FINAL PROPOSED RULE # 17-P001

Administrative Procedures – Final Proposed Rule Coversheet

Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the "Rule on Rulemaking" adopted by the Office of the Secretary of State, this final proposed filing will be considered complete upon the submission and acceptance of the following components to the Office of the Secretary of State and to the Legislative Committee on Administrative Rules:

- Final Proposed Rule Coversheet
- Adopting Page
- Economic Impact Statement
- Public Input Statement
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- Copy of ICAR acceptance e-mail
- A copy of comments received during the Public Notice and Comment Period.
- Responsiveness Summary (detailing agency's decisions to reject or adopt suggested changes received as public comment).

All forms submitted to the Office of the Secretary of State, requiring a signature shall be hand signed original signatures of the appropriate adopting authority or authorized person, and all filings are to be submitted, no later than 3:30 pm on the last scheduled day of the work week.

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

Rule Title: Rule No. S-2016-01, Vermont Securities Regulations (Revised)

_____, on 3/20/17.
(signature) (date)

Printed Name and Title:
Michael Pieciak, Commissioner
Department of Financial Regulation

RECEIVED BY: _____

- ☐ Final Proposed Rule Coversheet
- ☐ Adopting Page
- ☐ Economic Impact Statement
- ☐ Public Input Statement
- ☐ Scientific Information Statement (if applicable)
- ☐ Incorporated by Reference Statement (if applicable)
- ☐ Clean text of the rule (Amended text without annotation)
- ☐ Annotated text (Clearly marking changes from previous rule)
- ☐ ICAR Approval received by E-mail.
- ☐ Copy of Comments
- ☐ Responsiveness Summary

1. TITLE OF RULE FILING:
   Rule No. S-2016-01, Vermont Securities Regulations (Revised)
2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE
   17P-001
3. ADOPTING AGENCY:
   Department of Financial Regulation
4. PRIMARY CONTACT PERSON:
   (A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).

   Name: Emily Kisicki

   Agency: Department of Financial Regulation

   Mailing Address: 89 Main Street, Montpelier, Vermont 05602

   Telephone: 802 828 - 2904 Fax: -

   E-Mail: emily.g.kisicki@vermont.gov

   Web URL*(WHERE THE RULE WILL BE POSTED)*:
   http://www.dfr.vermont.gov/proposed-rules-and-regulations
5. SECONDARY CONTACT PERSON:
   (A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).

   Name: Christopher Smith

   Agency: Department of Financial Regulation

   Mailing Address: 89 Main Street, Montpelier, Vermont 05602

   Telephone: 802 828 - 0727 Fax: -

   E-Mail: christopher.smith@vermont.gov
6. RECORDS EXEMPTION INCLUDED WITHIN RULE:
   (DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE EXEMPTING IT FROM INSPECTION AND COPYING?) No

   IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

   PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

   No exemption within proposed revisions.
7. LEGAL AUTHORITY / ENABLING LEGISLATION:

(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).

9 V.S.A. § 5605(a)

8. THE FILING HAS CHANGED SINCE THE FILING OF THE PROPOSED RULE.
9. THE AGENCY HAS INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.
10. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE NOT RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.
11. THE AGENCY HAS INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.
12. THE AGENCY HAS INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.
13. CONCISE SUMMARY **(150 WORDS OR LESS)**:
    The proposed revisions amend Sections 4-3 and 5-12 of the Vermont Securities Regulations to implement recent changes to federal rules related to intrastate and small offerings and federal crowdfunding.
14. EXPLANATION OF WHY THE RULE IS NECESSARY:
    The revisions are necessary to update Vermont's securities regulations in light of changes at the federal level. The revisions further modernize Vermont's regulations and will facilitate capital formation.
15. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:
    Department of Financial Regulation, companies that raise capital through intrastate offerings, crowdfunding, or small offerings.
16. BRIEF SUMMARY OF ECONOMIC IMPACT(150 WORDS OR LESS):
    The proposed revisions are expected to have a positive economic impact. The revisions expand the capital raising avenues for smaller companies and for intrastate offerings in order to facilitate greater access to capital while maintaining appropriate investor protections. The proposed

revisions also improve regulatory oversight over federal crowdfunding offerings by requiring notice filing.

17. A HEARING WAS HELD.

18. HEARING INFORMATION

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date: 3/3/2017

Time: 03:00 PM

Street Address: DFR 3rd Floor Offices, 89 Main Street, Montpelier, VT

Zip Code: 05602

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

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Zip Code:

19. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

3/10/2017

20. KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

Securities

Exemption

Offerings

Small business

Crowdfunding

Intrastate

Administrative Procedures – Adopting Page

Instructions:

This form must be completed for each filing made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. TITLE OF RULE FILING:
   Rule No. S-2016-01, Vermont Securities Regulations (Revised)
2. ADOPTING AGENCY:
   Department of Financial Regulation
3. AGENCY REFERENCE NUMBER, IF ANY:
   Rule No. S-2016-01
4. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

   - **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment as long as the rule is replaced with other text.
   - **NEW RULE** - A rule that did not previously exist even under a different name.
   - **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

   This filing is **AN AMENDMENT OF AN EXISTING RULE** .

5. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND LAST DATE OF ADOPTION FOR THE EXISTING RULE)*:

   Secretary of State Rule Log #26-025(as S-2016-01), Vermont Securities Regulations, July 1, 2016

State of Vermont
Agency of Administration
109 State Street
Montpelier, VT 05609-0201
www.aoa.vermont.gov

[phone] 802-828-3322
[fax] 802-828-3320

Office of the Secretary

INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES

To: Louise Corliss, SOS
Chris Winters, SOS
Charlene Dindo, LCAR
ICAR Members

Date: January 18, 2017

Proposed Rule: Rule No. S-2016-01, Vermont Securities Regulations (Revised)
(Dept of Financial Regulation)

The following official action was taken at the January 17, 2017 meeting of ICAR.

Present: Chair Brad Ferland, Steve Knudson, Dirk Anderson, John Kessler, Karen Songhurst, Diane Bothfeld, Clare O'Shaughnessy, Jen Duggan and Allan Sullivan
Absent: Jen Duggan – voted electronically
Clare O'Shaughnessy – voted electronically
Karen Songhurst – voted electronically
Abstain: Steve Knudson

[ ] The Committee has no objection to the proposed rule being filed with the Secretary of State.

[X] The Committee approves to move the rule forward with the following recommendations.

1. Coversheet #7 and #8: Be consistent. Should it be "Vermont Securities Regulations", or "Vermont Securities Regulation".
2. Coversheet #10, last sentence: Change "improves" to "improve".
3. Coversheet #13: Add hearing information when available.
4. Coversheet #14: Add "Intrastate" to key words.
5. Economic Impact Statement #5: Change to "... implement changes made at the federal level,..."
6. Economic Impact Statement #6: Explain why having the rule is better than no rule.
7. Public Input Statement #4, last sentence: Change to "...by state regulators and the securities industry."

[ ] The Committee opposes filing of the proposed rule.

cc: Emily Kisicki
Christopher Smith

Administrative Procedures – Economic Impact Statement

Instructions:

In completing the economic impact statement, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule. This form must be completed for the following filings made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

Rules affecting or regulating public education and public schools must include cost implications to local school districts and taxpayers in the impact statement (see 3 V.S.A. § 832b for details).

The economic impact statement also contains a section relating to the impact of the rule on greenhouse gases. Agencies are required to explain how the rule has been crafted to reduce the extent to which greenhouse gases are emitted (see 3 V.S.A. § 838(c)(4) for details).

All forms requiring a signature shall be original signatures of the appropriate adopting authority or authorized person.

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I conclude that this rule is the most appropriate method of achieving the regulatory purpose. In support of this conclusion I have attached all findings required by 3 V.S.A. §§ 832a, 832b, and 838(c) for the filing of the rule entitled:

Rule Title: Rule No. S-2016-01, Vermont Securities Regulations (Revised)

_____, on 3/20/17.
(signature) (date)

Printed Name and Title:
Michael Pieciak, Commissioner
Department of Financial Regulation

BE AS SPECIFIC AS POSSIBLE IN THE COMPLETION OF THIS FORM, GIVING FULL INFORMATION ON YOUR ASSUMPTIONS, DATABASES, AND ATTEMPTS TO GATHER OTHER INFORMATION ON THE NATURE OF THE COSTS AND BENEFITS INVOLVED. COSTS AND BENEFITS CAN INCLUDE ANY TANGIBLE OR INTANGIBLE ENTITIES OR FORCES WHICH WILL MAKE AN IMPACT ON LIFE WITHOUT THIS RULE.

1. TITLE OF RULE FILING:

   Rule No. S-2016-01, Vermont Securities Regulations (Revised)

2. ADOPTING AGENCY:

   Department of Financial Regulation

3. CATEGORY OF AFFECTED PARTIES:

   LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:

   Department of Financial Regulation, companies that raise capital through intrastate offerings, crowdfunding, or small offerings. The proposed revisions are expected to have a positive economic impact as a result of increased opportunities to raise capital through small and intrastate offerings. No new fees are imposed for small or intrastate offerings.

   The proposed revisions also conform state rules with the new more lenient federal crowdfunding rules by requiring companies to complete simple initial and annual notice filings with the Securities Division. The administrative burden associated with the notice filing requirement is expected to be minimal.

4. IMPACT ON SCHOOLS:

   INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS:

   None expected.

5. COMPARISON:

   COMPARE THE ECONOMIC IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:

   The revisions are required to implement changes made at the federal level, and no alternative was presented.

6. FLEXIBILITY STATEMENT:
COMPARE THE BURDEN IMPOSED ON SMALL BUSINESS BY COMPLIANCE WITH THE RULE TO THE BURDEN WHICH WOULD BE IMPOSED BY ALTERNATIVES CONSIDERED IN 3 V.S.A. § 832a:

The proposed revisions are expected to improve access to capital by small businesses that utilize intrastate or small offerings. Compared with no rule, the revisions contained in the proposed rule will benefit small businesses by increasing avenues to access capital.

7. GREENHOUSE GAS IMPACT: *EXPLAIN HOW THE RULE WAS CRAFTED TO REDUCE THE EXTENT TO WHICH GREENHOUSE GASES ARE EMITTED, EITHER DIRECTLY OR INDIRECTLY, FROM THE FOLLOWING SECTORS OF ACTIVITIES*:

a. TRANSPORTATION —
IMPACTS BASED ON THE TRANSPORTATION OF PEOPLE OR PRODUCTS (e.g., "THE RULE HAS PROVISIONS FOR CONFERENCE CALLS INSTEAD OF TRAVEL TO MEETINGS" OR "LOCAL PRODUCTS ARE PREFERENTIALLY PURCHASED TO REDUCE SHIPPING DISTANCE."):
None.

b. LAND USE AND DEVELOPMENT —
IMPACTS BASED ON LAND USE AND DEVELOPMENT, FORESTRY, AGRICULTURE ETC. (e.g., "THE RULE WILL RESULT IN ENHANCED, HIGHER DENSITY DOWNTOWN DEVELOPMENT." OR "THE RULE MAINTAINS OPEN SPACE, FORESTED LAND AND /OR AGRICULTURAL LAND."):
None.

c. BUILDING INFRASTRUCTURE —
IMPACTS BASED ON THE HEATING, COOLING AND ELECTRICITY CONSUMPTION NEEDS (e.g., "THE RULE PROMOTES WEATHERIZATION TO REDUCE BUILDING HEATING AND COOLING DEMANDS." OR "THE PURCHASE AND USE OF EFFICIENT ENERGY STAR APPLIANCES IS REQUIRED TO REDUCE ELECTRICITY CONSUMPTION."):
None.

d. WASTE GENERATION / REDUCTION —
IMPACTS BASED ON THE GENERATION OF WASTE OR THE REDUCTION, REUSE, AND RECYCLING OPPORTUNITIES AVAILABLE (e.g., "THE RULE WILL RESULT IN REUSE OF PACKING MATERIALS." OR "AS A RESULT OF THE RULE, FOOD AND OTHER ORGANIC WASTE WILL BE COMPOSTED OR DIVERTED TO A 'METHANE TO ENERGY PROJECT'."):
None.

e. OTHER —

IMPACTS BASED ON OTHER CRITERIA NOT PREVIOUSLY LISTED:

None.

Administrative Procedures – Public Input Statement

Instructions:

In completing the public input statement, an agency describes what it did do, or will do to maximize the involvement of the public in the development of the rule. This form must be completed for the following filings made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

1. TITLE OF RULE FILING:

   Rule No. S-2016-01, Vermont Securities Regulations (Revised)

2. ADOPTING AGENCY:

   Department of Financial Regulation

3. PLEASE LIST THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE:

   The proposed rule was posted on the Department of Financial Regulation's website and a public hearing was held.

4. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

   The revisions to V.S.R. section 4-3 related to notice filings for federal crowdfunding offerings are based on a model by the National Association of Securities Administrators, and that model was vetted extensively by state regulators and the securities industry.

Administrative Procedures – Incorporation by Reference Statement

Instructions:

In completing the incorporation by reference statement, an agency describes any materials that are incorporated into the rule by reference and why the full text was not reproduced within the rule.

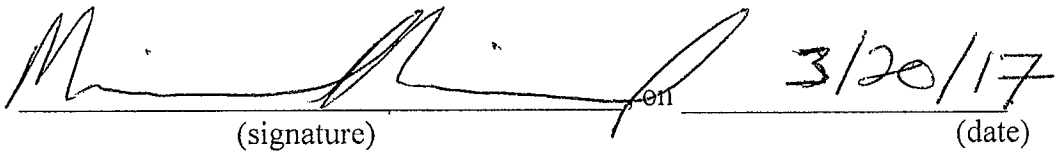
This form is only required when a rule incorporates materials by referencing another source without reproducing the text within the rule itself (e.g. federal or national standards, or regulations).

Copies of incorporated materials will be held by the Office of the Secretary of State until adoption or formal withdrawal of the rule is complete. Materials will be returned to the agency upon completion of the rule.

All forms requiring a signature shall be original signatures of the appropriate adopting authority or authorized person.

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I certify that the text of the matter incorporated has been reviewed by an official of the agency. I further certify that the agency has the capacity and intent to enforce the rule entitled:

Rule Title: Rule No. S-2016-01, Vermont Securities Regulations (Revised)



(signature) on 3/20/17 (date)

Printed Name and Title:

Michael Pieciak

Commissioner, Department of Financial Regulation

1. TITLE OF RULE FILING:

   Rule No. S-2016-01, Vermont Securities Regulations (Revised)

2. ADOPTING AGENCY:

   Department of Financial Regulation

3. DESCRIPTION (*DESCRIBE THE MATERIALS INCORPORATED BY REFERENCE)*:

   No material is incorporated by reference in this proposed rule, which is a revision to an existing rule. The existing rule incorporates laws, regulations, policies, and forms of the federal government, the Financial Industry Regulatory Authority (FINRA), and the North American Securities Administrators Association (NASAA).

