) The investment adviser contract specifically states that the client does not grant discretionary authority to the investment adviser and the investment adviser in fact does not exercise discretion with respect to the account; and

(C) A third-party trading agreement is executed between the client and a broker-dealer which specifically limits the investment adviser's authority in the client's broker-dealer account to the placement of trade orders and deduction of investment adviser fees.

(6) Appraisals. The commissioner may require an investment adviser to submit a current appraisal to establish the worth of any asset.

(7) Exception for Out-of-State Advisers. Every investment adviser that has its principal place of business in a state other than Vermont shall maintain such minimum net worth as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is licensed in such state and is in compliance with such state's minimum capital requirements.

(e) Surety Bond.

(1) Additional Bond Requirement. An investment adviser with discretionary authority or custody who does not meet the minimum adjusted net worth requirement of subdivisions (d)(2) and (3) above must also be bonded for the amount of the net worth deficiency rounded up to the nearest five thousand dollars (\$ 5,000) and file a Form U-SB with the commissioner.

(2) Exemptions. An investment adviser is exempt from the requirements of subdivision (1) above if the investment adviser:

(A) Qualifies for an exception from the minimum adjusted net worth requirements of subdivision (d)(3) above and does not have discretionary authority; or

(B) Has its principal place of business in a state other than Vermont, is properly registered in that state, and satisfies the bonding requirements of that state.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. § 5411)

V.S.R. § 7-6. Operational Requirements for Investment Advisers; Supervisory Procedures; Brochure Delivery.

(a) Supervision of Investment Adviser Representatives and Employees.

(1) Annual Review. At least annually, an investment adviser must conduct a review of the businesses in which the investment adviser engages. The review must be reasonably

designed to ensure compliance with all applicable laws and regulations.

(2) Supervisory Procedures. An investment adviser must establish and maintain written supervisory procedures that are reasonably designed to ensure compliance with all applicable laws, regulations, and any rules of any self-regulatory organization. An investment adviser must maintain copies of such written supervisory procedures at each investment-adviser branch office.

(A) In determining whether the supervisory procedures are reasonably designed the commissioner may consider:

- (i) The firm's size;
- (ii) The firm's organizational structure;
- (iii) The scope of the firm's business activities;
- (iv) The number and location of the offices;
- (v) The nature and complexity of products and services offered;
- (vi) The firm's volume of business;
- (vii) The number of investment adviser representatives assigned to a location;
- (viii) The specification of the office as a non-branch location;
- (ix) The firm's use of electronic communication;
- (x) The disciplinary history of the registered investment adviser representatives.

(B) At minimum, written supervisory procedures must include:

- (i) The designation of an appropriately registered investment adviser representative with the authority to oversee the supervisory responsibilities of the investment adviser;
- (ii) The assignment of an investment adviser responsible for supervising each investment adviser representative registered with an investment adviser;
- (iii) That the investment adviser will make reasonable efforts to ensure that all supervisory personnel are qualified to carry out their assigned responsibilities;

(iv) Procedures for conducting, at minimum, an annual review to ensure compliance with the written supervisory policies and procedures;

(v) Procedures for internal review and written endorsement by supervisory personnel described in subdivision (ii) above of all transaction and correspondence pertaining to the rendering of investment advice; and

(vi) Procedures for ensuring the good character, business repute, qualifications, and experience of any person applying for registration in association with the investment adviser.

(3) Code of Ethics.

(A) An investment adviser must establish, maintain, and enforce a written code of ethics that, at a minimum, includes:

(i) A standard (or standards) of business conduct that the investment adviser requires of its supervised persons, which must reflect the investment adviser's fiduciary obligations and those of its supervised persons;

(ii) Provisions requiring the investment adviser's supervised persons to comply with applicable State and Federal securities laws;

(iii) Provisions requiring all of the investment adviser's access persons to report, and the investment adviser to review, their personal securities transactions and holdings periodically:

(iv) Provisions requiring supervised persons to report any violations of the investment adviser's code of ethics promptly to its chief compliance officer or, provided the investment adviser's chief compliance officer also receives reports of all violations, to other persons designated in the investment adviser's code of ethics; and

(v) Provisions requiring the investment adviser to provide each of its supervised persons with a copy of the investment adviser's code of ethics and any amendments, and requiring the investment adviser's supervised persons to provide it with a written acknowledgment of their receipt of the code and any amendments.

