

Final Proposed Filing - 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 filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, and the Legislative Committee on Administrative Rules.

All forms shall be submitted at the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of these forms will be used to generate a notice of rulemaking in the portal of “Proposed Rule Postings” online, and the newspapers of record if the rule is marked for publication. Publication of notices will be charged back to the promulgating agency.

PLEASE REMOVE ANY COVERSHEET OR FORM NOT REQUIRED WITH THE CURRENT FILING BEFORE DELIVERY!

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:

Vermont Securities Regulations

_____/s/ Kaj Samsom_____, on 02/23/2026
(signature) (date)

Printed Name and Title:

Kaj Samsom, Commissioner

RECEIVED BY: _____

- Coversheet
- Adopting Page
- Economic Impact Analysis
- Environmental Impact Analysis
- Strategy for Maximizing Public Input
- 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 Minutes
- Copy of Comments
- Responsiveness Summary

1. TITLE OF RULE FILING:

Vermont Securities Regulations

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

25P 038

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: Russ McCracken, Assistant General Counsel

Agency: Department of Financial Regulation

Mailing Address: 89 Main Street, Montpelier, VT 05620

Telephone: 8028283301 Fax:

E-Mail: russ.mccracken@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<https://dfr.vermont.gov/about-us/legal-general-counsel/proposed-rules-and-public-comment>

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: Amanda Smith, Deputy Commissioner

Agency: Department of Financial Regulation

Mailing Address: 89 Main Street, Montpelier, VT 05620

Telephone: 8028283420 Fax:

E-Mail: amanda.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?) Yes

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

1 V.S.A. §§ 317(c) (1), (6), (7)

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

Under the current version of the Vermont Securities Regulations (S-2016-01) ("Rule"), the personal information submitted in connection with an application for funds from Vermont Financial Services Education and Victim Restitution Special Fund is confidential.

Information submitted in the application is personal information related to personal finance of the victims. Revisions to the Rule in § 9-1(b)(2) more specifically identify the information that is confidential.

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); 9 V.S.A. § 5616(j); 8 V.S.A. § 15(a).

EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

Under 9 V.S.A. § 5605(a), the Commissioner of the Department may adopt rules to carry out the provisions of the Vermont Uniform Securities Act. The Vermont Securities Regulations are the omnibus rule by which the Department implements the Vermont Uniform Securities Act. Each chapter of the Vermont Securities Regulations specifies which section it is implementing. Additionally, 9 V.S.A. § 5616(j) expressly authorizes the Department to adopt rules implementing the Vermont Financial Services Education and Victim Restitution Special Fund established by 9 V.S.A. § 5616.

Under 9 V.S.A. § 5411(e), the Department is expressly authorized to require investment advisers with custody or discretionary authority of client funds to obtain insurance specified by the Commissioner.

8. The Commissioner of the Department also has rulemaking authority under 8 V.S.A. § 15(a) to adopt rules implementing the provisions of Title 8 in a way that protects consumers against unfair and unconscionable practices.
9. THE FILING HAS CHANGED SINCE THE FILING OF THE PROPOSED RULE.
10. THE AGENCY HAS INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.
11. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.

12. THE AGENCY HAS INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.
13. THE AGENCY HAS INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.

14. **CONCISE SUMMARY (150 WORDS OR LESS):**

The Vermont Securities Regulations set out requirements for issuing securities in Vermont and regulating those who provide investment advice and offer and sell securities to the public. The primary changes include: for investment companies offering federally covered securities in Vermont, the revised Rule mandates electronic filings through a system to be designated by the Commissioner (allowed but not required under the current Rule); adding a requirement that Vermont domiciled investment advisers controlling client funds carry errors and omissions insurance; clarifying provisions for administering restitution assistance for victims of securities violations, including the application process; adding into regulation a current Department policy governing the privacy of client financial information held by broker-dealers and investment advisers; updating certain provisions to match national model rules from North American Securities Administrators Association; and drafting changes for clarity.

15. **EXPLANATION OF WHY THE RULE IS NECESSARY:**

The revisions to the Rule provide necessary updates to maintain effective administration of the Vermont Uniform Securities Act, strengthen investor protections, maintain consistency with regulatory model rules established by the national association of state securities regulators, and improve clarity. Mandating electronic filings for certain filings ensures efficient submission of filings.

The changes to the administration of restitution assistance for victims of securities violations are needed to clarify the process and improve administration.

Adding the Department's current policy on broker-dealer and investment adviser protections of client financial

information to the Vermont Securities Regulations strengthens the protections by promulgating the requirements in rule. This approach is also consistent with the Department's promulgation of corresponding rules for insurers and banks (Department Rules IH-2001-01 and B-2018-01).

16. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:

The revisions to the Rule are not arbitrary because the changes are the product of the Department's experience administering the current Rule and the Vermont Uniform Securities Act. The changes are rationally and reasonably connected to the Department's experience with protecting Vermont investors. Additionally, many of the changes are to keep the Rule consistent with model securities rules developed by the North American Securities Administrators Association. The Department is also acting well within its rulemaking authority under 9 V.S.A. § 5605(a), 9 V.S.A. § 5616(j), and 8 V.S.A. § 15(a).

17. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:

The Rule affects:

investment advisers and broker-dealers registered in Vermont;

representatives and agents of those investment advisers and broker-dealers;

issuers and offerors of securities in Vermont;

victims of securities violations that are eligible for restitution assistance;

Vermonters who are customers of investment advisers and broker-dealers;

Vermonters who otherwise invest in securities; and
the Department.

18. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):

The Department expects the economic impact of the revisions to the Rule to be a net positive. The revisions change certain compliance and operating requirements for broker-dealers and investment advisers, including requiring certain investment advisers to incur the expense of purchasing additional

insurance. Many revisions to the Rule make the legal requirements more clear, and conform certain provisions to model rules adopted by the North American Securities Administrators Association, which should create cost savings for regulated entities. The change to require investment companies to file electronic notice filings for federally covered securities will create additional expense for some investment companies, but the Department believes the requirement is beneficial to ensure orderly submission and record keeping for notice filings. The Department concludes that the benefits of additional protection for Vermont investors outweigh any additional compliance costs.