4. OBTAINING COPIES: *(EXPLAIN HOW THE MATERIAL(S) CAN BE OBTAINED BY THE PUBLIC, AND AT WHAT COST)*:

   The materials incorporated by reference are available for free to the public at the website of each organization that released the materials.

   Federal securities laws:

   http://www.sec.gov/about/laws.shtml#secact1933

   Securities and Exchange Commission (SEC) Regulations:

   http://www.sec.gov/about/laws/secrulesregs.htm

   SEC Forms:

   http://www.sec.gov/forms#.UzgQBleiiQk

   FINRA Rules:

   http://www.finra.org/Industry/Regulation/FINRARules/

   NASAA Statements of Policy:

   http://www.nasaa.org/regulatory-activity/statements-of-policy/

   NASAA Forms:

   http://www.nasaa.org/industry-resources/uniform-forms/

5. MODIFICATIONS (*PLEASE EXPLAIN ANY MODIFICATION TO THE INCORPORATED MATERIALS E.G., WHETHER ONLY PART OF THE MATERIAL IS ADOPTED AND IF SO, WHICH PART(S) ARE MODIFIED)*:

   None.

6. REASONS FOR INCORPORATION BY REFERENCE (*EXPLAIN WHY THE AGENCY DECIDED TO INCORPORATE THE MATERIALS RATHER THAN REPRODUCE THE MATERIAL IN FULL WITHIN THE TEXT OF THE RULE*):

   Securities regulation is a complex, interconnected framework of federal and state laws and regulations, as well as the rules and policies of self-regulatory organizations. Many of these laws and regulations are voluminous. Including the language of these materials, rather than incorporating them by reference, would render the rule unwieldy and difficult to navigate.

7. THE INCORPORATED MATERIALS HAVE BEEN REVIEWED BY THE FOLLOWING OFFICIAL OF THE AGENCY:
   The Commissioner, Deputy Commissioner for Securities, Director of Capital Markets, and Department Counsel reviewed the materials incorporated by reference.

8. THE ADOPTING AGENCY REQUESTS THAT ALL COPIES OF INCORPORATED MATERIALS BE KEPT WITH THE RULE FILING .

Run Spell Check

VERMONT

State of Vermont
Department of Financial Regulation
89 Main Street
Montpelier, VT 05620-3101
www.dfr.vermont.gov

For consumer assistance:
[Banking] 888-568-4547
[Insurance] 800-964- 1784
[Securities] 877-550-3907

To: Office of the Secretary of State
Legislative Committee on Administrative Rules

From: Emily Kisicki, Director of Examinations and Enforcement
Department of Financial Regulation

Re: Comments/Responses on Proposed Rule Titled "Rule No. S-2016-01, Vermont Securities Regulations (Revised)"

Date: March 17, 2017

At the Public Hearing for the proposed rule, Rule No. S-2016-01, Vermont Securities Regulations (Revised), held in Montpelier on March 3, 2017, the Department of Financial Regulation (Department) received no comments. The deadline for public comments passed on March 10, 2017.

The Department received two written comments on the proposed rule:

(1) Carin Cross, Co-founder and Managing Director of Fresh Tracks Capital, filed a written comment, a copy of which is attached.

(2) Gravel & Shea PC ("Gravel & Shea") filed a written comment, a copy of which is attached.

The Department's response to the comments are as follows:

CAIRN CROSS COMMENTS:

Cairn Cross stated support for the rule as proposed. No response to the comment is required.

GRAVEL & SHEA COMMENTS:

1) Gravel & Shea asked when the initial notice filing under V.S.R. Sec. 4-3(e) is required. The Department agreed that clarity regarding timing of the filing would be helpful, and

added a new paragraph (V.S.R. Sec. 4-3(e)(2)) to outline timing requirements. The added language is from the National Association of State Securities Administrators Model Rule for Federal Crowdfunding Offerings.

2) Gravel & Shea asked how an issuer can determine whether it has a "principal place of business" for purposes of the proposed language in V.S.R. Sec. 5-12(a)(1)(A). Gravel & Shea also commented that there is inconsistency between the requirements of proposed Sec. 5-12(a)(1)(A) and the narrower set of criteria to qualify for the intrastate crowdfunding exemption under Rule 147A(c)(2). The Department agreed that Sec. 5-12(a)(1)(A) could be clarified, and modified the language in response to the comment. The revised language provides that an issuer must be registered with, or authorized by, the Vermont Secretary of State in order to utilize the 2017 Vermont Investor Exemption for new offerings. The issuer must also meet the requirements of Sections 5-12(a)(1)(B)-(E), which includes the criteria under Rule 147A(c)(2).

3) Gravel & Shea suggested a drafting revision for proposed V.S.R. Sec. 5-12(d)(8). The Department agreed with the comment and revised the language as suggested.

VERMONT

State of Vermont
Department of Financial Regulation
89 Main Street
Montpelier, VT 05620-3101
www.dfr.vermont.gov

For consumer assistance:
[Banking] 888-568-4547
[Insurance] 800-964- 1784
[Securities] 877-550-3907

Legislative Committee on Administrative Rules
Vermont State House
115 State Street
Montpelier, Vermont 05633

March 20, 2017

RE: Rule No. S-2016-01, Vermont Securities Regulations (Revised)

Dear Committee:

The Department of Financial Regulation ("DFR") submits this letter to explain differences between the proposed rule and the final proposed rule. All changes were made in response to comments, and are outlined in the attached Comments Memo.

Specifically, DFR made the following revisions to the proposed rule in response to comments:

(1) Added the new paragraph for V.S.R. Sec. 4-3(e)(2) to outline timing requirements for the initial notice filing.

(2) Revised Sec. 5-12(a)(1)(A) to replace this language: (A) Although an issuer may be formed under the laws of any state or the District of Columbia, it must have its principal place of business in Vermont and must be either (i) registered with the Vermont Secretary of State; or (ii) authorized to transact business in Vermont by Vermont Secretary of State; with the following language: "(A) An issuer must be either (i) registered with the Vermont Secretary of State; or (ii) authorized to transact business in Vermont by Vermont Secretary of State;"

(3) Revised V.S.R. Sec. 5-12(d)(8) to replace this language: "This regulation is unavailable for:" with the following language: "The exemptions set forth in subsection (a) and (b) and the registration procedure set forth in (c) shall be unavailable for:".

DFR appreciates LCAR's consideration of the final proposed rule. Please let me know if DFR can answer any questions for the Committee.

Sincerely,
Emily Kisicki

Emily Kisicki, Director of Examinations and Enforcement
828-2904, emily.g.kisicki@vermont.gov

Kisicki, Emily G.

From: Cairn Cross <ccross@freshtrackscap.com>
Sent: Tuesday, March 7, 2017 8:54 AM
To: Kisicki, Emily G.
Subject: Comments on proposed rules

Emily:

I am writing to support the proposed language contained in two rules found at the following link: http://www.dfr.vermont.gov/sites/default/files/Annotated%20Copy%20of%20Crowdfunding%20Changes%20for%20website.pdf.

We believe the language change allowing companies legally domiciled in other states and the District of Columbia to conduct crowdfunding offerings in Vermont makes sense as we find that a preponderance of start-up and early stage companies incorporate in Delaware. We also believe that the language change allowing for Vermont Crowdfunding up to $5,000,000 is a fair step in order to synch Vermont's law to the laws of other states and to the intent of the JOBS Act.

Thank you for your interest

Cairn G. Cross
Co-Founder and Managing Director
FreshTracks Capital I, II, III & IV
P.O. Box 849
Shelburne, VT 05482
802-923-1504
http://www.freshtrackscap.com
@vtcairncross, @roadpitch

Building Exceptional Vermont Businesses
Critical Process Systems
Vermont Teddy Bear, Pajama Gram, Vermont Brownie Company
NativeEnergy
Patient Engagement Systems
Bridj
Faraday
Ello
SunCommon
Budnitz Bicycles
Mamava
THINKmd

Kisicki, Emily G.

From: Pauline Law <plaw@gravelshea.com>
Sent: Friday, March 10, 2017 5:04 PM
To: Kisicki, Emily G.; Pieciak, Michael
Cc: William A. Mason; Ethan B. McLaughlin; Peter S. Erly
Subject: RE: Proposed Crowdfunding Rules

Emily,

I'm following up with Gravel & Shea's brief comments and questions regarding the proposed crowdfunding rules. The comments and questions are as follows:

- V.S.R Sec. 4-3(e): At what point during the offering is the initial notice filing required?

- V.S.R. Sec. 5-12(a)(1)(A): By what means may an issuer determine whether it has a "principal place of business" in Vermont? Should the definition in Rule 147A(c)(1) be incorporated by reference?

  Also, there is some inconsistency between Sec. 5-12(a)(1)(A) and Sec. 5-12(a)(1)(E). Sec. 5-12(a)(1)(A) says that the issuer must have a principal place of business in Vermont and is either "registered with the Vermont Secretary of State"[1] or authorized to transact business in Vermont by the "Vermont Secretary of State"; Sec. 5-12(a)(1)(E) requires the issuer to conform to all of the rules set forth in 147A. Rule 147A(c)(2) puts forth a much narrower set of criteria to qualify for the intrastate crowdfunding exemption than the criteria under which one might ordinarily seek authority to do business in Vermont from the Secretary of State.

- V.S.R. Sec. 5-12(d)(8): A drafting comment. We think the phrase "This regulation is unavailable for:" could be clarified to say something to the effect of "The exemptions set forth in subsection (a) and (b) and the registration procedure set forth in (c) shall be unavailable for. . ."

Thank you for considering our comments. Please don't hesitate to be in touch if you'd like to discuss further.

Regards,

Pauline

[1] This phrasing was also somewhat ambiguous; in the context, we took it to mean that the issuer was organized/incorporated under the laws of the state of Vermont, but would appreciate clarification as to its meaning.

Pauline Law | *Associate*
Gravel & Shea PC
76 St. Paul Street, 7th Floor | P. O. Box 369 | Burlington, VT 05402-0369
802-658-0220 (phone) | 802-658-1456 (fax)
plaw@gravelshea.com | www.gravelshea.com
Biography | Download vCard

From: Peter S. Erly
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To: 'Pieciak, Michael'

Annotated Text

CHAPTER 1 – Title, Authority, and Definitions

V.S.R. § 1-1 Title; Authority.

Regulations V.S.R. § 1-1 through V.S.R. § 8-5 (the "Vermont Securities Regulations") are promulgated pursuant to the provisions of the Vermont Uniform Securities Act (2002), 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 by 17 C.F.R. § 230.501.

(d) "*Act*" means the Vermont Uniform Securities Act (2002), codified at Title 9 V.S.A. Chapter 150.

(e) "*Advisory representative*" means:

(1) For purposes of V.S.R. § 7-2(a)(12):

(A) Any partner, officer, or director of the investment adviser;

(B) Any employee who participates in any way in the determination of which recommendations are made;

(C) Any employee who, in connection with the employee's duties, obtains any information concerning which securities are being recommended before the effective dissemination of the recommendations; or

(D) Any person in a control relationship to the investment adviser, any affiliated person of a controlling person, or any affiliated person of an affiliated person who obtains information concerning securities recommendations being made by the investment adviser before the effective dissemination of the recommendations.

(2) For purposes of V.S.R. § 7-2(a)(12) when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, either of the following:

(A) Any partner, officer, director, or employee of the investment adviser who participates in any way in the determination of which recommendations are made, or whose functions or duties relate to the determination of which securities are being recommended before the effective dissemination of the recommendations; or

(B) Any person in a control relationship to the investment adviser, any affiliated person of a controlling person, or any affiliated person of an affiliated person who obtains information concerning securities recommendations being made by the investment adviser before the effective dissemination of the recommendations or of the information concerning the recommendations.

(C) For purposes of V.S.R. § 7-2(a)(12), an investment adviser is deemed to be "primarily engaged in a business or businesses other than advising investment advisory clients" if, for each of its most recent three (3) fiscal years or for the period of time since organization, whichever is less, the investment adviser derived, on an unconsolidated basis, more than fifty percent (50%) of total sales and revenues, and more than fifty percent (50%) of income or loss before income taxes and extraordinary items, from other business or businesses that did not primarily involve the giving of investment advice.

(f) "*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;

(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; and

(4) Liabilities of a sole proprietor that are secured by assets specified under paragraph (C) above, but not in excess of the value of the secured assets.

(g) "*Affiliate*" means a person who directly or indirectly controls, is controlled by, or is under common control with another person.

(h) "*Agency cross transaction*" for an investment advisory client as used in 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-dealer 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).

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

(j) "*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 the preceding five (5) year period before such sale due to conviction on State, Federal or International criminal charges for tax evasion or tax fraud on any applicable Federal, State or International Statute, or is subject to any of the following:

(i) Tax liens;

(ii) Court ordered judgements;

(iii) Wage garnishments;

(iv) Bank levies;

(v) Treasury or refund offsets;

(k) "*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 subparagraphs (ii)-(viii) above. For purposes of this paragraph, 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).

(l) "*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.

(m) "*CFTC*" means the U.S. Commodity Futures Trading Commission.

(n) "*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.

(o)"*Commissioner*" has the same meaning as defined in 9 V.S.A. § 5102(2), or the commissioner's designee.

(p) "*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.

(q) "*Controlling person*" means a person who directly or indirectly, controls any person liable under any provision of the act or of any rule or regulation thereunder. A controlling person is also liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable (including to the commissioner), unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct of the controlled person. An individual partner, officer, or director, or person occupying a similar status or performing similar functions is presumed to be a controlling person.

(r) "*CRD*" means the FINRA Central Registration Depository, the central licensing and registration system for the U.S. securities industry and its regulators.

(s) "*Current brochure*" and "*current brochure supplement*" mean the most recent versions of the brochure or brochure supplements, including all sticker amendments.

(t) "*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) The following constitute custody:

(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; and

(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.

(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 twenty-four (24) hours of receipt and the investment adviser maintains the records required under V.S.R. § 7-2(a)(21).

(u) "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."

(v) "*Designated security*" 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.

(w) "*Discretionary authority*" means the authority to transact in securities on behalf of a client without prior approval from the client except for 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. Discretionary authority does not include the authority under which an investment adviser places trade orders with a broker-dealer pursuant to a third-party trading agreement if all of the following conditions are met:

(1) The investment adviser has executed a separate investment adviser contract exclusively with its client acknowledging 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.

(2) The investment adviser contract specifically states that the client does not grant discretionary authority to the investment adviser, and the investment adviser does not exercise discretion with respect to the account.

(3) A third-party trading agreement is executed between the client and a broker-dealer that 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.

(x) "*Eligible privately held company*" means a company meeting both of the following conditions:

(1) The company does not have any class of securities registered, or required to be registered, with the United States Securities and Exchange Commission under 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 the rule, and every five (5) years thereafter, each dollar amount in paragraphs (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).

(y) "*Eligible adult*" means:

(1) a person sixty-five years of age or older; or

(2) a person subject to 33 V.S.A. § 6901 *et seq.*

(z) "Encryption" is the protection of the confidentiality of data by ensuring that only approved users can view the data.

(aa) "*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.

(bb) "*FDIC*" means the Federal Deposit Insurance Corporation.