(4) Fee-Based Accounts. An investment adviser must implement supervisory procedures for the periodic review of fee-based accounts to determine whether they remain appropriate for customers owning them.

(5) Supervision of Non-Investment Adviser Branch Offices. The procedures established

and the reviews conducted must provide sufficient supervision at remote offices to ensure compliance with applicable securities laws and regulations. Based on the factors specified in subdivision (2) above, the commissioner may require more frequent reviews or more stringent supervision for certain non-investment adviser branch offices.

(6) Failure to Supervise. An investment adviser who fails to comply with this subsection (a) is deemed to have, per se, “failed to reasonably supervise” its investment adviser representatives under 9 V.S.A. § 5412(d)(9).

(b) Brochure Delivery Requirements.

(1) General Requirements. Unless otherwise provided in this subsection (b), an investment adviser must provide each client and prospective client with a firm brochure and one (1) or more supplements. The brochure and supplements must contain all information required by part 2A of Form ADV and any other relevant information that the commissioner requires.

(2) Offer and Delivery Requirements.

(A) An investment adviser must deliver a current brochure to each client or prospective client and deliver current brochure supplements for each investment adviser representative who will provide advisory services to the client. For purposes of this subsection, an investment adviser representative is deemed to provide advisory services to a client if the investment adviser representative:

- (i) Regularly communicates investment advice to the client;
- (ii) Formulates investment advice for assets of the client;
- (iii) Makes discretionary investment decisions for assets of the client; or
- (iv) Sells investment advisory services or solicits, offers, or negotiates for the sale of investment advisory services.

(B) An investment adviser must deliver the documents required in subdivision (A) above to the client at least forty-eight (48) hours before entering into any investment advisory contract with the client or prospective client, or at the time of entering into a contract if the advisory client has a right to terminate the contract without penalty within five (5) business days after entering into the contract.

(C) At least once a year and without charge, an investment adviser must deliver, or offer in writing to deliver, to each of its clients the current brochure and any current brochure supplements. The investment adviser must send the current brochure and supplements to any client that accepts such written offer within seven (7) days after receiving notice of such acceptance.

(3) Delivery to Limited Partners, Members, or Beneficial Owners. If the investment adviser is the general partner of a limited partnership, the manager of a limited liability company, or the trustee of a trust, then for purposes of this subsection the investment adviser must treat each of the partnership's limited partners, the company's members, or the trust's beneficial owners as a client.

(4) Wrap Fee Program Brochures.

(A) An investment adviser who is a sponsor of a wrap fee program must deliver to every client or prospective client the required brochure containing all information required by Form ADV. Any additional information in a wrap fee brochure must be limited to wrap fee programs that the investment adviser sponsors.

(B) An investment adviser is not required to offer or deliver a wrap fee program brochure to the client or prospective client of the wrap fee program if another sponsor of the wrap fee program delivers a wrap fee program brochure containing all the information that the investment adviser's wrap fee program brochure is required to contain.

(C) A wrap fee program brochure does not take the place of any brochure supplements that the investment adviser is required to deliver under subdivision (b)(2)(A) above.

(5) Delivery of Updates and Amendments. An investment adviser must amend and deliver its brochure to clients if information contained in the brochure or brochure supplements becomes materially inaccurate within thirty (30) days of the event requiring an amendment. The investment adviser must follow the updating and delivery instructions for part 2A and/or 2B of Form ADV.

(6) Multiple Brochures. An investment adviser who renders substantially different types of investment advisory services to different clients may provide each with different brochures, if each client receives all applicable information about services and fees. The brochure delivered to a client may omit any information required by part 2A and/or 2B of Form ADV if this information is not applicable to the type of investment advisory service or fee of a specific client or prospective client.

(7) Other Disclosure Obligations. Nothing in this subsection relieves any investment adviser from any obligation to disclose information to its clients or advisory clients pursuant to any state or federal law.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. §§ 5411(g) and 5412(d)(9))

V.S.R. § 7-7. Investment Adviser Business Continuity and Succession Planning.

(a) Every investment adviser must establish, implement, and maintain written procedures relating

to a business continuity and succession plan.