19. A HEARING WAS HELD.

20. 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: 12/1/2025

Time: 01:00 PM

Street Address: Virtual (MS Teams) only

Zip Code:

URL for Virtual: https://teams.microsoft.com/l/meetup-join/19%3ameeting_MDAwMjk1YTItMDJiZC00ODU5LWE0OTgtMjhkZTk5NDc1NGRj%40thread.v2/0?context=%7b%22Tid%22%3a%2220b4933b-baad-433c-9c02-70edcc7559c6%22%2c%22Oid%22%3a%228e6e8bee-36f6-4255-a55d-f61857ec6e87%22%7d

Date: 12/29/2025

Time: 11:00 AM

Street Address: Virtual (MS Teams) only

Zip Code:

URL for Virtual: https://gcc02.safelinks.protection.outlook.com/ap/t-59584e83/?url=https%3A%2F%2Fteams.microsoft.com%2F1%2Fmeetup-join%2F19%253ameeting_YWFmYjczY2QtODE1YS00ZmU4LWI3MjktN

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3D%3D%7C0%7C%7C%7C&sdata=OzlsKerRhI7LM5pm18ca0wWCVVdCQT1
T5Jd1PiQn4814%3D&reserved=0

Date:

Time: AM

Street Address:

Zip Code:

URL for Virtual:

Date:

Time: AM

Street Address:

Zip Code:

URL for Virtual:

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

1/8/2026

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

Vermont Securities Regulation

Vermont Uniform Securities Act

broker dealer

investment adviser

victim restitution assistance

securities

Adopting Page

Instructions:

This form must accompany each filing made during the rulemaking process:

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:

Vermont Securities Regulations

2. ADOPTING AGENCY:

Department of Financial Regulation

3. 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 if 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** .

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

21P-029; Rule No. S-2016-01, Vermont Securities Regulations (Revised 2021); effective date December 16, 2021.

Interagency Committee on Administrative Rules (ICAR) Minutes

Date/Time: October 13, 2025, 2:02 PM

Location: Virtually via Microsoft Teams

Members Present: John Kessler (acting Chair), Diane Sherman, Jared Adler, Jennifer Mojo, John Kessler, Natalie Weill, Michael Obuchowski, Nicole Dubuque

Members Absent: Nick Kramer

Minutes By: Chrissy Gilhuly

- ▶ 2:02 p.m. meeting called to order.
- ▶ Review and approval of minutes from the September 8 [meeting](#).
- ▶ No additions/deletions to agenda. Agenda approved as drafted.
- ▶ No public comments were made.
- ▶ Presentation of Proposed Rule with recommended changes on pages to follow:
 - 1) Department of Financial Regulation
 - a. Update to the Risk Retention Group Holding Company System Rule that sets out reporting, organizational and operational requirements for Risk Retention Groups (RRG) organized as holding companies.
 - i. This update to the rule tells RRGs how to comply with changes made in Subchapter 13 of Title 8, Act 101 by Act 110 (H.659) of 2024
 - b. Vermont Securities Regulations
 - i. Changes to the rule requirements for issuing securities in Vermont and regulating those who provide investment advice and offer and sell securities to the public.
 - 2) Office of the State Treasurer
 - a. Vermont Saves Program Proposed Rule Change:
 - i. This Rule proposes to make two amendments to the Rules implemented in 2024 pursuant to 3 V.S.A. Chapter 18, consistent with the legislative intent to establish a State auto-IRA program for “the purpose of increasing financial security for Vermonters by providing access to an IRA for Vermont employees of companies that do not currently offer a retirement savings program.”
- ▶ Next scheduled meeting is October 27, time TBD.
- ▶ 2:58 p.m. meeting adjourned.

Vermont Agency of Administration

Proposed Rule: Changes to the rule requirements for issuing securities in Vermont and regulating those who provide investment advice and offer and sell securities to the public.

Presented By: Russ McCracken, Department of Financial Regulation

Motion was made to accept the rule by Diane Sherman, seconded by Jared Adler, and passed unanimously.

DRAFT

Economic Impact Analysis

Instructions:

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose. If no impacts are anticipated, please specify “No impact anticipated” in the field.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn't appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

1. TITLE OF RULE FILING:

Vermont Securities Regulations

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:

The changes to the Rule affects the following groups:

Broker-dealers and investment advisers registered in Vermont will be impacted by changes to certain compliance and operating requirements, many of which are based on national model rules established by the North American Securities Administrators Association, rules adopted by FINRA, or, in the case of the

additional provisions governing privacy of financial information, the Department's existing policy. Additional compliance costs to the regulated entities from these changes are expected to be minimal, with a potential for cost savings as a result of regulations that are more consistent with other states.

Additionally, investment advisers that are both registered and domiciled in Vermont and maintain custody or control of client funds will have additional costs of maintaining errors and omissions insurance with minimum coverages specified by the changes to the Rule. The Department believes, based on survey of Vermont-registered investment advisers, that it is common for investment advisers to maintain this insurance already. Those that don't have the insurance coverage already will have the additional expense of obtaining the insurance. The requirement adds to the protection of customers by increasing the monetary protections above the much lower minimum adjusted net worth requirements currently in the Rule. The Department believes the potential benefits and protections for customers of the additional requirement justifies additional cost of compliance.

Representatives and agents of those investment advisers and broker-dealers will also be impacted by changes to certain compliance requirements, similar to the changes impacting investment advisers and broker-dealers. Additional compliance costs to the representatives and agents from these changes are expected to be minimal.