(cc) "*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 or, 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.

(dd) "*FINRA*" means the Financial Industry Regulatory Authority formerly, the National Association of Securities Dealers (NASD)

(ee) "*Financial institution*" means any federal-chartered, national or state-chartered bank, savings and loan association, savings bank and credit union located in Vermont.

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

(gg) "*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.

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

(ii) "*Independent party*" 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.

(jj) "*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.

(kk) "*Investment adviser representative*" Notwithstanding 9 V.S.A. § 5102(16), the term "investment adviser representative" who is employed by or associated with a federal covered investment adviser only includes an individual who has a "place of business" in this jurisdiction, as that term is defined in rules or regulation the SEC promulgates under 15 U.S.C. § 80b-3, and who either:

(1) Is an "investment adviser representative" as that term is defined in rules or regulations promulgated under Section 203A of the Investment Advisers Act of 1940 by the U.S. Securities and Exchange Commission; or

(2) (A) Is not a "supervised person" as that term is defined in regulations promulgated under the Investment Advisers Act of 1940; and

(B) Solicits, offers or negotiates for the sale of or sells investment advisory services on behalf of a federal covered investment adviser.

(ll) "*Investment-related*" 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).

(mm) "*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.

(nn) "*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.

(oo) "*NASAA*" means the North American Securities Administrators Association, Inc.

(pp) "*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.

(qq) "*National securities exchange*" means a securities exchange that has registered with the SEC as national securities exchanges under 15 U.S.C. § 78f.

(rr) "*NCUA*" means the National Credit Union Administration.

(ss) "*Networking arrangement*" and "*brokerage affiliate arrangement*" mean an arrangement between a securities professional and a financial institution that offers retail banking services pursuant to which the securities professional conducts investment-related services on the premises of the financial institution.

(tt) "*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.

(uu) "*Predecessor*" means a person, a major portion of whose business, assets, or control has been acquired by another.

(vv) "*Private fund adviser*" means an investment adviser who solely provides advice to one (1) or more qualifying private funds.

(ww) "*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.

(xx) "*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.

(yy) "*Public Shell Company*" 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.

(zz) "*Qualified client*" means a qualified client as defined in 17 C.F.R. § 275.205-3.

(aaa) "*Qualified custodian*" means any of the following independent institutions or entities:

(1) A bank or savings association that has deposits insured by the federal deposit insurance corporation;

(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.

(bbb)"*Qualified individual*" means any agent, investment adviser representative or person who

serves in a supervisory, compliance, or legal capacity for a broker-dealer or investment adviser.

(ccc) "*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).

(ddd) "*Registrant*" means a person registered under the act.

(eee) "*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.

(fff) "*SCOR*" means Small Company Offering Registration.

(ggg) "*Securities professional*" means any person providing investment-related services in Vermont, including: broker-dealers, agents, investment advisers, investment adviser representatives, solicitors, and third-party portals."

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

(iii) "*Solicitor*" means any person or entity who, for direct or indirect compensation, acts as an agent of an investment adviser in referring potential clients. Indirect compensation includes referral agreements in which parties mutually and exclusively refer clients to each other.

(jjj) "*Sponsor*" of a wrap fee program as used in 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.

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

(lll) "*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).

(mmm) "*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.

(nnn) "*Vermont certified investor*" 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 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.

(ooo) "*Vermont main street investor*" means any person who does not come within the definition of "Vermont certified investor" or "accredited investor."

(ppp) "*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 are hereby adopted by reference:

(1) The Commodity Exchange Act – 7 U.S.C. § 1 *et seq.*;

(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;

(28) Employee Retirement Income Security Act Definitions – 29 U.S.C. § 1002;

(b) *State Statutes*.

(1) Vermont Public Records Act – 1 V.S.A. § 315 *et seq.*

(2) Vermont Accounting Definitions – 26 V.S.A. § 13.

(3) Reports of Abuse of Vulnerable Adults – 33 V.S.A. § 6901 *et seq.*

(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*.

(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) "Part of an issue", "Person Resident", and "Doing Business within" for Purposes of Section 3(a)(11) – 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 Depository 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*.

(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.

(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 D: Notice of Sale of Securities Pursuant to Regulation D, Section 4(6) and or Uniform Limited Offering Exemption;

(h) Form F-7: Registration Statement for Securities of Certain Canadian Issuers Offered for Cash Upon the Exercise of Rights Granted to Existing Security Holders;

(i) Form F-8: Registration Statement for Securities of Certain Canadian Issuers to be issued in Exchange Offers or a Business Combination;

(j) Form F-10: Registration Statement for Securities of Certain Canadian Issuers;

(k) Form N-1A: Registration Form Used by Open-End Management Investment Companies;

(l) Form NF: Uniform Investment Company Notice Filing Form;

(m) Form S-1: Registration Statement under Securities Act of 1933;

(n) Form SB-2: Registration Statement for Securities to be Sold to the Public by Certain Small Business Issuers;

(o) Form U-1: Uniform Application to Register Securities;

(p) Form U-2: Uniform Consent to Service of Process;

(q) Form U-2A: Uniform Corporate Resolution;

(r) Form U-4: Uniform Application for Securities Industry Registration or Transfer;

(s) Form U-5: Uniform Request for Withdrawal of Securities Industry Registration or Transfer;

(t) Form U-7: Uniform Small Company Offering Registration Form;

(u) Form U-SB: Uniform Surety Bond Form;

(v) Solicitation of Interest Form;

(w) Uniform Notice Regulation A – Tier 2 Offering Form;

V.S.R. § 2-4 NASAA Statements of Policy 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;

(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 FINRA Member 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, each such broker-dealer must be duly registered or exempt from registration, and the agent must be registered separately for each such broker-dealer.

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

(4) An applicants must be an approved FINRA member, unless exempt from FINRA registration.

(5) 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*. An application for initial registration as a broker-dealer must include:

(A) Filed with CRD:

(i) A completed Form BD filed with the CRD;

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

(iii) A Form BR for every broker-dealer branch office in Vermont that is not the broker-dealer's principle place of business and the filing fee specified in 9 V.S.A. § 5410(a)

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

(B) Filed directly with the commissioner:

(i) A completed Affidavit of Broker-Dealer Activity Form directly with the commissioner; 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) *Non-FINRA Member Filing*. Non-FINRA member broker-dealers must file all materials listed in subdivision (1) above directly with the commissioner and must comply with all requirements of this chapter. In lieu of a FOCUS report, non-FINRA 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(d).

(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 an 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. 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 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. § 3-4(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 From BDW with the CRD 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. 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*. The following must be filed for any application for agent registration:

(A) File with the CRD:

(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;

(iv) Proof of a valid passing score of the Series 6 and/or Series 7 examination; and

(v) Proof of valid passing score on the Series 63 or 66 examination. Agents registered in Vermont as of the effective date of these Vermont Securities Regulations are exempt from the Series 63 or 66 examination Requirement.

(B) The commissioner may require or waive any other information, record, examination the commissioner deems appropriate and requests in writing;

(C) Non-FINRA member agent must file all materials listed in this subdivision (1) above directly with the commissioner and must comply with all requirements of this chapter.

(2) *Effective Date of Registration*. Registration is effective forty-five (45) calendar days after the broker-dealer 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.

(3) *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. 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.

(4) *Updates and Amendments*. Amendment to Form U-4 must be filed on behalf of an agent whenever there is any material change to its 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.

(5) *Withdrawal, Cancellation, or Termination of an Agent's Employment with a Broker-Dealer*.

(A) A Form U-5 must be filed with the CRD (or with the commissioner in the case of a non-FINRA member agent) 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 agents in connection with the purchase and sale of securities until such time as they have 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.

(6) *Withdrawn Applications*. A partial Form U-5 must be filed with the CRD 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.

(7) *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 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 this subsections (c)-(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*. A broker-dealer or agent 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 or 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, and 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 paragraph 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 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*. A broker-dealer or agent must not hold oneself out as representing any person other than the broker-dealer with whom the agent is associated and, in the case of an agent whose normal place of business is not on the premises of the broker-dealer, failing to 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; and

(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 price 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 price 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 price 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, 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 price 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 fee specified in 17 C.F.R. § 270.12b-1 or any service fee that in total

exceeds twenty five hundredths of a percent (.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 firm's business activities;

(D) The number and location of 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 cyber security 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 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 V.S.R. sub divisions (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 paragraphs (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 paragraph 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 paragraph 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 paragraph 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 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 I 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) *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.

(e) *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) 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) - (E), 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); 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 described in 15 U.S.C. § 77r(b)(4)(E).*

(1) *Filing Requirements.* An issuer offering or selling a security that is a federal covered security pursuant to http://legislature.vermont.gov/statutes/section/09/150/05302 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 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 person 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 paragraph (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 obtaining 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 or 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 prior to the initial offer and/or 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 Sections 4(a)(6) and 18(b)(4)(C) of the Securities Act of 1933:

(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 Securities and Exchange Commission; 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 paragraph (1) shall be filed with the commissioner when the issuer makes its initial Form C concerning the offering with the Securities and Exchange Commission. 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 paragraph (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) For purposes of, MJDS 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, as long as 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 and 9 V.S.A. § 5605(a); implementing 9 V.S.A. § 5203)

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); and implementing 9 V.S.A. § 5201)

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

The availability of the exemption under 9 V.S.A. § 5201(3)(C) applying to "any other depository institution" is premised on such depository institution being:

(a) Organized under the laws of the United States or one of its states; and

(b) 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) as well as any other depository institution that the commissioner designates by order.

(Authorized by 9 V.S.A. § 5606(a); and 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 9 V.S.A. §§ 5501-10.

(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 to offers or sales of a security with an aggregate sales price of one million dollars ($1,000,000) or less and sold 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 self-executing 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) calendars 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) *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.

(g) *Waiver*. The commissioner may waive any term or condition set forth in this regulation, V.S.R. § 5-5.

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

V.S.R. § 5-6 NonIssuer Transaction Exemption.

Nonissuer transactions are exempt from registration under the following circumstances:

(a) *No Registered Broker-Dealer.* Isolated nonissuer transactions completed without a registered broker-dealer that 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 nonissuer transactions.

(b) *Registered Broker-Dealer.* Isolated nonissuer transactions completed with a broker-dealer will not be limited in Vermont provided:

(1) The securities are exempt from registration under the Securities Act of 1933;

(2) Sales are made only to accredited investors;

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

(4) The issuer, including any of its predecessors, is a going concern engaged in a valid business activity and is not:

(A) In an organizational or developmental stage;

(B) A shell company; or

(C) In bankruptcy or receivership.

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

V.S.R. § 5-7 Uniform Limited Offering Exemption for Rule 505 Offerings.

(a) *Exemption.* A transaction made in compliance with 17 C.F.R. § 230.505 is exempt from the registration requirements of 9 V.S.A. §§ 5301 and 5504 if:

(1) The issuer pays the fee specified in 9 V.S.A. § 5305(k) and files a notice on Form D within fifteen (15) calendar days of the first sale of the security in Vermont; and

(2) The issuer, any person acting on the issuer's behalf, or a broker-dealer ensures the suitability of each sale to a non-accredited investor in accordance with FINRA Rule 2111(a).

(b) *Antifraud Requirements.* This exemption does not relieve issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of 9 V.S.A. §§ 5501-10. This exemption does not relieve registered broker-dealers or agents from the due diligence, suitability, "know your customer" standards, or any other requirements of law otherwise applicable to such registered persons.

(c) *Disqualification*: This exemption will not be available for offerings involving a bad actor;

(d) *Effect of Noncompliance*. Any failure to comply with subsections (a) and (b) above is grounds for the commissioner to deny or revoke the exemption for a security or transaction and commence an administrative enforcement action under 9 V.S.A. §§ 5603-04. An issuer failing to comply at the time of application may not result in loss of the exemption for any particular offer or sale, if the commissioner determines that all of the following conditions are met:

(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) The issuer made a good faith and reasonable attempt to comply with all applicable requirements of V.S.R. § 5-7(a)-(b).

(e) *Stacking Of Exemptions*. Offers and sales exempt under this regulation may not be combined with offers and sales exempt under 9 V.S.A § 5201-03 or these rules.

(f) *Recordkeeping*. The issuer must maintain a written record of all information it furnishes to all offerees for at least five (5) years. The issuer must file copies of the record with the commissioner upon written request.

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

V.S.R. § 5-8 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. § 5-9 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 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 prepared in accordance GAAP.

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

V.S.R. § 5-10 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); and implementing 9 V.S.A. § 5203)

V.S.R. § 5-11 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. § 5-11(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. § 5-11(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. § 5-12(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. § 5-12 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. § 5-12(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 offer's term and renew consistent with V.S.R. § 5-12(d)(6) by providing notice to the commissioner certifying the requirements of this section and V.S.R. § 5-12(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. § 5-12(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. § 5-12(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 ~~with~~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. § 5-12(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 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 any 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 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 regulation relieves issuers, broker-dealers and their agents, or investment advisors and their representatives from the antifraud and enforcement provisions of 9 V.S.A. §§ 5501-10, 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 or 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. § 5-12(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. 5-12(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 the 15 U.S.C. § 78o; or

(B) A funding portal registered under 15 U.S.C. § 77d-1 and the Securities and Exchange Commission 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. § 5-12(d) as well as its records.

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

V.S.R. § 5-13 Registration Exemption for Investment Advisers to Private Funds

(a) *Exemption for Private Fund Advisers*. Subject to the additional requirements of V.S.R. § 5-13(a)(3), a private fund adviser is exempt from the registration requirements of 9 V.S.A. § 5403 if:

(1) Neither the private fund adviser nor any of its advisory affiliates are subject to an event that would disqualify an issuer under 17 C.F.R. § 230.506(d)(1) or V.S.R. § 1-2(e);

(2) 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

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

(b) *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:

(1) 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;

(2) 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:

(A) All services to be provided to individual beneficial owners;

(B) All duties the investment adviser owes to the beneficial owners; and

(C) Any other material information affecting the rights or responsibilities of the beneficial owners.

(3) 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.

(c) *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.

(d) *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.

(e) *Electronic Filing*. The report filings described in subdivision (a)(1) 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.

(f) *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.

(g) *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.

(h) *Grandfathering for 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)

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 SB-2;

(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 of 9 V.S.A. § 5501 and 9 V.S.A § 5502 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 a potential 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 potential issuer is or will be a business entity organized under the laws of a State or Territory of the United States; 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. § 230.251(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 any amendments to the foregoing materials or additional materials to be used to conduct solicitations of interest with the commissioner, 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 section 9 V.S.A. §§ 5301-05, but is a violation and be actionable by the commissioner under section 9 V.S.A. §§ 5603-04 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 a potential 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.

(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. § 7-7(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(d);

(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(c);

(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*. An individual investment adviser representative must register in Vermont if they maintain a place of business in Vermont or have more than five (5) clients who are residents of Vermont.

(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 paragraph (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 paragraph (1)(D) 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 either of the following:

(i) The Series 65 Uniform Investment Adviser Law Examination; or

(ii) The Series 7 General Securities Representative Examination and the Series 66 Uniform Combined State Law Examination.