(b) The business continuity and succession plan must be based upon the facts and circumstances of the investment adviser's business model, including the size of the firm, type(s) of services provided, and the number of locations of the investment adviser.

(c) The business continuity and succession plan must provide for at least the following:

(1) The protection, backup, and recovery of books and records.

(2) Alternate means of communications with customers, key personnel, employees, vendors, service providers (including third-party custodians), and regulators, including, but not limited to, providing notice of a significant business interruption or the death or unavailability of key personnel or other disruptions or cessation of business activities.

(3) Office relocation in the event of temporary or permanent loss of a principal place of business.

(4) Assignment of duties to qualified responsible persons in the event of the death or unavailability of key personnel.

(5) Otherwise minimizing service disruptions and client harm that could result from a sudden significant business interruption.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. § 5407(d))

V.S.R. § 7-8. Cybersecurity Procedures.

(a) A Vermont registered investment adviser must establish and maintain written policies and procedures reasonably designed to ensure cybersecurity. In determining whether the cybersecurity policies and procedures are reasonably designed, the commissioner may consider:

(1) The firm's size;

(2) The firm's relationships with third parties;

(3) The firm's policies, procedures, and training of employees with regard to cybersecurity practices;

(4) Authentication practices;

(5) The firm's use of electronic communications;

(6) The automatic locking of devices used to conduct the firm's electronic security; and

(7) The firm's process for reporting of lost or stolen devices.

(b) A Vermont registered investment adviser must include cybersecurity as part of its risk assessment.

(c) The cybersecurity policies and procedures must provide for:

(1) An annual cybersecurity risk assessment;

(2) The use of secure email, including use of encryption and digital signatures;

(3) Authentication practices for employee access to electronic communications, databases, and media;

(4) Procedures for authenticating client instructions received via electronic communication; and

(5) Disclosure to clients of the risks of using electronic communications.

(d) A Vermont registered investment adviser must maintain evidence of adequate insurance for the risk of cybersecurity breach. Insurance will be deemed adequate if the insurance is proportional to:

(1) The firm's size;

(2) The firm's organizational structure;

(3) The scope of the firm's business activities;

(4) The number and location of the firm's offices;

(5) The nature and complexity of products and services offered;

(6) The firm's volume of business;

(7) The number of investment adviser representatives assigned to a location;

(8) The specification of the office as a non-branch location;

(e) A Vermont registered investment adviser must provide identity restoration services at no cost to consumers in the event of a breach in the cybersecurity of consumer nonpublic personal information.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. §§ 5411 and 5412(d)(9))

CHAPTER 8
ADDITIONAL PROVISIONS APPLYING TO BROKER-DEALERS, INVESTMENT
ADVISERS, AGENTS, REPRESENTATIVES, QUALIFIED INDIVIDUALS, AND OTHERS.

V.S.R. § 8-1. Sales of Securities at Depository Institutions.

(a) Applicability. This section applies to broker-dealers and investment advisers on the premises of a depository institution in Vermont. This regulation does not alter or abrogate a broker-dealer or investment adviser's obligations to comply with other applicable laws or regulations that may govern the operations of broker-dealers and their agents and/or investment advisers and their representatives, including but not limited to, supervisory obligations. This regulation does not apply to broker-dealer or investment advisory services provided at financial institutions not offering retail, depository banking services.

(b) Broker-dealers and investment advisers may not access a customer's depository institution records unless the customer has given prior written permission.

(c) Definitions. For purposes of this section the terms "securities firm", "securities customer" and "securities service" are intended to include both broker-dealer and investment adviser firms, customers and services.

(d) Standards for Securities Firms. No broker-dealer or investment adviser shall conduct broker-dealer or investment advisory services on the premise of a depository institution unless the broker-dealer or investment adviser complies initially and continuously with the following requirements:

(1) Distinguishing Services and Products.

(A) Setting. If a broker-dealer or investment adviser occupies or uses physical space in an area on the premises of the depository institution, this area must be sufficiently separated from the retail area of the depository institution. The area must be conspicuously identified as the place of business of the broker-dealer or investment adviser; readily distinguishable from the operations of the depository institution and staffed only by those persons whose affiliation with the broker-dealer or investment adviser is conspicuously identified.