Issuers and offerors of certain securities in Vermont will be impacted by the requirement to make certain filings electronically in a way designated by the Department. The updates to the Rule instruct the Commissioner to designate an electronic filing platform for notice filings for investment companies offering federally covered securities in Vermont. Most investment companies make notice filings electronically already, but if the Commissioner designated a platform that is different than the one currently used by an investment company for the notice filings, that could result in additional fees or expenses for investment

companies to switch to a different platform. The updates to the rule also require that Regulation A - Tier 2 filings be made electronically in the same way as Regulation D notice filings are currently required to be made, which is expected to have minimal economic impact on issuers for Regulation A - Tier 2 offerings. The Department believes the additional costs are justified by the benefit of having the applicable investment company notice filings made through the same designated platform. The Department notes that filing fees paid to the State are set in statute and are not affected by the updates to the Rule.

Victims of securities violations that are eligible for restitution assistance will be impacted by changes to the Rule that clarify the process for apply for restitution assistance. The clarifications to the application process are not expected to have an economic impact.

Vermonters who are clients of investment advisers and broker-dealers or who otherwise invest in securities will benefit from additional protection against financial loss provided by updates to the Rule. The additional requirement for investment advisers that have custody or control of client funds to maintain errors and omissions insurance provides additional protection to the clients of those investment advisers because the insurance will provide an alternate source of recovery for those clients in certain cases.

The Department benefits from the updates to the Rule. Requiring electronic filing for certain securities-related filings helps the Department more effectively and efficiently administer the filing and public records requirements. Updates to the Vermont Financial Services Education and Victim Restitution Special Fund benefit the Department's ability to administer the Fund and provide restitution payments from the Fund in an efficient and orderly way. Drafting and other clarifying changes and corrections in the revisions to the Rule improve the clarity of the Rule, which benefits the Department's administration.

The Department concludes that the benefits of additional protection for Vermont investors outweigh any additional compliance costs.

4. IMPACT ON SCHOOLS:

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

The modification to the Rule is not expected to have any impact on schools.

5. ALTERNATIVES: CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.

Since the modification to the Rule is not expected to have any impact on schools, alternatives were not considered.

6. IMPACT ON SMALL BUSINESSES:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):

The Department anticipates that the impact on small businesses will be minimal. While the revisions to the Rule do change certain compliance requirements for broker-dealers and investment advisers, which may be small businesses, the Department does not believe that those changes create a material economic impact. As noted above, the modification to the Rule requires that investment advisers that are registered and domiciled in Vermont and have custody or discretionary control of customer funds maintain errors and omissions insurance coverage. To the extent an investment adviser that is a small business does not already carry insurance meeting this requirement, the Department believes the protections against economic loss for investors justifies that additional costs of compliance. The Rule continues to have provisions that are intended to minimize costs for small businesses seeking to raise capital through a securities offering, including the Small Company Offering Registration in Section 4-2 of the Rule.

7. **SMALL BUSINESS COMPLIANCE:** *EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.*

With respect to broker-dealers and investment advisers, the Department believes that the compliance requirements are appropriately tailored to protect Vermont investors. The Department doesn't anticipate a material negative impact on small businesses as a result of revisions to the Rule. As noted above, the Rule continues to provide a way for small business issuers of securities that is intended to reduce compliance costs for the issuance.

8. **COMPARISON:**

COMPARE THE 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 Department believes that the changes in the Rule are appropriately tailored to balance compliance and investor protection. Where appropriate, such as the Small Company Offering Registration, the Rule has separate requirements for small businesses that are not impacted by the proposed changes. Not having a Rule at all could actually increase compliance costs because the lack of a rule could result in additional effort and expense being required to comply with the Vermont Uniform Securities Act.

9. **SUFFICIENCY:** *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*

The Department considered the economic impact of the changes individually and taken as a whole in the context of the existing compliance requirements imposed by the Rule and law on regulated entities. For some revisions, the Department utilized updates developed by the North American Securities Administrators Association for consistency with requirements imposed by other states. With respect to the requirement for Vermont registered and domiciled investment advisers that have custody or control of client funds, the Department also conducted a survey of Vermont

registered investment advisers regarding their existing errors and omissions insurance coverage.

Environmental Impact Analysis

Instructions:

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis. If no impacts are anticipated, please specify “No impact anticipated” in the field.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

1. TITLE OF RULE FILING:

Vermont Securities Regulations

2. ADOPTING AGENCY:

Department of Financial Regulation

3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*

None .

4. WATER: *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*

None .

5. LAND: *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*

None .

6. RECREATION: *EXPLAIN HOW THE RULE IMPACTS RECREATION IN THE STATE:*

None .

7. **CLIMATE:** *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*

None.

8. **OTHER:** *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*

None.

9. **SUFFICIENCY:** *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*

The proposed revisions to this Rule are not expected to have any environmental impact.

Public Input Maximization Plan

Instructions:

Agencies are encouraged to hold hearings as part of their strategy to maximize the involvement of the public in the development of rules. Please complete the form below by describing the agency's strategy for maximizing public input (what it did do, or will do to maximize the involvement of the public).

This form must accompany each filing made during the rulemaking process:

1. TITLE OF RULE FILING:

Vermont Securities Regulations

2. ADOPTING AGENCY:

Department of Financial Regulation

3. PLEASE DESCRIBE THE AGENCY'S STRATEGY TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE, LISTING THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:

Several of the changes to the Rule are based on model rules adopted by the North American Securities Administrators Association (NASAA), which undergo public review and comment prior to becoming model rules.

In addition to conducting its own thorough review of the Rule based on its experience administering the Rule, the Department engaged with other state regulators and NASAA, an organization of state securities regulators, in determining what modifications to propose.

With respect to the additional requirement for Vermont registered and domiciled investment advisers with custody or discretionary control of client funds to maintain errors and omissions insurance, the Department surveyed Vermont-registered investment advisers about their current insurance coverage to understand the impact of the additional requirement on investment advisers. The Department shared draft changes to the

Public Input

applicable section of the Rule with Vermont-registered investment advisers.

Once filed, the Department intends to share the proposed Rule other state securities regulators for review and comment through NASAA.