(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 paragraph (D) 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.

(C) *Waivers*. The commissioner may wave or modify the examination requirement for good cause shown.

(D) *Lapsed Registration*. If an individual has met the examination requirements of paragraph (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 paragraph (A) above again before applying for registration.

(E) *Loss of Professional Designations*. An investment adviser representative exempt from examination requirements under subparagraph (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) Describing the of the loss or lapse of such designation;

(II) A written explanation for such loss/lapse; and

(III) 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 paragraph (A) above; or

(II) Reestablish one (1) of the professional designations listed under paragraph (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.

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

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

(a) Except as otherwise provided in subsection (i) below, an investment adviser must make and keep true, accurate, and current books, ledgers, and records in an accrual basis, including:

(1) *Journals*. A journal or journals, including cash receipts and disbursement records, and any other records of original entry forming the basis of entries in any ledger;

(2) *Ledgers*. General and auxiliary ledgers or other comparable records reflecting asset, liability, equity, capital, income, and expense accounts;

(3) *Memoranda*.

(A) Memoranda must memorialize the following:

(i) Each order given by the investment adviser for the purchase or sale of any security;

(ii) Any instruction received by the investment adviser from the client concerning the purchase, sale, receipt, or delivery of a particular security;

(iii) Any modification or cancellation of an order or instruction; and

(iv) Each order entered pursuant to the exercise of discretionary power;

(B) Each memorandum must show the following information:

(i) The terms and conditions of the order, instruction, modification, or cancellation;

(ii) The name of the person connected with the investment adviser who recommended the transaction to the client and the name of the person who placed the order;

(iii) The account for which the order, instruction, modification, or cancellation was entered;

(iv) The date of entry; and

(v) The bank, broker, or dealer by or through whom the transaction was executed, if appropriate;

(4) *Banking Information*. Check books, bank statements, canceled checks, and cash reconciliations;

(5) *Bills*. Bills or statements, paid or unpaid, relating to the investment adviser's business as an investment adviser;

(6) *Accounting Information*. All trial balances, financial statements, and internal audit working papers relating to the investment adviser's business as an investment adviser, maintained on an accrual basis. For purposes of this paragraph, "financial statements" means a balance sheet, an income statement, a cash flow statement, and a net worth computation if a net worth computation is required by V.S.R. § 7-5(c);

(7) *Communications*.

(A) Originals of all written communications received or copies of all written communications sent by the investment adviser relating to the following:

(i) Any recommendation made or proposed to be made and any advice given or proposed to be given;

(ii) Any receipt, disbursement, or delivery of funds or securities; and

(iii) The placing or execution of any order to purchase or sell any security;

(B) The investment adviser need not keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser;

(C) If the investment adviser sends any notice, circular, or other advertisement

offering any report, analysis, publication, or other investment advisory service to more than ten (10) persons, the investment adviser need not keep a record of the names and addresses of the persons to whom the notice, circular, or advertisement was sent. However, if the notice, circular, or advertisement is distributed to persons named on any list, the investment adviser must retain a memorandum describing the list and its source with a copy of the notice, circular, or advertisement;

(8) *Accounts*. A list or other record of all accounts in which the investment adviser is vested with any discretionary authority with respect to the funds, securities, or transactions of any client;

(9) *Grants of Authority*. A copy of all powers of attorney and other evidence of a client granting any discretionary authority to the investment adviser;

(10) *Agreements.* A copy each agreement the investment adviser enters into with any client and all other written agreements otherwise relating to the investment adviser's business as an investment adviser;

(11) *Recommendation Materials*. A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication that the investment adviser circulates or distributes, directly or indirectly, to two (2) or more persons who do not have an existing relationship with the investment adviser. The investment adviser must maintain a memorandum indicating the reasons for a recommendation if such communication recommends the purchase or sale of a specific security and does not state the reasons for the recommendation;

(12) *Proof of Beneficial Ownership*.

(A) A record of every transaction in a security in which the investment adviser or any advisory representative has or acquires beneficial ownership except as provided in paragraph (E) below. Notwithstanding the foregoing, if the investment adviser is primarily engaged in any business other than advising investment advisory clients, the investment adviser must maintain a record of every transaction in a security, in which the investment adviser or any advisory representative has or acquires beneficial ownership except as provided in below in paragraph (E) below. Each record must state:

(i) The title and amount of the security involved;

(ii) The date and nature of the transaction;

(iii) Whether it is a purchase, sale, or other acquisition or disposition;

(iv) The price at which the transaction was effected; and

(v) The name of the broker-dealer or bank with or through whom the transaction was effected;

(B) The record may contain a disclaimer that the record may not be construed as an admission that the investment adviser or advisory representative has any beneficial ownership in the security;

(C) A transaction must be recorded at least ten (10) days after the end of the fiscal quarter in which the transaction was effected;

(D) A record is not required for either of the following:

(i) Any transaction effected in an account that neither the investment adviser nor advisory representative do not have any influence of control over; or

(ii) Any transaction in a security that is a directly issued by the United States;

(E) An investment adviser is not deemed to violate the provisions of this subdivision (12) because of a failure to record securities transactions of any advisory representative if the investment adviser establishes adequate procedures and used reasonable diligence to promptly obtain reports of all transactions required to be recorded;

(13) The following records:

(A) A copy of any written statement given to any client or prospective client in accordance with the provisions of V.S.R. § 7-6(b);

(B) Any summary of material changes required by part 2A and/or of Form ADV but is not contained in the written statement; and

(C) A record of the date that any document described above was sent to any client;

(14) For each client obtained by a solicitor:

(A) Any written agreement in which the investment adviser agrees to engage a solicitor and the terms of such agreement;

(B) A signed and dated acknowledgment by the client evidencing the client's receipt of the investment adviser and solicitor's disclosure statements; and

(C) A copy of the solicitor's written disclosure statement;

(15) Records or documents to demonstrate the calculation of the performance or rate of return of all managed accounts or securities published in any communication that the investment adviser distributes through any medium to two (2) or more persons other than persons connected with the investment adviser;

(16) Copies of any communications regarding:

(A) Any litigation involving the investment adviser, any investment adviser representative, or employee; and

(B) Any customer or client complaint;

(17) A written basis for any recommendation or investment advice for each client, including any documents obtained in complying with V.S.R. § 7-3(d)(1);

(18) Written procedures to supervise the activities of investment adviser representatives and employees reasonably designed to achieve compliance with the act and these regulations;

(19) Copies of any document filed with or received from any state agency, federal agency, or self-regulatory organization that pertains to the investment adviser or its investment adviser representatives;

(20) Copies with original signatures of each initial Form U-4 and any amendment to the disclosure reporting pages filed on behalf of an investment adviser representative. The copies must be available for inspection upon request by the commissioner;

(21) An investment adviser that inadvertently held or obtained a client's securities or funds and returned them to the client within three (3) business days of receiving them or forwarded checks drawn by clients made payable to third parties within twenty-four (24) hours of receipt is not deemed to have custody. In such circumstance, the investment adviser must keep records of:

(A) The issuer, type of security and series, and date of issue;

(B) The denomination, interest rate, and maturity date of any debt instrument;

(C) The certificate number;

(D) The name in which the securities are registered, the date given to the investment adviser, the date sent to the client or sender, the form of delivery, and proof of delivery;

(E) Any mail confirmation number, confirmation by the client, or sender of the return of the funds or securities; and

(F) The date the investment adviser received each check; and

(22) An investment adviser obtaining possession of securities acquired from an issuer in any transaction satisfying the exception from custody under V.S.A. § 7-5(a)(3)(B) must keep:

(A) A record showing all applicable contact information for the issuer or current transfer agent 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) *Investment Advisers with Custody*.

(1) An investment adviser with custody must keep:

(A) A copy of any and all documents executed by the client;

(B) Records showing all purchases, sales, receipts, and deliveries of securities, debits, and credits for all accounts;

(C) A separate account ledger for each client showing dates and value of all purchases, sales, receipts, deliveries of securities, and all debits and credits;

(D) Copies of confirmations of all transactions in the account of any client;

(E) A record for each security held by any client showing the name of each client with 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 and any statement delivered to the client with the date the statement was sent;

(G) A copy of any auditor's report, financial statements, and letters verifying the completion of an examination by an independent certified public accountant and describing the nature and extent of the examination;

(H) A record of any finding by an independent certified public accountant of any material discrepancies found during the examination; and

(I) Any evidence of a client's designation of an independent representative.

(2) An investment adviser with custody because it advises a pooled investment must also keep:

(A) True, accurate, and current account statements;

(B) If the investment adviser qualifies for the exception in V.S.R. § 7-5(a)(3)(C), the date of each audit, a copy of the financial statements, and evidence of mailing the audited financial statements to all limited partners, members, or other beneficial owners within one-hundred twenty (120) calendar days of the end of the investment adviser's fiscal year; and

(C) If the investment adviser complies with V.S.R. § 7-5(a)(2)(G), a copy of the written agreement with the independent party reviewing all fees and expenses, indicating the responsibilities of the independent third party, and copies of all invoices and receipts showing approval by the independent party for payment through the qualified custodian.

(3) An investment adviser with custody because it is acting as the trustee for a beneficial trust and qualifies for the exception in V.S.R. § 7-5(a)(3)(E), the investment adviser must also keep the following records:

(A) A copy of the written statement given to each beneficial owner setting forth a description of the requirements of V.S.R. § 7-5(a)(2) and why the investment adviser will not be complying with those requirements; and

(B) A written acknowledgement signed and dated by each beneficial owner, evidencing receipt of the statement required in paragraph (a)(3)(A) above.

(c) To the extent that the information is reasonably obtainable for each portfolio the investment adviser supervises or manages, an investment adviser subject to subsection (b) above that provides any investment supervisory or management service to any client must make and keep true, accurate and current:

(1) Records for each client showing the date and value of each security purchased and sold; and

(2) Information from which the investment adviser can promptly furnish the name of each client and the current amount or interest of the client in any security.

(d) Books or records required by this regulation may be maintained so that the identity of any client is indicated by numerical or alphabetical code or a similar designation.

(e) An investment adviser must maintain and preserve the following records in an easily accessible place in the manner prescribed:

(1) All books and records required to be made under the provisions of subsection (a) through subdivision (c)(1) above, except for books and records required to be made under the provisions of subdivision (a)(11) and (16)-(20) above, must be maintained for at least

five (5) years from the end of the fiscal year during which the last entry was made on the record. The records must be maintained during the first two (2) years in the principal office of the investment adviser.

(2) Any corporate governance materials of the investment adviser and any predecessor must be maintained in the principal office of the investment adviser until termination of the enterprise, and then preserved at least three (3) years from termination of the enterprise.

(3) Books and records required by subdivisions (a)(11) and (16) above must be maintained for at least five (5) years from the end of the fiscal year during which the investment adviser last published or disseminated the communication. The records must be maintained during the first two (2) years in the principal office of the investment adviser.

(4) Books and records required by subdivisions (a)(17)-(20) above must be maintained for at least five (5) years from the end of the fiscal year during which the last entry was made on the record. The records must be maintained during the first two (2) years in the principal office of the investment adviser or for the time period during which the investment adviser is registered in Vermont, whichever is less.

(5) Notwithstanding any other record preservation requirements of this regulation, the following records or copies must be maintained at the respective business location of the investment adviser at which a client received investment advisory services for the time period described above:

(A) The records required to be preserved under subdivisions (a)(3), (7)-(10), (14), (15), (17)-(19), and subsections (c) and (d) above; and

(B) The records or copies required under subdivisions (a)(11) and (16) that identify the name of the investment adviser representative providing investment advice from that business location or identify the business location's physical address, mailing address, electronic mailing address, or telephone number.

(f) Before discontinuing business as an investment adviser, each investment adviser must arrange for the preservation of the books and records required under this regulation for the remainder of each period specified above, and must notify the commissioner in writing of the exact address where the books and records will be maintained.

(g) The records required by this regulation may be maintained and preserved in electronic format, the type of which the commissioner may specify. If records are produced or reproduced in any electronic or computerized medium, the investment adviser must meet the following criteria:

(1) Arrange and index the records to permit the immediate location of any particular record;

(2) Promptly provide any record that the commissioner may request; and

(3) With respect to electronic images and records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records in order to reasonably safeguard these records from loss, alteration, or destruction; and

(h) Books or records made, kept, maintained, and preserved in compliance with 17 C.F.R. § 240.17a-3 and 17 C.F.R. § 240.17a-4 that are substantially the same as any book or record required to be made, kept, maintained, and preserved under this regulation, are deemed to comply with this regulation.

(i) An investment adviser with its principal place of business in a state other than Vermont is exempt from the requirements of this regulation, if the investment adviser is registered in that state and is in compliance with that 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 Loaning 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 advisers representative for similar services in the geographic area in which the client resides; or

(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; and

(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, where 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 where 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, where 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:

(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 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; and

(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 adjusted net worth requirements of V.S.R. § 7-5(c); 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 was 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 the final order, judgment, or decree was entered, or

(B) The date on which any rights of appeal from preliminary orders, judgments, or decrees lapsed.

(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)(14) 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 paragraph (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 applies 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 Safekeeping of Client Funds or Securities; Financial Reporting; Minimum Net Worth; Bonding.

(a) *Safekeeping of Client Funds and Securities*.

(1) Any violation of this subsection constitutes "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.

(2) *Requirements*. An investment adviser must not have custody of client funds or securities unless the investment adviser meets each of the following conditions.

(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, 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 may send account statements to clients if the investment adviser has reasonable basis for believing that the qualified custodian sends an 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 subparagraph (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 paragraphs (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 paragraph (3)(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.

(3) *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 (2) above with respect to shares of a mutual fund that is an open-end company as defined 15 U.S.C. § 80a-5(a)(1).

(B) *Certain Privately Offered Securities*. An investment adviser is not required to comply with subdivision (2) 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 (2) 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 (2) 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 (2) 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 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 paragraph (2) 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 (2) above.

(b) *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 section (b) if the investment adviser:

(A) Qualifies for an exception from the minimum adjusted net worth requirements of subdivision (c)(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.

(c) *Adjusted Net Worth 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 advisors 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 paragraphs (a)(2)(A)-(F) above and the recordkeeping requirements of V.S.R. § 7-2(b);

(B) Complies with the safekeeping requirements in paragraphs (a)(2)(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 paragraph (a)(3)(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 (c). 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) *Appraisals*. The commissioner may require an investment adviser to submit a current appraisal to establish the worth of any asset.

(6) *Exception for Out-of-State Advisers*. An investment adviser with its principal place of business in a state other than Vermont, properly registered in that state must maintain the minimum capital required by that state.

(d) *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 (c)(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 (c)(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 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 subparagraph (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) *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

(4) *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.

(5) *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 paragraph (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*. An investment adviser who 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 the brochure required to a client or prospective client 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 paragraph (3)(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))

CHAPTER 8 – Provisions Applying to All Securities Professionals

V.S.R. § 8-1 Sales of Securities at Financial Institutions.