(B) Product Recommendations. A broker-dealer or investment adviser must establish policies and procedures to ensure that customers are fully and clearly informed of the nature and risks of non-deposit investment products, and that distinguish products and services the broker-dealer or investment adviser offers from the retail banking products offered by the hosting depository institution. Recommendations by a broker-dealer or investment adviser concerning non-deposit investment products with a name similar to that of a depository institution must only occur pursuant to policies and procedures reasonably designed to minimize risk of customer confusion.

(C) Networking & Brokerage Affiliate Arrangements. Networking and brokerage affiliate arrangements must be governed by a written agreement that sets forth the responsibilities of the parties and the compensation arrangements. Networking and brokerage affiliate arrangements must provide that supervisory personnel of the broker-dealer or investment adviser and representatives of state securities authorities, where authorized by state law, will be permitted access to the depository institution's premises where the broker-dealer or investment adviser conducts broker-dealer and/or investment advisory services in order to inspect the books and records and other relevant information maintained by the broker-dealer or investment adviser with respect to its broker-dealer and/or investment advisory services. Management of a broker-dealer or investment adviser is responsible for ensuring that any networking or brokerage affiliate arrangement clearly outlines the duties and responsibilities of all parties, including those of depository institution personnel.

(2) Communications with the Public

(A) Advertising material and other promotional literature, which may be disseminated jointly, must prominently and clearly disclose that the depository institution is not a registered broker-dealer or investment adviser and that securities customers will be dealing exclusively with the registered broker-dealer or investment adviser with respect to securities services. Advertising must make it clear that the broker-dealer or investment adviser and the bank are separate, distinct, and unaffiliated entities and that investment products sold through the securities firm are not deposits insured by any government agency.

(B) The broker-dealer or investment adviser must assume responsibility for reviewing and either approving or disapproving any advertising matter used or intended for use by the depository institution with respect to securities services and must maintain evidence demonstrating that it has done so.

(C) The following shorter, logo format disclosures may be used by a broker-dealer in advertisements and sales literature, including material published, or designed for use, in radio or television broadcasts, Automated Teller Machine ("ATM") screens, billboards, signs, posters and brochures, to comply with the requirements of this section, provided that such disclosures are displayed in a conspicuous manner:

- (i) Not FDIC Insured;
- (ii) No Bank Guarantee; and
- (iii) May Lose Value.

(3) Customer Disclosure.

(A) At or prior to the time that a customer's securities account is opened on the premises of the depository institution, customers must sign a written disclosure that states:

(i) The securities services are not being provided by the depository institution;

(ii) The broker-dealer or investment adviser is not a division of the depository institution but is a separate company;

(iii) Any insurance coverage which applies to accounts maintained by the depository institution, such as FDIC or NCUSIF, will not extend to dealings with the broker-dealer or investment adviser.

(B) Signage, directories, and other labeling displayed on depository institution premises must not in any way imply or lead customers or the public to conclude that the broker-dealer or investment adviser operation constitutes a division of the depository institution.

(C) Employees who are jointly employed by the depository institution and the broker-dealer or investment adviser and who are registered agents or investment adviser representatives of the broker-dealer or investment adviser must disclose this dual relationship to securities customers.

(D) The broker-dealer or investment adviser's telephone number must be listed and answered in a fashion as to be unambiguously identified as that of the broker-dealer or investment adviser, not the depository institution. For example, "XYZ Securities at ABC Bank" would be inappropriate while "XYZ Securities" would be appropriate. There must be separate letterhead and business cards for the broker-dealer or investment adviser and the depository institution, although the depository institution address may be shown on both. All securities confirmations and account statements must unambiguously identify the broker-dealer or investment adviser only.

(4) Separation of Functions

(A) The broker-dealer or investment adviser must require that all orders be placed by customers directly with the broker-dealer or investment adviser and not accepted through the depository institution.

(B) The broker-dealer or investment adviser must not permit the depository institution and its employees to participate or aid in any way the offer, sale, or purchase of securities through the facilities of the broker-dealer or investment

adviser, except as provided in these guidelines. Any questions concerning such transactions must be directed to and handled by the broker-dealer or investment adviser through persons who are registered as agents or representatives in Vermont. In addition, all accounts of Vermont residents must be opened and supervised by persons who are registered as agents or investment adviser representatives.

