



STATE OF VERMONT

Legislative Committee on Administrative Rules (LCAR)

MEMO TO: Representative Michael Marcotte, Chair, House Committee on Commerce and Economic Development
Senator Ann Cummings, Chair, Senate Committee on Finance

FROM: Legislative Committee on Administrative Rules

DATE: December 2, 2021

SUBJECT: Development and Enforcement of an Investment Adviser's Code of Ethics and Written Policies on Vulnerable Adults

The Legislative Committee on Administrative Rules (LCAR) reviewed [Rule No. S-2016-01, Vermont Securities Regulations \(Revised 2021\) \(V.S.R.\)](#) at LCAR's November 18, 2021 meeting.

One of the amendments approved by LCAR will require investment advisors to "establish, maintain, and enforce a written code of ethics" that meets certain minimums as delineated in the rule, V.S.R. § 7-6(a)(3), and "establish and maintain written policies and procedures reasonably designed to ensure protection of vulnerable adults from financial exploitation . . .[.]" V.S.R. § 8-4(h), ("written policies on vulnerable adults").

During its deliberations, LCAR heard testimony from the Department of Financial Regulation (DFR) that while there are certain minimum requirements for the codes of ethics that are to be established, maintained, and enforced by investment advisers, *see* V.S.R. § 7-6(a)(3)(i)–(v); rules regulating the protection of vulnerable adults from financial exploitation, *see* V.S.R. § 8-4; and certain practices that are prohibited under other portions of the V.S.R., *see, e.g.*, V.S.R. §§ 3-2 and 7-3, the required code of ethics and written policies on vulnerable adults established and maintained by investment advisers would not, themselves, be subject to State review beyond what is contained in the V.S.R.

Further, there could be violations of an investment adviser's code of ethics or written policies on vulnerable adults that might not be reported to DFR's Securities Division or subject to its regulatory oversight.

By way of example from Deputy Commissioner William R. Carrigan, if an investment adviser receives a complaint of a violation of its code of ethics pertaining to the possible financial exploitation of a vulnerable adult, it must be reported to DFR's Securities Division, but other complaints of violations of the code of ethics might not come to the attention of DFR's Securities

Division unless a complaint is filed directly with DFR's Securities Division or the violation is addressed in a subsequent desk audit of the investment adviser by DFR's Securities Division.

Accordingly, LCAR requests that the House Committee on Commerce and Economic Development and the Senate Committee on Finance review DFR's involvement in the development and enforcement of an investment adviser's code of ethics and written policies on vulnerable adults during the 2022 legislative session.