(a) *Applicability*. This section applies to securities professionals conducting investment-related services on the premises of a financial institution where retail deposits are taken. This regulation does not alter or abrogate a securities professional's obligations to comply with other applicable laws or regulations that may govern the operations of securities professionals. This regulation does not apply to investment-related services provided at financial institutions not offering retail, depository banking services.

(b) *Standards for Securities Professionals*. A securities professional must not conduct investment-related services on the premise of a financial institution where retail deposits are taken unless the securities professional complies with the following requirements:

(1) *Distinguishing Services and Products*.

(A) *Services*. Unless impractical, investment-related services must be conducted in a physical location distinct from the area in which the financial institution's retail banking services occur. In all situations, a securities professional must identify its services in a manner that clearly distinguishes those services from the financial institution's retail banking services. A securities professional's name must be clearly displayed in the area in which the securities professional conducts its investment-related services.

(B) *Products*. A securities professional must establish policies and procedures reasonably designed to ensure that recommendations clearly state the securities nature of the product and distinguish products the securities professional offers from retail banking products by the hosting financial institution offers.

(2) *Networking and Brokerage Affiliate Arrangements and Program Management*. 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 securities professional and representatives of state securities authorities, where authorized by state law, will be permitted access to the financial institution's premises where the securities professional conducts investment-related services in order to inspect the books and records and other relevant information maintained by the securities professional with respect to its investment-related services. A securities professional is responsible for ensuring that any networking or brokerage affiliate arrangement clearly outlines the duties and responsibilities of all parties, including those of financial institution personnel.

(3) *Separation of Functions*.

(A) A securities professional must accept customer orders directly and may not accept orders through the financial institution.

(B) The financial institution and its employees must not participate or aid the offer, sale, purchase, or recommendation of securities through the facilities of the securities professional, except as provided in these regulations. Any questions concerning such transactions must be directed to and handled by a securities professional properly registered in Vermont. In addition, all accounts of Vermont residents must be opened and supervised by securities professionals who are registered in Vermont.

(C) A securities professional must not permit the financial institution and its employees to advise securities customers as to the advisability of investing in, purchasing, or selling securities through the facilities of the securities professional. This does not preclude the financial institution from informing customers of the availability of the investment-related services or from distributing securities professional's advertising and informational material. Nor is this guideline intended to prohibit financial 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 securities professional and not by or through the financial institution.

(E) A securities professional must not permit the financial institution to accept securities customers' checks or securities certificates in settlement of securities transaction orders placed directly with the securities professional.

(F) A securities professional must not permit financial institution employees to receive compensation for investment-related services, either directly or indirectly, unless these employees are securities professionals. However, the financial institution itself may receive commission related compensation for its participation in the networking or brokerage affiliate arrangement based upon a percentage of the revenues generated by the networking or brokerage affiliate arrangement. Financial institution employees may receive one-time, nominal fees of a fixed amount for referring financial institution customers to a securities professional if such fees do not depend on whether the referral results in an investment-related transaction.

(G) A securities professional may permit financial institution employees to perform only clerical and ministerial functions in dealing with investment-related customers and in connection with investment-related transactions unless such financial institution employees are securities professionals registered in Vermont. The referral of questions or complaints and the mere transmittal of order forms or like information to another person registered as a securities professional 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 professional registration requirements include informing potential securities customers that a securities professional provides investment-related services, delivering blank new account forms and written instructions on their preparation to customers, distributing promotional materials, and directing persons to registered securities professionals or a toll-free telephone number.

(H) A securities professional must take precautions to ensure that unregistered financial institution employees do not engage in any solicitation activity. In addition, a securities professional must not permit unregistered financial 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 securities professional personnel either directly or indirectly;

(vi) Assume responsibility for the day-to-day operation and supervision of any place of business of a securities professional.

(I) Securities professional employees, or a qualified individual, even if jointly employed by the financial institution, must not have access to financial institution records of securities customers unless the customer grants prior written permission.

(J) A securities professional may not deal in any securities of the financial institution or any affiliate thereof on the premises of the financial institution except in unsolicited transactions.

(K) A securities professional is responsible for supervising employees of both the financial institution and the securities professional who are registered as a securities professional to ensure compliance with all applicable federal and state securities laws and FINRA regulatory requirements including branch office registration, customer suitability and protection, financial responsibility, training and compliance responsibilities, and recordkeeping and reporting requirements. The books and records of securities professional must be kept separate from those

of the financial institution. The commissioner must have unimpeded access during the financial institution's business hours to all securities professional books and records maintained on the financial institution's premises, to joint employees of the financial institution and a securities professional who are registered as securities professionals, and their personnel records. A securities professional must have a written agreement with the financial institution that is approved by the securities professional's board of directors.

(4) *Customer Disclosure and Written Acknowledgment.*

(A) At or before the time that a customer's securities brokerage account is opened or an investment advisory contract is signed on the premises of a financial institution where retail deposits are taken, the securities professional must perform the following:

(i) Disclose, orally and in writing, that the securities products purchased or sold in a transaction with the securities professional are not insured by the FDIC or NCUA, are not deposits or other obligations of the financial institution and are not guaranteed by the financial institution, and are subject to investment risks, including possible loss of the principal invested; and

(ii) Make reasonable efforts to obtain from each customer during the account opening process a written acknowledgment of the disclosures required by subparagraph (3)(A)(i) above.

(B) Investment-related services that include any written or oral representations concerning insurance coverage other than FDIC or NCUA insurance coverage must also provide clear and accurate written or oral explanations of the coverage to the customers when these representations are first made.

(5) *Communications with the Public.*

(A) All of a securities professional's written confirmations and account statements must indicate clearly that the investment-related services are provided by the securities professional.

(B) *Advertisements and Sales Literature.*

(i) Advertisements and sales literature that announce the location of a financial institution where investment services are provided by the securities professional, or that are distributed by the securities professional on the premises of a financial institution, must disclose that the securities products are not insured by the FDIC or NCUA, are not deposits or other obligations of the financial institution and are not guaranteed by the financial institution, and are subject to investment risks, including possible

loss of the principal invested.

(ii) To comply with the requirements of subparagraph (4)(C)(i), the following logo format disclosures may be used by a securities professional in advertisements and sales literature, including material published or designed for use in radio or television broadcasts, automated teller machine screens, billboards, signs, posters, and brochures, if these disclosures are displayed in a conspicuous manner: "not FDIC insured," "not NCUA insured," "no bank guarantee," and "may lose value."

(iii) If the omission of the disclosures required by sub paragraph (4)(C)(i) above would not cause the advertisement or sales literature to be misleading in light of the context in which the material is presented, the disclosures is not required with respect to messages contained in radio broadcasts of 30 seconds or less; signs, including banners and posters, when used only as location indicators; and electronic signs, including billboard-type signs that are electronic, time and temperature signs, and ticker tape signs. However, the requirements of subparagraph (4)(C)(i) above apply to messages contained in other media, including television, on-line computer services, and automated teller machines.

(6) *Notification of Termination*. A securities professional must promptly notify the financial institution if any employee of the securities professional registered in Vermont who is also employed by the financial institution is terminated for cause by the securities professional.

"Dishonest or unethical practices," as used in 9 V.S.A. § 5412(d)(13) includes any conduct that violates subsection (b) above;

(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) A securities professional must not use a senior-specific certification or designation that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees in any way that misleads any person. This prohibition includes:

(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) The use of a certification or professional designation that was obtained from a designating or certifying organization that is primarily engaged in the business of instruction in sales or marketing or does not have reasonable standards or procedures for:

(A) Ensuring the competency of its designees or certificants;

(B) Monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(C) 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 the terms "certification" and "professional designation" do not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, including an agency that regulates securities professionals or investment companies, if that job title indicates seniority or standing within the organization or specifies an individual's area of specialization within the organization.

(Authorized by 9 V.S.A. § 5605(a); implementing 8 V.S.A. §§ 15 and 24)

V.S.R. § 8-3 Electronic Filing for Securities Professionals.

(a) *Designated Entity*. The IARD and CRD are authorized to receive and store filings and collect related fees from securities professionals on behalf of the commissioner.

(b) *Electronic Filing*. Unless otherwise required by these regulations, all securities professional applications, amendments, reports, notices, related filings, and fees required pursuant to the act and these regulations must be filed 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 Cybersecurity Procedures.

(a) A securities professional must establish and maintain written procedures reasonably designed to ensure cybersecurity. In determining whether the cybersecurity 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 securities professional must include cybersecurity as part of its risk assessment.

(c) To the extent reasonably possible, the cybersecurity procedures must provide for:

(1) An annual cybersecurity risk assessments;

(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 securities professional must maintain evidence of adequate insurance for the risk of cyber security 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 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 securities professional must provide identity restoration services at no cost to consumers in the occurrence of breach in the cyber security of consumer nonpublic personal information.

(Authorized by 9 V.S.A. § 5606(a); implementing 9 V.S.A. §§ 5411 and 5412(d)(9))

V.S.R. § 8-5 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 Adult Protective Services in the Vermont Department of Disabilities, Aging & Independent Living and the commissioner (collectively "the agencies").

(b) *Immunity for Governmental Disclosures*. A qualified individual that in good faith and exercising reasonable care makes a disclosure of information pursuant to subsection (a) above is immune from administrative or civil liability that might otherwise arise from such disclosure or for 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, a qualified individual may notify any third party previously designated by the eligible adult. Disclosure may not be made to any designated third party that is suspected of financial exploitation or other abuse of the eligible adult.

(d) *Immunity for Third-Party Disclosures*. A qualified individual that, in good faith and exercising reasonable care, complies with subsection (c) above is immune from any administrative or civil liability 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 will may result in financial exploitation of an eligible adult; and

(B) The broker-dealer or investment adviser:

(i) Immediately, but 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, but 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 will expire upon 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 of securities, Adult Protective Services, the broker-dealer, or investment adviser that initiated the delay under this subsection, or other interested party.

(f) *Immunity for Delaying Disbursements*. A broker-dealer or investment adviser that, in good faith and exercising reasonable care, complies with subsection (e) above is immune from any administrative or civil liability 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 comprise 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.

(Authorized by 9 V.S.A. § 5605(a); implementing 8 V.S.A. § 24)

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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. § 8-5 (the "Vermont Securities Regulations") are promulgated pursuant to the provisions of the Vermont Uniform Securities Act (2002), 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 by 17 C.F.R. § 230.501.

(d) "*Act*" means the Vermont Uniform Securities Act (2002), codified at Title 9 V.S.A. Chapter 150.

(e) "*Advisory representative*" means:

(1) For purposes of V.S.R. § 7-2(a)(12):

(A) Any partner, officer, or director of the investment adviser;

(B) Any employee who participates in any way in the determination of which recommendations are made;

(C) Any employee who, in connection with the employee's duties, obtains any information concerning which securities are being recommended before the effective dissemination of the recommendations; or

(D) Any person in a control relationship to the investment adviser, any affiliated person of a controlling person, or any affiliated person of an affiliated person who

obtains information concerning securities recommendations being made by the investment adviser before the effective dissemination of the recommendations.

(2) For purposes of V.S.R. § 7-2(a)(12) when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, either of the following:

(A) Any partner, officer, director, or employee of the investment adviser who participates in any way in the determination of which recommendations are made, or whose functions or duties relate to the determination of which securities are being recommended before the effective dissemination of the recommendations; or

(B) Any person in a control relationship to the investment adviser, any affiliated person of a controlling person, or any affiliated person of an affiliated person who obtains information concerning securities recommendations being made by the investment adviser before the effective dissemination of the recommendations or of the information concerning the recommendations.

(C) For purposes of V.S.R. § 7-2(a)(12), an investment adviser is deemed to be "primarily engaged in a business or businesses other than advising investment advisory clients" if, for each of its most recent three (3) fiscal years or for the period of time since organization, whichever is less, the investment adviser derived, on an unconsolidated basis, more than fifty percent (50%) of total sales and revenues, and more than fifty percent (50%) of income or loss before income taxes and extraordinary items, from other business or businesses that did not primarily involve the giving of investment advice.

(f) "*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;

(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; and

(4) Liabilities of a sole proprietor that are secured by assets specified under paragraph (C) above, but not in excess of the value of the secured assets.

(g) "*Affiliate*" means a person who directly or indirectly controls, is controlled by, or is under common control with another person.

(h) "*Agency cross transaction*" for an investment advisory client as used in 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-dealer 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).

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

(j) "*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 the preceding five (5) year period before such sale due to conviction on State, Federal or International criminal charges for tax evasion or tax fraud on any applicable Federal, State or International Statute, or is subject to any of the following:

(i) Tax liens;

(ii) Court ordered judgements;

(iii) Wage garnishments;

(iv) Bank levies;

(v) Treasury or refund offsets;

(k) "*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 subparagraphs (ii)-(viii) above. For purposes of this paragraph, 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).

(l) "*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.

(m) "*CFTC*" means the U.S. Commodity Futures Trading Commission.

(n) "*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.

(o)"*Commissioner*" has the same meaning as defined in 9 V.S.A. § 5102(2), or the commissioner's designee.

(p) "*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.

(q) "*Controlling person*" means a person who directly or indirectly, controls any person liable under any provision of the act or of any rule or regulation thereunder. A controlling person is also liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable (including to the commissioner), unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct of the controlled person. An individual partner, officer, or director, or person occupying a similar status or performing similar functions is presumed to be a controlling person.

(r) "*CRD*" means the FINRA Central Registration Depository, the central licensing and registration system for the U.S. securities industry and its regulators.

(s) "*Current brochure*" and "*current brochure supplement*" mean the most recent versions of the brochure or brochure supplements, including all sticker amendments.

(t) "*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) The following constitute custody:

(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; and

(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.

(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 twenty-four (24) hours of receipt and the investment adviser maintains the records required under V.S.R. § 7-2(a)(21).

(u) "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."

(v) "*Designated security*" 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.

(w) "*Discretionary authority*" means the authority to transact in securities on behalf of a client without prior approval from the client except for 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. Discretionary authority does not include the authority under which an investment adviser places trade orders with a broker-dealer pursuant to a third-party trading agreement if all of the following conditions are met:

(1) The investment adviser has executed a separate investment adviser contract exclusively with its client acknowledging 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.

(2) The investment adviser contract specifically states that the client does not grant discretionary authority to the investment adviser, and the investment adviser does not exercise discretion with respect to the account.

(3) A third-party trading agreement is executed between the client and a broker-dealer that 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.

(x) "*Eligible privately held company*" means a company meeting both of the following conditions:

(1) The company does not have any class of securities registered, or required to be registered, with the United States Securities and Exchange Commission under 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 the rule, and every five (5) years thereafter, each dollar amount in paragraphs (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).

(y) "*Eligible adult*" means:

(1) a person sixty-five years of age or older; or

(2) a person subject to 33 V.S.A. § 6901 *et seq.*

(z) "Encryption" is the protection of the confidentiality of data by ensuring that only approved users can view the data.

(aa) "*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.

(bb) "*FDIC*" means the Federal Deposit Insurance Corporation.

(cc) "*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 or, 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.