(C) The broker-dealer or investment adviser must not permit the depository institution and its employees to advise securities customers as to the advisability of investing in, purchasing, or selling securities through the facilities of the broker-dealer or investment adviser. This does not preclude the depository institution from informing customers of the availability of the securities services or from distributing securities service advertising and informational material. Nor is this guideline intended to prohibit depository institutions with trust departments from engaging in normal trust functions.

(D) All securities certificates and transactional correspondence (including, without limitation, confirmations, monthly statements, etc.) must be issued directly by the broker-dealer or investment adviser and not by or through the depository institution.

(E) The broker-dealer or investment adviser must not permit the depository institution to accept securities customers' checks or securities certificates in settlement of securities transaction orders placed directly with the broker-dealer or investment adviser.

(F) The broker-dealer or investment adviser must not permit depository institution employees to receive compensation for securities services, either directly or indirectly, unless these employees are registered as agents or investment adviser representatives of the broker-dealer or investment adviser. However, the depository institution itself may receive commission-related compensation for its participation in the networking arrangement based upon a percentage of the revenues generated by the arrangement. Depository institution employees may receive one-time, nominal fees of a fixed amount for referring depository institution customers to a securities firm if such fees do not depend on whether the referral results in a securities transaction.

(G) The broker-dealer or investment adviser may permit depository institution employees to perform only clerical and ministerial functions in dealing with securities customers and in connection with securities transactions unless they are qualified as agents/investment adviser representatives of the broker-dealer or investment adviser and are registered as such in Vermont. The referral of questions or complaints and the mere transmittal of order forms or like information to another person registered as an agent/investment adviser representative of a broker-dealer or investment adviser for action by that person will be deemed a clerical or ministerial function. Other clerical or

ministerial functions that would not appear to trigger the Act's securities representative registration requirements include informing potential securities customers that the securities firm provides securities services, delivering blank new account forms and written instructions on their preparation to customers, distributing promotional materials, and directing persons to registered agents of the broker-dealer or investment adviser or a toll-free telephone number.

(H) The broker-dealer or investment adviser shall ensure that unregistered depository institution employees do not engage in any solicitation activity. In addition, the broker-dealer or investment adviser must not permit unregistered depository institution employees to engage in the following activities:

- (i) Open customer accounts or assist in the preparation of new account forms by customers;
- (ii) Make suitability determinations, render investment advice, or make investment recommendations in connection with the purchase or sale of securities;
- (iii) Process orders to purchase or sell securities;
- (iv) Engage in the resolution of complaints regarding the purchase or sale of securities;
- (v) Supervise broker-dealer or investment adviser personnel either directly or indirectly;
- (vi) Assume responsibility for the day-to-day operation and supervision of any place of business of the broker-dealer or investment adviser.

(I) Broker-dealer or investment adviser employees and registered agents or representatives, even if jointly employed by the depository institution, may not have access to depository institution records of securities customers unless the customer grants prior written permission.

(J) The broker-dealer or investment adviser may not deal in any securities of the depository institution or any affiliate thereof on the premises of the depository institution except in unsolicited transactions.

(K) The broker-dealer or investment adviser is responsible for supervising joint employees of the depository institution and the securities firm who are registered agents/investment adviser representatives and for ensuring compliance with all applicable federal and state securities laws and NASD

regulatory requirements including branch office registration under the Act, customer suitability and protection, financial responsibility, training and compliance responsibilities, and recordkeeping and reporting requirements.

(5) Books and Records. The books and records of the broker-dealer or investment adviser must be kept separate from those of the depository institution. The commissioner shall have unimpeded access during the depository institution's business hours to all broker-dealer or investment adviser books and records maintained on the depository institution's premises and to joint employees of the depository institution and the securities firm who are registered as agents or representatives and their personnel records.

(6) Notification of Termination. The broker-dealer or investment adviser must promptly notify the depository institution if any agent or representative of the broker-dealer or investment adviser who is employed by the depository institution is terminated for cause.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. § 5412)

V.S.R. § 8-2. Prohibited Conduct. Use of Senior-Specific Certifications and Professional Designations.