Once filed, the Department also intends to share the proposed Rule directly with local law firms that represent clients in Securities related matters to ensure an opportunity to review and comment on any updates in the proposed Rule. The Department also plans to inform all Vermont-registered investment advisers and Vermont-registered and domiciled broker-dealers of the availability of the rule for public comment.

Additionally, the Department hosts a conference in the fall that will occur during the public comment period for Vermont-registered investment advisers, and the Department plans to share and discuss revisions to the Rule at that conference.

In addition to the steps above and posting the rule revisions on the Department's website and the other APA required steps, the Department plans to hold a public hearing on the revisions to the rule.

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

Local law firms that represent issuers of securities;
Vermont-registered investment advisers;
Vermont-registered and domiciled broker-dealers; and
Other state securities regulators through NASAA.

Incorporation by Reference

THIS FORM IS ONLY REQUIRED WHEN INCORPORATING MATERIALS BY REFERENCE. PLEASE REMOVE PRIOR TO DELIVERY IF IT DOES NOT APPLY TO THIS RULE FILING:

Instructions:

In completing the incorporation by reference statement, an agency describes any materials that are incorporated into the rule by reference and how to obtain copies.

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).

Incorporated materials will be maintained and available for inspection by the Agency.

1. TITLE OF RULE FILING:

Vermont Securities Regulations

2. ADOPTING AGENCY:

Department of Financial Regulation

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

The Rule incorporates by reference several provisions of Vermont law, federal securities laws, regulations, and forms, FINRA rules and NASAA policy statements. The only changes being made to material incorporated by reference are the addition of federal Regulation Best Interest (17 C.F.R. § 240.151-1), NASAA Statement of Policy Regarding Debt Securities, NASAA Statement of Policy Regarding Real Estate Investment Trusts, and NASAA Resolution Declaring Blank Check Blind Pool Offerings to be Fraudulent Practices.

4. FORMAL CITATION OF MATERIALS INCORPORATED BY REFERENCE:

Federal Regulation Best Interest, 17 C.F.R. § 240.151-1; NASAA Statement of Policy Regarding Debt Securities, NASAA Statement of Policy Regarding Real Estate

Investment Trusts, and NASAA Resolution Declaring Blank Check Blind Pool Offerings to be Fraudulent Practices.

5. **OBTAINING COPIES:** *(EXPLAIN WHERE THE PUBLIC MAY OBTAIN THE MATERIAL(S) IN WRITTEN OR ELECTRONIC FORM, AND AT WHAT COST):*

The statutes, regulations, forms, rules, and policies are publicly available online at no cost.

6. **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.

Run Spell Check



State of Vermont
Department of Financial Regulation
89 Main Street
Montpelier, VT 05620-3101

For consumer assistance:
[Banking] 888-568-4547
[Insurance] 800-964-1784
[Securities] 877-550-3907
www.dfr.vermont.gov

February 20, 2026

**Re: Public Comments and Responsiveness Summary for Dept. of Financial Regulation
Securities Regulation, 25P038**

The Department of Financial Regulation (“Department” or “DFR”) is proposing a revision to the Vermont Securities Regulations. DFR made the proposed rule filing with the Secretary of State on October 22, 2025, and the filing was posted October 29, 2025. DFR held public comment hearings for the rule on December 1, 2025, and December 29, 2025. DFR continued to accept any public comment through January 8, 2026.

DFR received six public comments on the rule. Comments were received from: the Financial Services Institute (“FSI”), the Securities Industry and Financial Markets Association (“SIFMA”), Alec Long, the Institute for Portfolio Alternatives (“IPA”), the Insured Retirement Institute (“IRI”), and the Public Investors Advocate Bar Association (“PIABA”).

The Department’s responses to comments received are below. Where the Department is making changes to the proposed rule, copied sections of the rule marked to show those changes are included in this letter.¹

V.S.R. § 7-5(d)(3)(B) requirement for E&O insurance for IAs with discretion or custody over client funds.

Two commentors provided comments on the new requirement for Vermont investment advisers with custody or discretionary control over client funds to carry errors and omissions insurance with a minimum of one million dollars of aggregate coverage. One commentor wrote in opposition, the other wrote in support. Commentor Alec Long wrote that firms can voluntarily elect to carry errors and omissions insurance and investors can choose to work with firms that do carry the insurance, and also that the requirement would place a considerable financial burden on many firms, particularly smaller firms, likely increase the cost of errors and omissions insurance for firms, and increase the potential for frivolous litigation. Commentor Alec Long asked the Department instead to have a requirement that firms disclose whether they have errors and omissions insurance.

¹ The Department also made typographical and formatting corrections in the proposed rule, which are not noted in this letter.



Commentor PIABA supported the Department's requirement for errors and omissions insurance to address the problem of unpaid arbitration awards that leave investors that are harmed by a thinly-capitalized investment adviser without a practical remedy. Commentor PIABA writes that the requirement ensures recoverability by reducing unpaid arbitration awards, enforces discipline for investment advisers to implement compliance programs, is commonplace and feasible, noting that major custodians like Schwab and Fidelity have insurance requirements for firms that use their platforms and that Oregon and Oklahoma have also put in place insurance requirements for investment advisers, and is supported by the market.

The Department reviewed the comments and decided not to make any changes to the errors and omissions insurance requirement for Vermont investment advisers that have custody or discretion of client funds. The Department concluded that the requirement is justified by the additional protection offered to investors from making sure that an investment adviser had sufficient liability coverage, either through insurance, assets, or surety bond, from which to pay a judgment or arbitration award to an investor who had been harmed by misconduct. Based on the Department's survey of Vermont investment advisers, it is common for firms to maintain errors and omissions insurance. As commentor PIABA noted, two major custodians also require firms using their platforms to maintain errors and omissions insurance. The Department has express authority under 9 V.S.A. § 5411(e) to require investment advisers that have custody of or discretionary authority over funds or securities of a customer or client to obtain insurance.