(dd) "*FINRA*" means the Financial Industry Regulatory Authority formerly, the National Association of Securities Dealers (NASD)

(ee) "*Financial institution*" means any federal-chartered, national or state-chartered bank, savings and loan association, savings bank and credit union located in Vermont.

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

(gg) "*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.

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

(ii) "*Independent party*" 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.

(jj) "*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.

(kk) "*Investment adviser representative*" Notwithstanding 9 V.S.A. § 5102(16), the term "investment adviser representative" who is employed by or associated with a federal covered investment adviser only includes an individual who has a "place of business" in this jurisdiction, as that term is defined in rules or regulation the SEC promulgates under 15 U.S.C. § 80b-3, and who either:

(1) Is an "investment adviser representative" as that term is defined in rules or regulations promulgated under Section 203A of the Investment Advisers Act of 1940 by the U.S. Securities and Exchange Commission; or

(2) (A) Is not a "supervised person" as that term is defined in regulations promulgated under the Investment Advisers Act of 1940; and

(B) Solicits, offers or negotiates for the sale of or sells investment advisory services on behalf of a federal covered investment adviser.

(ll) "*Investment-related*" 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).

(mm) "*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.

(nn) "*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.

(oo) "*NASAA*" means the North American Securities Administrators Association, Inc.

(pp) "*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.

(qq) "*National securities exchange*" means a securities exchange that has registered with the SEC as national securities exchanges under 15 U.S.C. § 78f.

(rr) "*NCUA*" means the National Credit Union Administration.

(ss) "*Networking arrangement*" and "*brokerage affiliate arrangement*" mean an arrangement between a securities professional and a financial institution that offers retail banking services pursuant to which the securities professional conducts investment-related services on the premises of the financial institution.

(tt) "*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.

(uu) "*Predecessor*" means a person, a major portion of whose business, assets, or control has

been acquired by another.

(vv) "*Private fund adviser*" means an investment adviser who solely provides advice to one (1) or more qualifying private funds.

(ww) "*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.

(xx) "*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.

(yy) "*Public Shell Company*" 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.

(zz) "*Qualified client*" means a qualified client as defined in 17 C.F.R. § 275.205-3.

(aaa) "*Qualified custodian*" means any of the following independent institutions or entities:

(1) A bank or savings association that has deposits insured by the federal deposit insurance corporation;

(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.

(bbb)"*Qualified individual*" means any agent, investment adviser representative or person who serves in a supervisory, compliance, or legal capacity for a broker-dealer or investment adviser.

(ccc) "*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).

(ddd) "*Registrant*" means a person registered under the act.

(eee) "*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.

(fff) "*SCOR*" means Small Company Offering Registration.

(ggg) "*Securities professional*" means any person providing investment-related services in Vermont, including: broker-dealers, agents, investment advisers, investment adviser representatives, solicitors, and third-party portals."

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

(iii) "*Solicitor*" means any person or entity who, for direct or indirect compensation, acts as an agent of an investment adviser in referring potential clients. Indirect compensation includes referral agreements in which parties mutually and exclusively refer clients to each other.

(jjj) "*Sponsor*" of a wrap fee program as used in 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.

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

(lll) "*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).

(mmm) "*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.

(nnn) "*Vermont certified investor*" 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 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.

(ooo) "*Vermont main street investor*" means any person who does not come within the definition of "Vermont certified investor" or "accredited investor."

(ppp) "*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 are hereby adopted by reference:

(1) The Commodity Exchange Act – 7 U.S.C. § 1 *et seq.*;

(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;

(28) Employee Retirement Income Security Act Definitions – 29 U.S.C. § 1002;

(b) *State Statutes*.

(1) Vermont Public Records Act – 1 V.S.A. § 315 *et seq.*

(2) Vermont Accounting Definitions – 26 V.S.A. § 13.

(3) Reports of Abuse of Vulnerable Adults – 33 V.S.A. § 6901 *et seq.*

(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*.

(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) "Part of an issue", "Person Resident", and "Doing Business within" for Purposes of Section 3(a)(11) – 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 Depository 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*.

(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.

(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 D: Notice of Sale of Securities Pursuant to Regulation D, Section 4(6) and or Uniform Limited Offering Exemption;

(h) Form F-7: Registration Statement for Securities of Certain Canadian Issuers Offered for Cash Upon the Exercise of Rights Granted to Existing Security Holders;

(i) Form F-8: Registration Statement for Securities of Certain Canadian Issuers to be issued in Exchange Offers or a Business Combination;

(j) Form F-10: Registration Statement for Securities of Certain Canadian Issuers;

(k) Form N-1A: Registration Form Used by Open-End Management Investment Companies;

(l) Form NF: Uniform Investment Company Notice Filing Form;

(m) Form S-1: Registration Statement under Securities Act of 1933;

(n) Form SB-2: Registration Statement for Securities to be Sold to the Public by Certain Small Business Issuers;

(o) Form U-1: Uniform Application to Register Securities;

(p) Form U-2: Uniform Consent to Service of Process;

(q) Form U-2A: Uniform Corporate Resolution;

(r) Form U-4: Uniform Application for Securities Industry Registration or Transfer;

(s) Form U-5: Uniform Request for Withdrawal of Securities Industry Registration or Transfer;

(t) Form U-7: Uniform Small Company Offering Registration Form;

(u) Form U-SB: Uniform Surety Bond Form;

(v) Solicitation of Interest Form;

(w) Uniform Notice Regulation A – Tier 2 Offering Form;

V.S.R. § 2-4 NASAA Statements of Policy 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;

(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 FINRA Member 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, each such broker-dealer must be duly registered or exempt from registration, and the agent must be registered separately for each such broker-dealer.

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

(4) An applicants must be an approved FINRA member, unless exempt from FINRA registration.

(5) 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*. An application for initial registration as a broker-dealer must include:

(A) Filed with CRD:

(i) A completed Form BD filed with the CRD;

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

(iii) A Form BR for every broker-dealer branch office in Vermont that is not the broker-dealer's principle place of business and the filing fee specified in 9 V.S.A. § 5410(a)

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

(B) Filed directly with the commissioner:

(i) A completed Affidavit of Broker-Dealer Activity Form directly with the commissioner; 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) *Non-FINRA Member Filing*. Non-FINRA member broker-dealers must file all materials listed in subdivision (1) above directly with the commissioner and must comply with all requirements of this chapter. In lieu of a FOCUS report, non-FINRA 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(d).

(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 an 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. 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 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. § 3-4(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 From BDW with the CRD 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. 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*. The following must be filed for any application for agent registration:

(A) File with the CRD:

(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;

(iv) Proof of a valid passing score of the Series 6 and/or Series 7 examination; and

(v) Proof of valid passing score on the Series 63 or 66 examination. Agents registered in Vermont as of the effective date of these Vermont Securities Regulations are exempt from the Series 63 or 66 examination Requirement.

(B) The commissioner may require or waive any other information, record, examination the commissioner deems appropriate and requests in writing;

(C) Non-FINRA member agent must file all materials listed in this subdivision (1) above directly with the commissioner and must comply with all requirements of this chapter.

(2) *Effective Date of Registration*. Registration is effective forty-five (45) calendar days after the broker-dealer 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.

(3) *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. 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.

(4) *Updates and Amendments*. Amendment to Form U-4 must be filed on behalf of an agent whenever there is any material change to its 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.

(5) *Withdrawal, Cancellation, or Termination of an Agent's Employment with a Broker-Dealer*.

(A) A Form U-5 must be filed with the CRD (or with the commissioner in the case of a non-FINRA member agent) 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 agents in connection with the purchase and sale of securities until such time as they have 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.

(6) *Withdrawn Applications*. A partial Form U-5 must be filed with the CRD 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.

(7) *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 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 this subsections (c)-(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*. A broker-dealer or agent 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 or 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, and 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 paragraph 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 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*. A broker-dealer or agent must not hold oneself out as representing any person other than the broker-dealer with whom the agent is associated and, in the case of an agent whose normal place of business is not on the premises of the broker-dealer, failing to 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; and

(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 price 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 price 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 price 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, 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 price 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 fee specified in 17 C.F.R. § 270.12b-1 or any service fee that in total

exceeds twenty five hundredths of a percent (.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 firm's business activities;

(D) The number and location of 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 cyber security 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 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 V.S.R. sub divisions (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 paragraphs (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 paragraph 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 paragraph 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 paragraph 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 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 I 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) *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.

(e) *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) 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) - (E), 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); 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 described in 15 U.S.C. § 77r(b)(4)(E).*

(1) *Filing Requirements*. An issuer offering or selling a security that is a federal covered security pursuant to http://legislature.vermont.gov/statutes/section/09/150/05302 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 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 person 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 paragraph (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 obtaining 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 or 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 prior to the initial offer and/or 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 Sections 4(a)(6) and 18(b)(4)(C) of the Securities Act of 1933:

(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 Securities and Exchange Commission; 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 paragraph (1) shall be filed with the commissioner when the issuer makes its initial Form C concerning the offering with the Securities and Exchange Commission. 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 paragraph (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(d))

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) For purposes of, MJDS 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, as long as 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 and 9 V.S.A. § 5605(a); implementing 9 V.S.A. § 5203)

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); and implementing 9 V.S.A. § 5201)

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

The availability of the exemption under 9 V.S.A. § 5201(3)(C) applying to "any other depository institution" is premised on such depository institution being:

(a) Organized under the laws of the United States or one of its states; and

(b) 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) as well as any other depository institution that the commissioner designates by order.

(Authorized by 9 V.S.A. § 5606(a); and 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 9 V.S.A. §§ 5501-10.

(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 to offers or sales of a security with an aggregate sales price of one million dollars ($1,000,000) or less and sold 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 self-executing 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) calendars 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) *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.

(g) *Waiver*. The commissioner may waive any term or condition set forth in this regulation, V.S.R. § 5-5.

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

V.S.R. § 5-6 NonIssuer Transaction Exemption.

Nonissuer transactions are exempt from registration under the following circumstances:

(a) *No Registered Broker-Dealer*. Isolated nonissuer transactions completed without a registered broker-dealer that 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 nonissuer transactions.

(b) *Registered Broker-Dealer*. Isolated nonissuer transactions completed with a broker-dealer will not be limited in Vermont provided:

(1) The securities are exempt from registration under the Securities Act of 1933;

(2) Sales are made only to accredited investors;

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

(4) The issuer, including any of its predecessors, is a going concern engaged in a valid business activity and is not:

(A) In an organizational or developmental stage;

(B) A shell company; or

(C) In bankruptcy or receivership.

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

V.S.R. § 5-7 Uniform Limited Offering Exemption for Rule 505 Offerings.

(a) *Exemption*. A transaction made in compliance with 17 C.F.R. § 230.505 is exempt from the registration requirements of 9 V.S.A. §§ 5301 and 5504 if:

(1) The issuer pays the fee specified in 9 V.S.A. § 5305(k) and files a notice on Form D within fifteen (15) calendar days of the first sale of the security in Vermont; and

(2) The issuer, any person acting on the issuer's behalf, or a broker-dealer ensures the suitability of each sale to a non-accredited investor in accordance with FINRA Rule 2111(a).

(b) *Antifraud Requirements*. This exemption does not relieve issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of 9 V.S.A. §§ 5501-10. This exemption does not relieve registered broker-dealers or agents from the due diligence, suitability, "know your customer" standards, or any other requirements of law otherwise applicable to such registered persons.

(c) *Disqualification*: This exemption will not be available for offerings involving a bad actor;

(d) *Effect of Noncompliance*. Any failure to comply with subsections (a) and (b) above is grounds for the commissioner to deny or revoke the exemption for a security or transaction and commence an administrative enforcement action under 9 V.S.A. §§ 5603-04. An issuer failing to comply at the time of application may not result in loss of the exemption for any particular offer or sale, if the commissioner determines that all of the following conditions are met:

(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) The issuer made a good faith and reasonable attempt to comply with all applicable requirements of V.S.R. § 5-7(a)-(b).

(e) *Stacking Of Exemptions*. Offers and sales exempt under this regulation may not be combined with offers and sales exempt under 9 V.S.A § 5201-03 or these rules.

(f) *Recordkeeping*. The issuer must maintain a written record of all information it furnishes to all offerees for at least five (5) years. The issuer must file copies of the record with the commissioner upon written request.

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

V.S.R. § 5-8 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. § 5-9 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 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 prepared in accordance GAAP.

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

V.S.R. § 5-10 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); and implementing 9 V.S.A. § 5203)

V.S.R. § 5-11 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. § 5-11(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. § 5-11(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. § 5-12(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. § 5-12 Vermont Crowdfunding ~~Vermont Small Business Offerings~~.

(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. § 5-12(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 offer's term and renew consistent with V.S.R. § 5-12(d)(6) by providing notice to the commissioner certifying the requirements of this section and V.S.R. § 5-12(d) remain satisfied.

(b) ~~*Intrastate Exemption.* An issuer is exempt from the requirements of 9 V.S.A. §§ 5301 and 5504 if the offer or sale of the security is conducted in accordance with the filing requirements of V.S.R. § 5-12(c)(3) below.~~ *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. § 5-12(d) are satisfied:

(1) ~~The~~ An issuer ~~of the security~~ must be an entity formed under the laws of ~~the State of~~ Vermont and registered with the Vermont Secretary of State;

(2) ~~The o~~Offer~~ings~~ 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) ~~The~~ An offering must meet all other requirements of the federal exemption for intrastate offerings pursuant to 15 U.S.C. § 77c(a)(11).

~~(4) *Aggregate Offering Limit.* The maximum aggregate amount in cash and other consideration from all sales of the security sold under this exemption within any twelve (12) month period must not exceed:~~

~~(A) One million dollars ($1,000,000), if the 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.~~

~~(B) Two million dollars ($2,000,000) if:~~

~~(i) The 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) The issuer has entered into an enforceable revenue producing contract that is satisfactory to the commissioner.~~

~~(5) *Filing Fee*. In addition to the filing requirements listed in V.S.R. § 5-12(c)(3) of this regulation, the issuer must file the fee prescribed in 9 V.S.A. § 5305(k).~~

(~~b~~c) *Interstate Investor Registration*. ~~An issuer satisfies~~ Securities offered or sold in Vermont meet the requirements of 9 V.S.A. §§ ~~5301 and 5504~~ 5304 ~~if the offer or sale of the security is conducted in accordance with this section and fulfills the filing requirements of 9 V.S.A. § 5304 and V.S.R. § 5-12(c)(3) below~~ provided the requirements of this subsection and V.S.R. § 5-12(d) are satisfied:

(1) ~~The~~ An issuer ~~of the security must be an entity~~ may be formed under the laws of any State or ~~Territory of the United States~~ or the District of Columbia and must be either (i) registered with the Vermont Secretary of State; or (ii) authorized ~~as an entity formed under the laws of Vermont or as an entity authorized~~ to transact business ~~with~~in Vermont by the Vermont Secretary of State;

(2) ~~*Aggregate Offering Limit.* The maximum aggregate amount in cash and other consideration from all sales of the security sold under this exemption within any twelve (12) month period must not exceed one million dollars ($1,000,000).~~

~~(3) The 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.~~

~~(4) *Filing Fee.* In addition to the filing requirements listed in 9 V.S.A. § 5304 and V.S.R. § 5-12(c)(3) of this regulation, the~~ 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.