(a) The use of a senior specific certification or designation by any person in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person, shall be a dishonest and unethical practice in the securities, commodities, investment, franchise, banking, finance, or insurance business within the meaning of the Vermont Uniform Securities Act. The prohibited use of such certifications or professional designation includes, but is not limited to, the following:

- (1) Using a certification or professional designation by a person who has not earned or is otherwise ineligible to use that certification or designation;
- (2) Using a nonexistent or self-conferred certification or professional designation;
- (3) Using a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and
- (4) Using a certification or professional designation that was obtained from a designating or certifying organization that:

- (A) Is primarily engaged in the business of instruction in sales or marketing;
- (B) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;
- (C) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or
- (D) Does not have reasonable continuing education requirements for its designees or certificants to maintain the professional designation or certification.

(b) A rebuttable presumption exists that a designating or certifying organization is not disqualified solely for purposes of subdivision (a)(4) above if the organization has been accredited by:

- (1) The American National Standards Institute;
- (2) The National Commission for Certifying Agencies; or
- (3) An organization that is on the United States Department of Education's list titled "Accrediting Agencies Recognized for Title IV Purposes," if the designation or credential does not primarily apply to sales or marketing, or both.

(c) In determining whether a combination of words or an acronym or initials standing for a combination of words constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, the factors to be considered must include:

- (1) The use of one (1) or more words including "senior," "retirement," "elder," or similar words, combined with one (1) or more words including "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner," or similar words, in the name of the certification or professional designation; and
- (2) The manner in which the words are combined.

(d) For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title: (1) Indicates seniority or standing within the organization; or (2) Specifies an individual's area of specialization within the organization. For purposes of this subsection, "financial services regulatory agency" includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

(Authorized by 9 V.S.A. § 5605(a); implementing 8 V.S.A. §§ 15 and 24)

V.S.R. § 8-3. Electronic Filing for Investment Advisors, Investment Advisor Representatives, Broker-Dealers, and Broker-Dealer Agents.

(a) Designated Entity. The IARD and CRD are authorized to receive and store filings and collect related fees from investment advisors, investment advisor representatives, broker-dealers, and broker-dealer agents on behalf of the commissioner.

(b) Electronic Filing. Unless otherwise required by these regulations, all applications, amendments, reports, notices, related filings, and fees that are required to be filed by investment advisors, investment advisor representatives, broker-dealers, and broker-dealer agents pursuant to the Act and these regulations must be electronically submitted and transmitted to the IARD and the CRD.

(c) Electronic Signatures. When a signature is required on any filing made through the IARD or CRD, the applicant or a duly authorized officer of the applicant must affix an electronic signature to the filing by typing the individual's name in the appropriate field and submitting the filing to the IARD or CRD. Submission of a filing in this manner constitutes a legal signature by any individual whose name is typed on the filing.

(d) Exception to Electronic Filing. Any documents or fees required to be filed with the commissioner that are not permitted to be filed with or cannot be accepted by the IARD or CRD must be filed directly with the commissioner.

(e) Hardship Exemptions. An investment adviser may apply for an exemption from filing through the IARD or CRD system.

(1) Temporary Hardship Exemption.

(A) Criterion for Exemption. Investment advisers who experience unanticipated technical difficulties that prevent submission of an electronic filing to IARD or CRD may request a temporary hardship exemption from electronic filing requirements.

(B) Application for Exemption. To apply for a temporary hardship exemption, the investment adviser must file a written request with the securities administrator in the state where the investment adviser's principal place of business is located. The request must be submitted in a form approved by that securities administrator, and the request must be filed no later than one (1) business day after the due date for the filing that is the subject of request. The investment adviser must also submit the filing that is the subject of the request in electronic format to IARD or CRD no later than seven (7) business days after the filing was due.

(C) Effective Date. If the request is in proper form, the temporary hardship exemption is deemed effective upon receipt by the securities administrator. Multiple temporary hardship exemption requests within the same calendar year may be disallowed by the securities administrator.

(2) Continuing Hardship Exemption.

(A) Criterion for Exemption. A continuing hardship exemption will not be granted unless the investment adviser is able to demonstrate that the electronic filing requirements of this regulation are prohibitively burdensome.

(B) Application for Exemption. To apply for a continuing hardship exemption, the investment adviser must file a written request with the securities administrator in the state where the investment adviser's principal place of business is located. The request must be submitted in a form approved by the securities administrator, and the request must be filed no later than twenty (20) business days before the due date for the filing that is the subject of the request. If the investment adviser's principal place of business is located in Vermont and the request is filed with the commissioner in a form approved by the commissioner, the request will be either granted or denied by the commissioner within ten (10) business days after the filing of the request.