V.S.R. Chapter 10; Privacy of Consumer Financial Information

Two commentors provided comments regarding the consumer financial information privacy requirements incorporated in the proposed rule as new Chapter 10. Commentor IRI wrote that the "opt-in" regime of Chapter 10, which requires firms to obtain an affirmative opt-in from their customers prior to disclosing nonpublic personal information, is an outlier and inconsistent with the "opt-out" regime under federal law in Gramm-Leach-Bliley Act ("GLBA") of 1999 and Regulation S-P (Privacy of Consumer Financial Information), 17 C.F.R. Part 248. The "opt-out" regime instead allows firms to share nonpublic personal information unless a customer has affirmatively opted out. Commentor IRI asked the Department to align Chapter 10 with federal law or create a "safe harbor" provision that allows firms to satisfy the Vermont requirement if they meet the federal requirements under GLBA.

Commentor SIFMA wrote that the "opt-in" requirement makes Vermont "the most restrictive state for data sharing and associated compliance burden" without addressing why an "opt-out" standard is insufficient. Commentor SIFMA also wrote that the definition of "consumer" in V.S.R. § 10-3(e) broadens the scope of Vermont's privacy requirements beyond the application of Regulation S-P or Regulation BI because V.S.R. § 10-3(e) includes an individual that "seeks to obtain" a financial product or service thus covering prospective customers.

The privacy requirements addressed by the commentors were first implemented in Vermont by rule in 2001. The Vermont Department of Banking, Insurance, Securities and Health Care Administration, a predecessor to the Department, promulgated the consumer financial privacy requirements, including the "opt-in" regime and definition of "consumer," in Regulation S-2001-01, effective in 2001. Those requirements continued in effect in accordance with Order in the

Matter of Applying Provisions of Certain Regulations, Bulletins, Policy Statements and Orders in Effect Prior to July 1, 2006 to the Vermont Uniform Securities Act, Docket 06-43-S (July 7, 2006), Exhibit 5.1, and Order In the Matter of Repealing in Part and Retaining in Part Order 06-23-S Applying Provisions of Certain Regulations, Bulletins, Policy Statements and Orders in Effect Prior to July 1, 2006 to the Vermont Uniform Securities Act, Docket 16-01-S (June 1, 2016). The Department's view is that the privacy requirements are currently in effect.

The Department also has an "opt-in" regime for banking and insurance entities under Department Rules B-2018-01 and IH-2001-01, both of which were also first promulgated in 2001. The Department reviewed and considered comments regarding the "opt-in" regime and concluded that additional compliance costs to firms was justified by the stronger protections afforded to consumers under an "opt-in" regime, and therefore declined to change its long-standing "opt-in" requirements.

The Department reviewed and considered the comments around the definition of "consumer" that includes individuals seeking to obtain financial products or services and decided not to make any changes to the current definition. The consumer privacy requirements differentiate and treat "consumers" differently from "customers." The latter are individuals that enter into a customer relationship with the firm. The Department believes that individuals that provide nonpublic financial information to a firm when they are seeking, but ultimately do not obtain, financial products or services from that firm should still have some protection of their confidential information, even though those individuals are not "customers" under the rule. While Regulation S-P defines "consumers" differently – without the inclusion of individuals that "seek[] to obtain" financial products or services – the first two examples of a consumer under Regulation S-P's definition are identical to the example in V.S.R. § 10-3(e):

"(i) An individual is your consumer if he or she provides nonpublic personal information to you in connection with obtaining or seeking to obtain brokerage services or investment advisory services, whether or not you provide brokerage services to the individual or establish a continuing relationship with the individual.

(ii) An individual is not your consumer if he or she provides you only with his or her name, address, and general areas of investment interest in connection with a request for a prospectus, an investment adviser brochure, or other information about financial products or services."

17 C.F.R. § 248.3(g)(2). After reviewing the comments, the Department decided not to make changes to the consumer financial privacy requirements.

V.S.R. § 2-2(a)(14) Incorporation of Regulation Best Interest

Three commentors wrote in support of the Department's incorporation by reference of SEC Regulation Best Interest, 17 C.F.R. § 240.151-1, in V.S.R. § 2-2(a)(14). The commentors generally supported the incorporation of an existing standard that aligned with federal regulations. The Department reviewed the comments and did not make any changes to the incorporation by reference of Regulation Best Interest.

V.S.R. § 3-2(j) restrictions on use of the title “adviser” or “advisor”

One commentator wrote in response to the proposed additional provision in V.S.R. § 3-2(j) that explicitly prohibited the use of the title “adviser” by a broker-dealer or agent unless that broker-dealer or agent was licensed as an investment adviser or investment adviser representative. Commentor SIFMA wrote that the prohibition was narrower than what was permitted under Regulation Best Interest because the prohibition does not permit individuals who are supervised persons (i.e., employees) of an investment adviser to use the title “adviser” or “advisor.” The Department reviewed and considered the comments, and also considered the disclosure obligation under Regulation Best Interest and the approach of other states. The Department is not adopting SIFMA’s position, but based on the Department’s review of the protections offered under the disclosure obligation of Regulation Best Interest, the Department decided to remove proposed V.S.R. § 3-2(j) from this revision of the rule. The change is noted below, with conforming changes to the section numbers in V.S.R. § 3-2.