(~~e~~d) *General Requirements*

An issuer utilizing V.S.R. § 5-12(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.

(~~2~~3) *Minimum Offering Raise*. ~~The~~ An issuer must set aside all funds raised as part of ~~the~~an offering in a separate bank account to be held until such time as the minimum

offering amount is reached. ~~The~~ 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 ~~the~~an issuer and disclosed in the offering document. An issuer may increase the aggregate offering amount once if it reaches full subscription. ~~The~~ 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 if:

(A) ~~The~~ 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, suspend or revokes the effectiveness of the offering.

(~~3~~4) *Filing Requirements*.

~~(A)~~ *Offering Materials*. Prior to an offering's commencement, ~~the~~an issuer must file the following with the commissioner:

(i) A certificate of good standing issued by ~~the~~an issuer's domiciliary state; and if ~~the~~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 any 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~~i~~) The filing fee prescribed above.

~~(B) *Advertising Materials*. Prior to the commencement of any advertising, the issuer must file any advertising materials intended for mass distribution with the commissioner. The issuer may commence their advertising if the offering is effective and the issuer has not received comments to the advertising materials within five (5) business days of filing with the commissioner.~~

(4~~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 ~~the~~an issuer files all required documents.

(~~5~~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.

(~~6~~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 ~~the~~an issuer must sign the offering document ~~and thereby~~ certifying that ~~the issuer made~~ reasonable efforts were made to verify the material accuracy and completeness of the information contained therein.

(~~7~~8) *Limitation on Use*. T~~his~~he ~~regulation~~ exemptions set forth in subsection (a) and (b) and the registration procedure set forth in (c) shall be ~~is~~ unavailable for:

(A) Offerings involving a bad actor;

(B) 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~~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).

(~~8~~9) *Antifraud Provisions*. Nothing in this regulation relieves issuers, broker-dealers and their agents, or investment advisors and their representatives from the antifraud and enforcement provisions of 9 V.S.A. §§ 5501-10, federal securities laws, the securities laws of other states or the rules of any government approved self-regulatory organization.

(~~9~~10) *Investor Knowledge*. An issuer and any agents must reasonably believe that the purchaser, either alone or through a representative, has sufficient knowledge or is capable of evaluating the merits and the risks of the investment.

(~~10~~11) *Reporting to the Commissioner*. Within thirty (30) calendar days after the expiration of ~~the~~ 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 ~~the~~an offering.

(~~d~~e) *Use of the Internet or Third Party Portal*. The use of the internet or a third party portal to conduct or help facilitate ~~their~~ an offering is voluntary~~; however, when using the internet an issuer must be mindful of the advertising rules set forth in V.S.R. § 5-12(c)(3)(B)~~. 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. § 5-12(~~d~~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. 5-12(~~d~~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 the 15 U.S.C. § 78o; or

(B) A funding portal registered under 15 U.S.C. § 77d-1 and the Securities and Exchange Commission 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. § 5-12(d) as well as its records.

(Authorized by 9 V.S.A. §§ 5605(a); implementing 9 V.S.A. ~~§5202(13)(C)~~§ 5203, 5307 & 5406)

V.S.R. § 5-13 Registration Exemption for Investment Advisers to Private Funds

(a) *Exemption for Private Fund Advisers*. Subject to the additional requirements of V.S.R. § 5-13(a)(3), a private fund adviser is exempt from the registration requirements of 9 V.S.A. § 5403 if:

(1) Neither the private fund adviser nor any of its advisory affiliates are subject to an event that would disqualify an issuer under 17 C.F.R. § 230.506(d)(1) or V.S.R. § 1-2(e);

(2) 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

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

(b) *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:

(1) 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;

(2) 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:

(A) All services to be provided to individual beneficial owners;

(B) All duties the investment adviser owes to the beneficial owners; and

(C) Any other material information affecting the rights or responsibilities of the beneficial owners.

(3) 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.

(c) *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.

(d) *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.

(e) *Electronic Filing*. The report filings described in subdivision (a)(1) 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.

(f) *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.

(g) *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.

(h) *Grandfathering for 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)

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 SB-2;

(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 of 9 V.S.A. § 5501 and 9 V.S.A § 5502 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 a potential 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 potential issuer is or will be a business entity organized under the laws of a State or Territory of the United States; 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. § 230.251(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 any amendments to the foregoing materials or additional materials to be used to conduct solicitations of interest with the commissioner, 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 section 9 V.S.A. §§ 5301-05, but is a violation and be actionable by the commissioner under section 9 V.S.A. §§ 5603-04 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 a potential 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.

(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. § 7-7(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(d);

(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(c);

(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*. An individual investment adviser representative must register in Vermont if they maintain a place of business in Vermont or have more than five (5) clients who are residents of Vermont.

(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 paragraph (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 paragraph (1)(D) 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 either of the following:

(i) The Series 65 Uniform Investment Adviser Law Examination; or

(ii) The Series 7 General Securities Representative Examination and the Series 66 Uniform Combined State Law Examination.

(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 paragraph (D) 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.

(C) *Waivers*. The commissioner may wave or modify the examination requirement for good cause shown.

(D) *Lapsed Registration*. If an individual has met the examination requirements of paragraph (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 paragraph (A) above again before applying for registration.

(E) *Loss of Professional Designations*. An investment adviser representative exempt from examination requirements under subparagraph (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) Describing the of the loss or lapse of such designation;

(II) A written explanation for such loss/lapse; and

(III) 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 paragraph (A) above; or

(II) Reestablish one (1) of the professional designations listed under paragraph (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.

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

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

(a) Except as otherwise provided in subsection (i) below, an investment adviser must make and keep true, accurate, and current books, ledgers, and records in an accrual basis, including:

(1) *Journals*. A journal or journals, including cash receipts and disbursement records, and any other records of original entry forming the basis of entries in any ledger;

(2) *Ledgers*. General and auxiliary ledgers or other comparable records reflecting asset, liability, equity, capital, income, and expense accounts;

(3) *Memoranda*.

(A) Memoranda must memorialize the following:

(i) Each order given by the investment adviser for the purchase or sale of any security;

(ii) Any instruction received by the investment adviser from the client concerning the purchase, sale, receipt, or delivery of a particular security;

(iii) Any modification or cancellation of an order or instruction; and

(iv) Each order entered pursuant to the exercise of discretionary power;

(B) Each memorandum must show the following information:

(i) The terms and conditions of the order, instruction, modification, or cancellation;

(ii) The name of the person connected with the investment adviser who recommended the transaction to the client and the name of the person who placed the order;

(iii) The account for which the order, instruction, modification, or cancellation was entered;

(iv) The date of entry; and

(v) The bank, broker, or dealer by or through whom the transaction was executed, if appropriate;

(4) *Banking Information*. Check books, bank statements, canceled checks, and cash reconciliations;

(5) *Bills*. Bills or statements, paid or unpaid, relating to the investment adviser's business as an investment adviser;

(6) *Accounting Information*. All trial balances, financial statements, and internal audit working papers relating to the investment adviser's business as an investment adviser, maintained on an accrual basis. For purposes of this paragraph, "financial statements" means a balance sheet, an income statement, a cash flow statement, and a net worth computation if a net worth computation is required by V.S.R. § 7-5(c);

(7) *Communications*.

(A) Originals of all written communications received or copies of all written communications sent by the investment adviser relating to the following:

(i) Any recommendation made or proposed to be made and any advice given or proposed to be given;

(ii) Any receipt, disbursement, or delivery of funds or securities; and

(iii) The placing or execution of any order to purchase or sell any security;

(B) The investment adviser need not keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser;

(C) If the investment adviser sends any notice, circular, or other advertisement

offering any report, analysis, publication, or other investment advisory service to more than ten (10) persons, the investment adviser need not keep a record of the names and addresses of the persons to whom the notice, circular, or advertisement was sent. However, if the notice, circular, or advertisement is distributed to persons named on any list, the investment adviser must retain a memorandum describing the list and its source with a copy of the notice, circular, or advertisement;

(8) *Accounts*. A list or other record of all accounts in which the investment adviser is vested with any discretionary authority with respect to the funds, securities, or transactions of any client;

(9) *Grants of Authority*. A copy of all powers of attorney and other evidence of a client granting any discretionary authority to the investment adviser;

(10) *Agreements*. A copy each agreement the investment adviser enters into with any client and all other written agreements otherwise relating to the investment adviser's business as an investment adviser;

(11) *Recommendation Materials*. A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication that the investment adviser circulates or distributes, directly or indirectly, to two (2) or more persons who do not have an existing relationship with the investment adviser. The investment adviser must maintain a memorandum indicating the reasons for a recommendation if such communication recommends the purchase or sale of a specific security and does not state the reasons for the recommendation;

(12) *Proof of Beneficial Ownership*.

(A) A record of every transaction in a security in which the investment adviser or any advisory representative has or acquires beneficial ownership except as provided in paragraph (E) below. Notwithstanding the foregoing, if the investment adviser is primarily engaged in any business other than advising investment advisory clients, the investment adviser must maintain a record of every transaction in a security, in which the investment adviser or any advisory representative has or acquires beneficial ownership except as provided in below in paragraph (E) below. Each record must state:

(i) The title and amount of the security involved;

(ii) The date and nature of the transaction;

(iii) Whether it is a purchase, sale, or other acquisition or disposition;

(iv) The price at which the transaction was effected; and

(v) The name of the broker-dealer or bank with or through whom the transaction was effected;

(B) The record may contain a disclaimer that the record may not be construed as an admission that the investment adviser or advisory representative has any beneficial ownership in the security;

(C) A transaction must be recorded at least ten (10) days after the end of the fiscal quarter in which the transaction was effected;

(D) A record is not required for either of the following:

(i) Any transaction effected in an account that neither the investment adviser nor advisory representative do not have any influence of control over; or

(ii) Any transaction in a security that is a directly issued by the United States;

(E) An investment adviser is not deemed to violate the provisions of this subdivision (12) because of a failure to record securities transactions of any advisory representative if the investment adviser establishes adequate procedures and used reasonable diligence to promptly obtain reports of all transactions required to be recorded;

(13) The following records:

(A) A copy of any written statement given to any client or prospective client in accordance with the provisions of V.S.R. § 7-6(b);

(B) Any summary of material changes required by part 2A and/or of Form ADV but is not contained in the written statement; and

(C) A record of the date that any document described above was sent to any client;

(14) For each client obtained by a solicitor:

(A) Any written agreement in which the investment adviser agrees to engage a solicitor and the terms of such agreement;

(B) A signed and dated acknowledgment by the client evidencing the client's receipt of the investment adviser and solicitor's disclosure statements; and

(C) A copy of the solicitor's written disclosure statement;

(15) Records or documents to demonstrate the calculation of the performance or rate of return of all managed accounts or securities published in any communication that the investment adviser distributes through any medium to two (2) or more persons other than persons connected with the investment adviser;

(16) Copies of any communications regarding:

(A) Any litigation involving the investment adviser, any investment adviser representative, or employee; and

(B) Any customer or client complaint;

(17) A written basis for any recommendation or investment advice for each client, including any documents obtained in complying with V.S.R. § 7-3(d)(1);

(18) Written procedures to supervise the activities of investment adviser representatives and employees reasonably designed to achieve compliance with the act and these regulations;

(19) Copies of any document filed with or received from any state agency, federal agency, or self-regulatory organization that pertains to the investment adviser or its investment adviser representatives;

(20) Copies with original signatures of each initial Form U-4 and any amendment to the disclosure reporting pages filed on behalf of an investment adviser representative. The copies must be available for inspection upon request by the commissioner;

(21) An investment adviser that inadvertently held or obtained a client's securities or funds and returned them to the client within three (3) business days of receiving them or forwarded checks drawn by clients made payable to third parties within twenty-four (24) hours of receipt is not deemed to have custody. In such circumstance, the investment adviser must keep records of:

(A) The issuer, type of security and series, and date of issue;

(B) The denomination, interest rate, and maturity date of any debt instrument;

(C) The certificate number;

(D) The name in which the securities are registered, the date given to the investment adviser, the date sent to the client or sender, the form of delivery, and proof of delivery;

(E) Any mail confirmation number, confirmation by the client, or sender of the return of the funds or securities; and

(F) The date the investment adviser received each check; and

(22) An investment adviser obtaining possession of securities acquired from an issuer in any transaction satisfying the exception from custody under V.S.A. § 7-5(a)(3)(B) must keep:

(A) A record showing all applicable contact information for the issuer or current transfer agent 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) *Investment Advisers with Custody*.

(1) An investment adviser with custody must keep:

(A) A copy of any and all documents executed by the client;

(B) Records showing all purchases, sales, receipts, and deliveries of securities, debits, and credits for all accounts;

(C) A separate account ledger for each client showing dates and value of all purchases, sales, receipts, deliveries of securities, and all debits and credits;

(D) Copies of confirmations of all transactions in the account of any client;

(E) A record for each security held by any client showing the name of each client with 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 and any statement delivered to the client with the date the statement was sent;

(G) A copy of any auditor's report, financial statements, and letters verifying the completion of an examination by an independent certified public accountant and describing the nature and extent of the examination;

(H) A record of any finding by an independent certified public accountant of any material discrepancies found during the examination; and

(I) Any evidence of a client's designation of an independent representative.

(2) An investment adviser with custody because it advises a pooled investment must also keep:

(A) True, accurate, and current account statements;

(B) If the investment adviser qualifies for the exception in V.S.R. § 7-5(a)(3)(C), the date of each audit, a copy of the financial statements, and evidence of mailing the audited financial statements to all limited partners, members, or other beneficial owners within one-hundred twenty (120) calendar days of the end of the investment adviser's fiscal year; and

(C) If the investment adviser complies with V.S.R. § 7-5(a)(2)(G), a copy of the written agreement with the independent party reviewing all fees and expenses, indicating the responsibilities of the independent third party, and copies of all invoices and receipts showing approval by the independent party for payment through the qualified custodian.

(3) An investment adviser with custody because it is acting as the trustee for a beneficial trust and qualifies for the exception in V.S.R. § 7-5(a)(3)(E), the investment adviser must also keep the following records:

(A) A copy of the written statement given to each beneficial owner setting forth a description of the requirements of V.S.R. § 7-5(a)(2) and why the investment adviser will not be complying with those requirements; and

(B) A written acknowledgement signed and dated by each beneficial owner, evidencing receipt of the statement required in paragraph (a)(3)(A) above.

(c) To the extent that the information is reasonably obtainable for each portfolio the investment adviser supervises or manages, an investment adviser subject to subsection (b) above that provides any investment supervisory or management service to any client must make and keep true, accurate and current:

(1) Records for each client showing the date and value of each security purchased and sold; and

(2) Information from which the investment adviser can promptly furnish the name of each client and the current amount or interest of the client in any security.

(d) Books or records required by this regulation may be maintained so that the identity of any client is indicated by numerical or alphabetical code or a similar designation.