(C) Effective Date. The exemption is effective upon approval by the securities administrator in the state where the investment adviser's principal place of business is located. The time period of the exemption will be no longer than one (1) year after the date on which the request is filed. If that securities administrator approves the request, the investment adviser must submit filings to the IARD or CRD in paper form, along with the appropriate processing fees, for the period of time for which the exemption is granted no later than five (5) business days after the exemption approval date.

(3) Recognition of Exemption. The decision to grant or deny a request for a hardship exemption is made by the securities administrator in the state where the investment adviser's principal place of business is located, and the commissioner will adhere to that decision.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. §§ 5105 and 5608(c))

V.S.R. § 8-4. Protection of Vulnerable Adults from Financial Exploitation.

(a) Governmental Disclosures. If a qualified individual reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, the qualified individual must promptly notify the commissioner and Adult Protective Services in the Vermont Department of Disabilities, Aging & Independent Living (collectively "the agencies").

(b) Immunity for Governmental Disclosures. A qualified individual who in good faith and exercising reasonable care makes a disclosure of information pursuant to subsection (a) above is immune from administrative or civil enforcement by the Department that might otherwise arise

from such disclosure or from any failure to notify the customer of the disclosure.

(c) **Third-Party Disclosures.** If a qualified individual reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, the qualified individual may notify any third party previously designated by the eligible adult. Disclosure may not be made to any designated third party who is suspected of financial exploitation or other abuse or exploitation of the eligible adult.

(d) **Immunity for Third-Party Disclosures.** A qualified individual who, in good faith and exercising reasonable care, complies with subsection (c) above is immune from any administrative or civil enforcement by the Department that might otherwise arise from such disclosure.

(e) **Delaying Disbursements.**

(1) A broker-dealer or investment adviser may delay a disbursement from an account of an eligible adult or an account on which an eligible adult is a beneficiary if:

(A) The broker-dealer, investment adviser, or qualified individual reasonably believes, after initiating an internal review of the requested disbursement and the suspected financial exploitation, that the requested disbursement may result in financial exploitation of the eligible adult; and

(B) The broker-dealer or investment adviser:

(i) Immediately, and in no event more than two business days after the requested disbursement, provides written notification of the delay and the reason for the delay to all parties authorized to transact business on the account, unless any such party is reasonably believed to have engaged in suspected or attempted financial exploitation of the eligible adult;

(ii) Immediately, and in no event more than two business days after the requested disbursement, notifies the agencies; and

(iii) Continues its internal review of the suspected or attempted financial exploitation of the eligible adult, as necessary, and reports the investigation's results to the agencies within seven business days after the requested disbursement.

(2) Any delay of a disbursement as authorized by this section may continue only until the sooner of:

(A) A determination by the broker-dealer or investment adviser that the disbursement will not result in financial exploitation of the eligible adult; or

(B) Fifteen (15) business days after the date on which the broker-dealer or

investment adviser first delayed disbursement of the funds, unless either of the agencies requests that the broker-dealer or investment adviser extend the delay, in which case the delay must expire no more than twenty-five (25) business days after the date on which the broker-dealer or investment adviser first delayed disbursement of the funds unless sooner terminated by either of the agencies or an order of a court of competent jurisdiction.

(3) A court of competent jurisdiction may enter an order extending the delay of the disbursement of funds or may order other protective relief based on the petition of the commissioner, Adult Protective Services, the broker-dealer or investment adviser who initiated the delay under this subsection, or other interested party.

(f) Immunity for Delaying Disbursements. A broker-dealer or investment adviser who, in good faith and exercising reasonable care, complies with subsection (e) above is immune from any administrative or civil enforcement by the Department that might otherwise arise from such delay in a disbursement in accordance with this section.

(g) Records. A broker-dealer or investment adviser must provide access to or copies of records that are relevant to the suspected or attempted financial exploitation of an eligible adult to agencies charged with administering state adult protective services laws and to law enforcement, either as part of a referral to the agency or to law enforcement, or upon request of the agency or law enforcement pursuant to an investigation. The records may include historical records as well as records relating to the most recent transaction or transactions that may involve financial exploitation of an eligible adult or the financial impairment of an adult. All records made available to the agencies under this section are not considered a public record as defined in 1 V.S.A. § 315 et seq. Nothing in this provision limits or otherwise impedes the authority of the commissioner to access or examine the books and records of broker-dealers and investment advisers as otherwise provided by law.