~~(j) — Prohibited Conduct. The use of the term adviser or advisor. A broker-dealer or agent must not use a title, purported credential, or professional designation containing any variant of the terms “adviser” or “advisor” without licensure as either an investment adviser or an investment adviser representative, unless otherwise permitted by law.~~

(k) Prohibited Conduct. The use of a senior specific certification or designation.
(1) A broker-dealer or agent must not use a senior specific certification or designation in connection with the offer, sale, or purchase of securities, or the provision of advice as to

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V.S.R. § 8-3 Protection of Vulnerable Adults from Financial Exploitation

Three commentators wrote in regard to V.S.R. § 8-3, which provides protections for “eligible adults,” which is defined as an individual sixty-five years of age or older, or an individual over eighteen years of age that has a mental or physical impairment that renders the individual unable to protect his or her own interests. The commentators generally asked the Department to expand the protections afforded under the rule for eligible adults. Commentor SIFMA, FSI, and IRI wrote in support of expanding the scope of V.S.R. § 8-3(e). Currently that section allows an investment adviser or broker-dealer to delay a disbursement to an eligible adult if fraud or abuse is suspected. Commentors SIFMA and FSI asked the Department to allow a firm to also delay a transaction if fraud or abuse is suspected because of situations where failing to place a hold on a transaction could substantially damage the eligible adult. For example, a transaction that involved the sale of securities could have tax consequences or a loss of additional gains from the securities that could not be reversed. Commentors noted that FINRA Rule 2165 and a majority of states allow for a hold on both transactions and disbursements.

Commentor SIFMA also asked the Department to incorporate into V.S.R. § 8-3 an ability for firms to contact third parties that are “reasonably associated” with an eligible adult in cases where abuse is suspected. This ability provides greater protections to eligible adults in cases where

the eligible adult does not have a designated third party with the firm, or if the firm suspects the designated third party of exploitation. Commentor SIFMA notes twenty-one states that have adopted similar protections.

Lastly, commentors SIFMA and FSI asked the Department to allow delays placed on disbursement or transaction to be extended for fifty-five business days, an increase from the current twenty-five business days allowed under V.S.R. § 8-3(e)(2)(B). The additional time allows the suspected abuse or exploitation to be investigated, and aligns with the total amount of time allowed under FINRA Rule 2165 for a delay on the disbursement or transaction.

The Department reviewed and considered the comments along with other state laws and decided to update V.S.R. § 8-3 of its proposed rule to (1) expand the scope of delays placed by investment advisers or broker dealers to include both disbursements and transactions where abuse of an eligible adult is suspected, (2) incorporate an ability for investment advisers or broker dealers to contact a “reasonably associated” third party when abuse is suspected, and (3) to extend the total time for a broker-dealer or investment adviser to delay a disbursement or transaction by an additional forty business days from the expiration of the first period of delay instead of from the date the transaction or disbursement was originally delayed (extending the total time from twenty-five business days to fifty-five business days, which matches the total of fifty-five business days that FINRA Rule 2165(b) allows for a hold on a transaction or disbursement). Under the Department’s rule, a delay can be terminated earlier by the Department, Adult Protective Services in the Vermont Department of Disabilities, Aging & Independent Living, or a court. The delay can also be extended beyond fifty-five business days by court order.

The Department believes each of these changes increases the protections for eligible adults and does not place any material additional compliance burden on investment advisers or broker dealers. The changes bring the Department’s rule more in line with protections offered for eligible adults by the FINRA rule and many other states’ laws. The changes are shown below:

V.S.R. § 8-3. Protection of Vulnerable Adults from Financial Exploitation.

- (a) Governmental Disclosures. If a qualified individual reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, the qualified individual must promptly notify the commissioner and Adult Protective Services in the Vermont Department of Disabilities, Aging & Independent Living (collectively “the agencies”).**

- (b) **Immunity for Governmental Disclosures.** A qualified individual who in good faith and exercising reasonable care makes a disclosure of information pursuant to subsection (a) above is immune from administrative or civil enforcement by the Department that might otherwise arise from such disclosure or from any failure to notify the customer of the disclosure.
- (c) **Third-Party Disclosures.** If a qualified individual reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, the qualified individual may notify any third party previously designated by the eligible adult and any third party reasonably associated with the eligible adult. Disclosure may not be made to any designated third party or any third party reasonably associated with the eligible adult who is suspected of financial exploitation or other abuse or exploitation of the eligible adult.
- (d) **Immunity for Third-Party Disclosures.** A qualified individual who, in good faith and exercising reasonable care, complies with subsection (c) above is immune from any administrative or civil enforcement by the Department that might otherwise arise from such disclosure.
- (e) **Delaying Transactions and Disbursements.**
- (1) A broker-dealer or investment adviser may delay a disbursement from or a transaction in 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 or transaction may result in financial exploitation of the eligible adult; and
- (B) The broker-dealer or investment adviser:
- (i) Immediately, and in no event more than two business days after the requested disbursement or transaction, provides written notification of the delay and the reason for the delay to all parties authorized to transact business on the account, unless any such party is reasonably believed to have engaged in suspected or attempted financial exploitation of the eligible adult;
- (ii) Immediately, and in no event more than two business days after the requested disbursement or transaction, 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 or transaction.

(2) Any delay of a disbursement or transaction as authorized by this section may continue only until the sooner of:

(A) A determination by the broker-dealer or investment adviser that the disbursement or transaction 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 or the transaction, unless either of the agencies requests that the broker-dealer or investment adviser extend the delay, in which case the delay may be extended an additional must expire no more than twenty-five (25) forty (40) 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 transaction or disbursement of funds or may order other protective relief based on the petition of the commissioner, Adult Protective Services, the broker-dealer or investment adviser who initiated the delay under this subsection, or other interested party.

(f) Immunity for Delaying Transactions or Disbursements. A broker-dealer or investment adviser who, in good faith and exercising reasonable care, complies with subsection (e) above is immune from any administrative or civil enforcement by the Department that might otherwise arise from such delay in a transaction or disbursement in accordance with this section.

V.S.R. § 2-4 Incorporation by reference of NASAA Statements of Policy, including Statement of Policy Regarding Real Estate Investment Trusts

Three commentors wrote regarding the Department's incorporation by reference of the North American Securities Administrators Association (NASAA) Statements of Policy, including the NASAA Statement of Policy Regarding Real Estate Investment Trusts (REIT). In V.S.R. § 2-4 of the current version of the rule, the NASAA Statements of Policy are incorporated by reference in their current versions "including subsequent amendments."