(e) An investment adviser must maintain and preserve the following records in an easily accessible place in the manner prescribed:

(1) All books and records required to be made under the provisions of subsection (a) through subdivision (c)(1) above, except for books and records required to be made under the provisions of subdivision (a)(11) and (16)-(20) above, must be maintained for at least

five (5) years from the end of the fiscal year during which the last entry was made on the record. The records must be maintained during the first two (2) years in the principal office of the investment adviser.

(2) Any corporate governance materials of the investment adviser and any predecessor must be maintained in the principal office of the investment adviser until termination of the enterprise, and then preserved at least three (3) years from termination of the enterprise.

(3) Books and records required by subdivisions (a)(11) and (16) above must be maintained for at least five (5) years from the end of the fiscal year during which the investment adviser last published or disseminated the communication. The records must be maintained during the first two (2) years in the principal office of the investment adviser.

(4) Books and records required by subdivisions (a)(17)-(20) above must be maintained for at least five (5) years from the end of the fiscal year during which the last entry was made on the record. The records must be maintained during the first two (2) years in the principal office of the investment adviser or for the time period during which the investment adviser is registered in Vermont, whichever is less.

(5) Notwithstanding any other record preservation requirements of this regulation, the following records or copies must be maintained at the respective business location of the investment adviser at which a client received investment advisory services for the time period described above:

(A) The records required to be preserved under subdivisions (a)(3), (7)-(10), (14), (15), (17)-(19), and subsections (c) and (d) above; and

(B) The records or copies required under subdivisions (a)(11) and (16) that identify the name of the investment adviser representative providing investment advice from that business location or identify the business location's physical address, mailing address, electronic mailing address, or telephone number.

(f) Before discontinuing business as an investment adviser, each investment adviser must arrange for the preservation of the books and records required under this regulation for the remainder of each period specified above, and must notify the commissioner in writing of the exact address where the books and records will be maintained.

(g) The records required by this regulation may be maintained and preserved in electronic format, the type of which the commissioner may specify. If records are produced or reproduced in any electronic or computerized medium, the investment adviser must meet the following criteria:

(1) Arrange and index the records to permit the immediate location of any particular record;

(2) Promptly provide any record that the commissioner may request; and

(3) With respect to electronic images and records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records in order to reasonably safeguard these records from loss, alteration, or destruction; and

(h) Books or records made, kept, maintained, and preserved in compliance with 17 C.F.R. § 240.17a-3 and 17 C.F.R. § 240.17a-4 that are substantially the same as any book or record required to be made, kept, maintained, and preserved under this regulation, are deemed to comply with this regulation.

(i) An investment adviser with its principal place of business in a state other than Vermont is exempt from the requirements of this regulation, if the investment adviser is registered in that state and is in compliance with that 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 Loaning 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 advisers representative for similar services in the geographic area in which the client resides; or

(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; and

(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, where 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 where 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, where 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:

(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 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; and

(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 adjusted net worth requirements of V.S.R. § 7-5(c); 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 was 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 the final order, judgment, or decree was entered, or

(B) The date on which any rights of appeal from preliminary orders, judgments, or decrees lapsed.

(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)(14) 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 paragraph (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 applies 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 Safekeeping of Client Funds or Securities; Financial Reporting; Minimum Net Worth; Bonding.

(a) *Safekeeping of Client Funds and Securities*.

(1) Any violation of this subsection constitutes "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.

(2) *Requirements*. An investment adviser must not have custody of client funds or securities unless the investment adviser meets each of the following conditions.

(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, 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 may send account statements to clients if the investment adviser has reasonable basis for believing that the qualified custodian sends an 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 subparagraph (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 paragraphs (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 paragraph (3)(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.

(3) *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 (2) above with respect to shares of a mutual fund that is an open-end company as defined 15 U.S.C. § 80a-5(a)(1).

(B) *Certain Privately Offered Securities*. An investment adviser is not required to comply with subdivision (2) 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 (2) 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 (2) 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 (2) 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 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 paragraph (2) 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 (2) above.

(b) *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 section (b) if the investment adviser:

(A) Qualifies for an exception from the minimum adjusted net worth requirements of subdivision (c)(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.

(c) *Adjusted Net Worth 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 advisors 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 paragraphs (a)(2)(A)-(F) above and the recordkeeping requirements of V.S.R. § 7-2(b);

(B) Complies with the safekeeping requirements in paragraphs (a)(2)(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 paragraph (a)(3)(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 (c). 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) *Appraisals*. The commissioner may require an investment adviser to submit a current appraisal to establish the worth of any asset.

(6) *Exception for Out-of-State Advisers*. An investment adviser with its principal place of business in a state other than Vermont, properly registered in that state must maintain the minimum capital required by that state.

(d) *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 (c)(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 (c)(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 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 subparagraph (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) *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

(4) *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.

(5) *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 paragraph (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*. An investment adviser who 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 the brochure required to a client or prospective client 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 paragraph (3)(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))

CHAPTER 8 – Provisions Applying to All Securities Professionals

V.S.R. § 8-1 Sales of Securities at Financial Institutions.

(a) *Applicability*. This section applies to securities professionals conducting investment-related services on the premises of a financial institution where retail deposits are taken. This regulation does not alter or abrogate a securities professional's obligations to comply with other applicable laws or regulations that may govern the operations of securities professionals. This regulation does not apply to investment-related services provided at financial institutions not offering retail, depository banking services.

(b) *Standards for Securities Professionals*. A securities professional must not conduct investment-related services on the premise of a financial institution where retail deposits are taken unless the securities professional complies with the following requirements:

(1) *Distinguishing Services and Products*.

(A) *Services*. Unless impractical, investment-related services must be conducted in a physical location distinct from the area in which the financial institution's retail banking services occur. In all situations, a securities professional must identify its services in a manner that clearly distinguishes those services from the financial institution's retail banking services. A securities professional's name must be clearly displayed in the area in which the securities professional conducts its investment-related services.

(B) *Products*. A securities professional must establish policies and procedures reasonably designed to ensure that recommendations clearly state the securities nature of the product and distinguish products the securities professional offers from retail banking products by the hosting financial institution offers.

(2) *Networking and Brokerage Affiliate Arrangements and Program Management*. 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 securities professional and representatives of state securities authorities, where authorized by state law, will be permitted access to the financial institution's premises where the securities professional conducts investment-related services in order to inspect the books and records and other relevant information maintained by the securities professional with respect to its investment-related services. A securities professional is responsible for ensuring that any networking or brokerage affiliate arrangement clearly outlines the duties and responsibilities of all parties, including those of financial institution personnel.

(3) *Separation of Functions*.

(A) A securities professional must accept customer orders directly and may not accept orders through the financial institution.

(B) The financial institution and its employees must not participate or aid the offer, sale, purchase, or recommendation of securities through the facilities of the securities professional, except as provided in these regulations. Any questions concerning such transactions must be directed to and handled by a securities professional properly registered in Vermont. In addition, all accounts of Vermont residents must be opened and supervised by securities professionals who are registered in Vermont.

(C) A securities professional must not permit the financial institution and its employees to advise securities customers as to the advisability of investing in, purchasing, or selling securities through the facilities of the securities professional. This does not preclude the financial institution from informing customers of the availability of the investment-related services or from distributing securities professional's advertising and informational material. Nor is this guideline intended to prohibit financial 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 securities professional and not by or through the financial institution.

(E) A securities professional must not permit the financial institution to accept securities customers' checks or securities certificates in settlement of securities transaction orders placed directly with the securities professional.

(F) A securities professional must not permit financial institution employees to receive compensation for investment-related services, either directly or indirectly, unless these employees are securities professionals. However, the financial institution itself may receive commission related compensation for its participation in the networking or brokerage affiliate arrangement based upon a percentage of the revenues generated by the networking or brokerage affiliate arrangement. Financial institution employees may receive one-time, nominal fees of a fixed amount for referring financial institution customers to a securities professional if such fees do not depend on whether the referral results in an investment-related transaction.

(G) A securities professional may permit financial institution employees to perform only clerical and ministerial functions in dealing with investment-related customers and in connection with investment-related transactions unless such financial institution employees are securities professionals registered in Vermont. The referral of questions or complaints and the mere transmittal of order forms or like information to another person registered as a securities professional 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 professional registration requirements include informing potential securities customers that a securities professional provides investment-related services, delivering blank new account forms and written instructions on their preparation to customers, distributing promotional materials, and directing persons to registered securities professionals or a toll-free telephone number.

(H) A securities professional must take precautions to ensure that unregistered financial institution employees do not engage in any solicitation activity. In addition, a securities professional must not permit unregistered financial 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 securities professional personnel either directly or indirectly;

(vi) Assume responsibility for the day-to-day operation and supervision of any place of business of a securities professional.

(I) Securities professional employees, or a qualified individual, even if jointly employed by the financial institution, must not have access to financial institution records of securities customers unless the customer grants prior written permission.

(J) A securities professional may not deal in any securities of the financial institution or any affiliate thereof on the premises of the financial institution except in unsolicited transactions.

(K) A securities professional is responsible for supervising employees of both the financial institution and the securities professional who are registered as a securities professional to ensure compliance with all applicable federal and state securities laws and FINRA regulatory requirements including branch office registration, customer suitability and protection, financial responsibility, training and compliance responsibilities, and recordkeeping and reporting requirements. The books and records of securities professional must be kept separate from those

of the financial institution. The commissioner must have unimpeded access during the financial institution's business hours to all securities professional books and records maintained on the financial institution's premises, to joint employees of the financial institution and a securities professional who are registered as securities professionals, and their personnel records. A securities professional must have a written agreement with the financial institution that is approved by the securities professional's board of directors.

(4) *Customer Disclosure and Written Acknowledgment*.

(A) At or before the time that a customer's securities brokerage account is opened or an investment advisory contract is signed on the premises of a financial institution where retail deposits are taken, the securities professional must perform the following:

(i) Disclose, orally and in writing, that the securities products purchased or sold in a transaction with the securities professional are not insured by the FDIC or NCUA, are not deposits or other obligations of the financial institution and are not guaranteed by the financial institution, and are subject to investment risks, including possible loss of the principal invested; and

(ii) Make reasonable efforts to obtain from each customer during the account opening process a written acknowledgment of the disclosures required by subparagraph (3)(A)(i) above.

(B) Investment-related services that include any written or oral representations concerning insurance coverage other than FDIC or NCUA insurance coverage must also provide clear and accurate written or oral explanations of the coverage to the customers when these representations are first made.

(5) *Communications with the Public*.

(A) All of a securities professional's written confirmations and account statements must indicate clearly that the investment-related services are provided by the securities professional.

(B) *Advertisements and Sales Literature*.

(i) Advertisements and sales literature that announce the location of a financial institution where investment services are provided by the securities professional, or that are distributed by the securities professional on the premises of a financial institution, must disclose that the securities products are not insured by the FDIC or NCUA, are not deposits or other obligations of the financial institution and are not guaranteed by the financial institution, and are subject to investment risks, including possible

loss of the principal invested.

(ii) To comply with the requirements of subparagraph (4)(C)(i), the following logo format disclosures may be used by a securities professional in advertisements and sales literature, including material published or designed for use in radio or television broadcasts, automated teller machine screens, billboards, signs, posters, and brochures, if these disclosures are displayed in a conspicuous manner: "not FDIC insured," "not NCUA insured," "no bank guarantee," and "may lose value."

(iii) If the omission of the disclosures required by sub paragraph (4)(C)(i) above would not cause the advertisement or sales literature to be misleading in light of the context in which the material is presented, the disclosures is not required with respect to messages contained in radio broadcasts of 30 seconds or less; signs, including banners and posters, when used only as location indicators; and electronic signs, including billboard-type signs that are electronic, time and temperature signs, and ticker tape signs. However, the requirements of subparagraph (4)(C)(i) above apply to messages contained in other media, including television, on-line computer services, and automated teller machines.

(6) *Notification of Termination*. A securities professional must promptly notify the financial institution if any employee of the securities professional registered in Vermont who is also employed by the financial institution is terminated for cause by the securities professional.

"Dishonest or unethical practices," as used in 9 V.S.A. § 5412(d)(13) includes any conduct that violates subsection (b) above;

(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) A securities professional must not use a senior-specific certification or designation that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees in any way that misleads any person. This prohibition includes:

(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) The use of a certification or professional designation that was obtained from a designating or certifying organization that is primarily engaged in the business of instruction in sales or marketing or does not have reasonable standards or procedures for:

(A) Ensuring the competency of its designees or certificants;

(B) Monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(C) 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 the terms "certification" and "professional designation" do not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, including an agency that regulates securities professionals or investment companies, if that job title indicates seniority or standing within the organization or specifies an individual's area of specialization within the organization.

(Authorized by 9 V.S.A. § 5605(a); implementing 8 V.S.A. §§ 15 and 24)

V.S.R. § 8-3 Electronic Filing for Securities Professionals.

(a) *Designated Entity*. The IARD and CRD are authorized to receive and store filings and collect related fees from securities professionals on behalf of the commissioner.

(b) *Electronic Filing*. Unless otherwise required by these regulations, all securities professional applications, amendments, reports, notices, related filings, and fees required pursuant to the act and these regulations must be filed 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 Cybersecurity Procedures.

(a) A securities professional must establish and maintain written procedures reasonably designed to ensure cybersecurity. In determining whether the cybersecurity 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 securities professional must include cybersecurity as part of its risk assessment.

(c) To the extent reasonably possible, the cybersecurity procedures must provide for:

(1) An annual cybersecurity risk assessments;

(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 securities professional must maintain evidence of adequate insurance for the risk of cyber security 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 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 securities professional must provide identity restoration services at no cost to consumers in the occurrence of breach in the cyber security of consumer nonpublic personal information.

(Authorized by 9 V.S.A. § 5606(a); implementing 9 V.S.A. §§ 5411 and 5412(d)(9))

V.S.R. § 8-5 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 Adult Protective Services in the Vermont Department of Disabilities, Aging & Independent Living and the commissioner (collectively "the agencies").

(b) *Immunity for Governmental Disclosures*. A qualified individual that in good faith and exercising reasonable care makes a disclosure of information pursuant to subsection (a) above is immune from administrative or civil liability that might otherwise arise from such disclosure or for 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, a qualified individual may notify any third party previously designated by the eligible adult. Disclosure may not be made to any designated third party that is suspected of financial exploitation or other abuse of the eligible adult.

(d) *Immunity for Third-Party Disclosures*. A qualified individual that, in good faith and exercising reasonable care, complies with subsection (c) above is immune from any administrative or civil liability 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 will may result in financial exploitation of an eligible adult; and

(B) The broker-dealer or investment adviser:

(i) Immediately, but 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, but 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 will expire upon 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 of securities, Adult Protective Services, the broker-dealer, or investment adviser that initiated the delay under this subsection, or other interested party.

(f) *Immunity for Delaying Disbursements*. A broker-dealer or investment adviser that, in good faith and exercising reasonable care, complies with subsection (e) above is immune from any administrative or civil liability 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 comprise 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.

(Authorized by 9 V.S.A. § 5605(a); implementing 8 V.S.A. § 24)