(h) A Vermont registered investment adviser must establish and maintain written policies and procedures reasonably designed to ensure protection of vulnerable adults from financial exploitation and compliance with this subchapter.

(Authorized by 9 V.S.A. § 5605(a); implementing 8 V.S.A. § 24)

CHAPTER 9 RESTITUTION FOR VICTIMS OF SECURITIES VIOLATIONS.

V.S.R. § 9-1. Victim Restitution Fund.

(a) General Provisions.

(1) The capitalized terms used in this Chapter shall have the same meaning as in 9 V.S.A. § 5616.

(2) Securities restitution assistance is only available from the Fund for Securities Violations occurring on or after July 1, 2019, the effective date of 9 V.S.A. § 5616.

(b) Application Form and Accompanying Documentation.

(1) Claimants shall submit a written application on a form prescribed by the Commissioner and shall include with the written application the following documentation:

(A) a copy of the court or administrative order awarding restitution to the Victim;

(B) a copy of Claimant's Driver's License or government issued photo identification;

(C) a copy of one or more documents connecting the Victim to the reported address (e.g. utility bill, W-2, voided check, etc.); and

(D) a completed Form W-9.

(2) If the Victim is deceased, and an executor or heir is completing the application, the following documents are needed, in addition to the documents listed above:

(A) Open Estate:

(i) a copy of the death certificate of the Victim;

(ii) a copy of the Letters Testamentary and/or Letters of Administration; and

(iii) a Federal ID Number for the estate.

(B) Closed Estate:

(i) a copy of the death certificate of the Victim;

(ii) a copy of the Letters Testamentary and/or Letters of Administration;

(iii) a notarized affidavit signed by executor/administrator to collect and distribute funds to the entitled heirs; and

(iv) A copy of the Final Report of Distribution or Closing Statement.

(C) Intestate Succession/No Probate:

(i) a copy of the death certificate of the Victim;

(ii) a Small Estate Affidavit; and

(iii) a copy of the deceased Victim's obituary.

(3) A Claimant's personal information. The personal information (as defined in 9 V.S.A. § 2430(1)(A)) submitted by the Claimant in connection with an application is confidential.

(4) The application and accompanying documentation must be filed in the office of the Department in person, by certified mail, or through the Department's Internet web site.

(c) Review of Applications; Additional Information; Denial.

(1) The Commissioner shall review all applications to ensure that the applications are complete and eligible for restitution assistance.

(A) If an application is not complete, the application shall be returned to the Claimant with a brief statement of the additional information required.

(B) The Claimant may, not more than thirty (30) days after receipt of the request for additional information, either supply the information or appeal to the Commissioner as to the completeness of the application.

(2) The Commissioner shall deny the application if:

(A) the Claimant does not furnish additional information; or

(B) additional time is not granted by the Commissioner for good cause; or

(C) the Commissioner determines that the Claimant does not meet the eligibility requirements for restitution assistance from the Fund.

(3) The decisions of the Commissioner as to the completeness of the application and the Claimant's eligibility are final.

(d) Awards from the Fund.

(1) A Claimant's eligibility for restitution does not mean that he or she shall receive the maximum award referenced in 9 V.S.A. § 5616(e)(3)-(4).

(2) When computing the amount of restitution to be paid from the Fund, the Commissioner shall exclude any award of interest contained in the Final Order.

(e) No Windfall to Claimants.

If:

(1) an award from the Fund is made to a Claimant; and

(2) that Claimant subsequently receives a payment from the party ordered to pay restitution in the Final Order;

the Claimant shall refund to the State the amount of the payment received from the party ordered to pay restitution in the Final Order.

(f) Forfeiture of Award.

(1) A Claimant convicted of forgery, fraud, or deception in connection with a claim under 9 V.S.A. § 5616 and this Chapter forfeits any award paid to the Claimant from the Fund.

(2) The Department may file a civil action to recover funds against a Claimant described in subsection (1).

(Authorized by 9 V.S.A. § 5616(e), (j))