Commentor FSI supported the incorporation by reference of the NASAA Statement of Policy Regarding REITs if the specific current version of the Statement of Policy was identified (i.e., "As Revised and Adopted May 7, 2007; Amended September 7, 2025; Effective January 1, 2026."). Commentor IPA did not object to the incorporation by reference of NASAA Statement of Policy Regarding REITs, but Commentor IPA asked that only the current version be incorporated by reference and that future amendments not be automatically incorporated by reference. Commentor SIFMA did not comment on a specific NASAA Statement of Policy but asked that the rule be revised so that future amendments are not automatically incorporated by reference. The commentors wrote that automatically incorporating by reference future amendments deprives the public and industry of an opportunity to comment on whether an amendment to a Statement of Policy should be incorporated by reference, and deprives the

Department from making a decision about whether to incorporate by reference an amendment to a Statement of Policy. Commentors also wrote that there may be confusion regarding which NASAA Statement of Policy is incorporated by reference.

The Department reviewed and considered the comments, and decided to keep V.S.R. § 2-4 as it currently exists in the rule, which incorporates by reference the current versions of each NASAA Statement of Policy listed in the rule, and also incorporates by reference all subsequent amendments to those Statements of Policy without further action needed by the Department. As drafted, V.S.R. § 2-4 incorporates each identified NASAA Statement of Policy as currently in effect. NASAA, which the Department is a member of, goes through a robust process of development, review, and comment for amendments to its Statement of Policy. If the Department decided it did not want to incorporate by reference a subsequent amendment to a Statement of Policy, the Department would have the ability through rulemaking to modify V.S.R. § 2-4 to not incorporate such amendment by reference.

V.S.R. §§ 1-2(k), (ww), (hhh) Definitions of Branch Office, Office of Supervisory Jurisdiction, and Residential Supervisory Location

Two commentors wrote in support of aligning the definitions of Broker-Dealer Branch Office, Office of Supervisory Jurisdiction, and Residential Supervisory Location in V.S.R. §§ 1-2(k), (ww), and (hhh) with the applicable FINRA rules. Commentor SIFMA wrote that the changes allowed securities professionals to participate in FINRA's Residential Supervisory Location Rule, allowing flexibility for the locations where professionals engaged in supervisory functions work and allowing the industry to adapt to changing demands of its workforce. Commentor FSI also supported the alignment between the Vermont Securities Regulation and FINRA rule. The Department reviewed and considered the comments and did not make any further changes to those sections of the proposed rule.

V.S.R. § 2-2(a)(23) Incorporation by Reference of SEC Marketing Rule

Commentor FSI wrote in support of the incorporation by reference of the SEC Investment Adviser Marketing Rule in V.S.R. § 2-2(a)(23). The Department reviewed and considered the comment and did not make any further changes to the incorporation by reference of the SEC Marketing Rule.

V.S.R. § 7-1(c)(4) Examination Validity Requirements

Commentor FSI wrote in support of the extension of time for examination results to be valid for investment advisers under certain circumstances in V.S.R. § 7-1(c)(4). The revisions in the rule align with updates to the NASAA model rules for investment adviser examination requirements. The Department reviewed and considered the comment and did not make any further changes to V.S.R. § 7-1(c)(4).

Sincerely,

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January 8, 2025

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RE: SIFMA Comments on Proposed Changes to *Vermont Securities Regulations* (No. S-2016-01).

The Securities Industry and Financial Markets Association (SIFMA)¹ is a national trade association representing over 350 large, medium and small broker-dealers, investment banks and asset managers, many of whom have a strong presence in Vermont.² In fact, almost 8,500 people in the state work in the finance and insurance industries, over 1,000 of them work at securities firms, and three broker-dealer main offices call Vermont home.

SIFMA appreciates the opportunity to comment on the Vermont Department of Financial Regulation's latest rulemaking proposal. We also very much appreciate the Department for granting SIFMA's request to extend the comment period deadline. The extension provided much needed time to solicit member feedback to offer the comments included herein. Specifically, SIFMA writes to express our strong support for the provisions that would incorporate Regulation Best Interest (Reg BI) by reference, exempt Residential Supervisory Locations (RSLs) from the definition of branch office; and recognize and incorporate the Financial Industry Regulatory Authority's (FINRA's) Remote Inspections Pilot Program. We also raise concerns about the Department's proposed adoption of NASAA Statement of Policy by Reference without referencing a date, regulation of professional titles and the inclusion of provisions related to privacy of consumer information. Finally, SIFMA recommends further revisions to the regulation related to senior investor protection.

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the regional member of the Global Financial Markets Association.

² See SIFMA, State-By-State: Capital Markets in the U.S. <https://states.sifma.org/#state/vt>.

I. Incorporation of Regulation Best Interest by Reference

As you well know, Reg BI³ was adopted by the United States Securities and Exchange Commission (SEC) in 2019. Reg BI created a nationwide, heightened standard of conduct for broker-dealers (BDs) and their representatives and updated and enhanced requirements for investment advisers (IAs).

Under Reg BI, a BD making a personalized recommendation to a retail customer in a brokerage account must act in the client's best interest without placing its financial or other interests ahead of the client's interest.⁴ V.S.R. § 2-2(14) incorporates Reg BI by reference, thus adopting the standard in its entirety. Incorporation of this standard of conduct ensures that retail customers in Vermont get the protection and benefits of this heightened standard, while also giving the Securities Division additional authority to address situations where a BD or its representative falls short of this standard. We particularly appreciate that the language incorporates an existing national standard. With many BDs and their representatives doing business in multiple states, a single uniform standard provides consistency, makes compliance efforts more efficient, and ensures client choice.

We thank you for updating your rules in this manner, and we encourage other states to follow your example.

II. Incorporating and Recognizing FINRA's Residential Supervisory Location Rule

FINRA adopted a Residential Supervisory Location (RSL) Rule that became effective in June, 2025.⁵ Under the Rule, securities professionals engaged in supervisory functions can have their private residence designated as a non-branch location provided certain eligibility requirements and other criteria are satisfied. Firms are then required to inspect these private residences on a periodic basis.

V.S.R. § 1-2(k) redefines "broker-dealer branch office" to mean branch office as used in FINRA Rule 3110. Further, V.S.R. § 1-2 (ww) defines "Office of Supervisory Jurisdiction" to align with FINRA Rule 3110. These definitions are further amended to strike out the language that would prohibit firms in Vermont from participating in the FINRA rule. In further alignment with FINRA Rule 3110, V.S.R. § 3-1(a)(3) is amended to allow BDs to supervise employees in accordance with the FINRA rule.

SIFMA strongly supports both the FINRA Rule and the proposed regulation. Both rules will enable securities professionals engaged in supervisory functions to work from home under certain circumstances, giving them the flexibility that the people they supervise have long enjoyed and

³ See <https://www.ecfr.gov/current/title-17/chapter-II/part-240/subpart-A/subject-group-ECFR4744c3e48c41cdb/section-240.15l-1>

⁴ BDs and their representatives must, among other things: (1) disclose all material facts about the scope and terms of the relationship and all material facts relating to conflicts of interest; (2) exercise diligence, care and skill, including understanding the risks, rewards and costs associated with a recommendation; (3) disclose mitigate or eliminate conflicts of interest associated with the recommendation; (4) establish robust policies and procedures to achieve compliance with Reg BI in its entirety; and (5) consider reasonably available alternatives approved for sale through their firm based on information reasonably known to the relevant associated person after exercising reasonably diligent search strategies.

⁵ See FINRA Rule 3110.19, Residential Supervisory Location, <https://www.finra.org/rules-guidance/key-topics/residential-supervisory-locations>.

allowing the industry to adopt to the changing demands of the workforce. This flexibility will help BDs maintain qualified talent in essential positions, without sacrificing compliance, security, or investor protection.

III. Adoption of NASAA Statement of Policy by Reference

V.S.R. § 2-4 (f) proposes to adopt several NASAA Statements of Policy by reference. Specifically, the Proposal incorporates:

- NASAA's Statement of Policy Regarding Debt Securities;
- NASAA's Statement of Policy Regarding Real Estate Investment Trusts; and
- NASAA's Resolution Declaring Blank Check Blind Pool Offerings to be Fraudulent Practices.

These statements are added to other statements of policy that have been incorporated by reference including policy related to church bonds, church extension fund securities, Policy regarding Dishonest or Unethical Business Practices by Broker-Dealers and Agents in Connection with Investment Company Shares; and policy Regarding the Small Company Offering Registration (SCOR).

None of the statements of policies are adopted with a reference to the date that they were adopted by NASAA. This could mean that Vermont regulations will automatically update to the latest version of the policy adopted by NASAA, denying the Department the ability to determine whether the statement is appropriate for both licensed entities and Vermont investors. SIFMA does not have any particular concern about the statements of policy that are being adopted by reference. However, SIFMA is concerned that adoption of these policies without a date could have negative consequence of limiting public comment from industry. As such, we urge Vermont to include specific references to applicable version of the statements of policy, so there is not a misunderstanding about the operative standard.

IV. Titling Provisions Conflict with Reg BI

V.S.R. § 3-2(j) adds a new section to unethical and fraudulent conduct rules to include the use of certain professional titles, namely the use of any variant of the terms "adviser" or "advisor" without licensure as either an investment adviser or an investment adviser representative. This provision is narrower than Reg BI, which also permits individuals who are supervised persons (i.e., employees) of an investment advisor to use the title "advisor" or "adviser." The Proposal would require financial advisors who do not have an advisory license to use a different title, in conflict with both Reg BI and this Proposal which as noted above adds Reg BI to the list of statues that are incorporated by reference.

To avoid a conflict, Vermont should clarify that associated persons of a broker-dealer who are supervised person (i.e. employees) of an investment advisor may use the title “advisor” or “adviser.” In addition, Vermont should clarify that the final clause of the titling provision (i.e., “unless otherwise permitted by law”) specifically includes Reg BI and recognizes that Reg BI permits associated persons of a broker-dealer who are supervised persons of an investment advisor to use these titles.

V. Privacy Requirements

V.S.R. § 10-1 et seq. seeks to impose privacy requirements that were, up until this proposed regulation, only applicable to BD in the form of an order, but had not been incorporated as regulations as required by the Vermont Administrative Procedure Act (Chapter 25 of Title 3 of Vermont Statutes Annotated).

Securities firms take the protection of their customer’s personal information very seriously, both as a business practice and a legal obligation. Firms have been subject to federal consumer data privacy standards since 1999 when Congress enacted the Gramm-Leach-Bliley Act (GLBA). This law has been expanded on by the SEC through the adoption of Regulation of S-P in 2000 and updated in 2024.⁶ GLBA and Regulation S-P were carefully crafted to strike a balance between consumer’s privacy interests, the need for information to complete financial transactions with robust privacy and data security standards and the need to comply with anti-fraud, money laundering and illicit financing requirements. Financial institutions are prohibited from disclosing information relating to a consumer to a nonaffiliated third party unless the customer is provided with notice and an opportunity to opt-out of such disclosure and does not opt-out or an exception applies permitting the disclosure.

The key distinction between the proposed regulations, GLBA and Regulation S-P is that under GLBA and Regulation S-P, customers must “opt-out” of a covered entity sharing information with nonaffiliated third party. The opt-out structure provides consumers and entities with a balanced approach that recognizes that customer information demands greater protection, the customer can and should be in control over how that information is shared. This standard gives customers much greater control of their information than they have when dealing with non-financial businesses, who are not required to offer customers the option of opting out of data sharing, let alone be subject to oversight of their opt-out practices. Further, adoption of this higher standard enshrines in regulation a privacy rule that makes Vermont the most restrictive state for data sharing and associated compliance burden, without offering any justification that an opt-out standard fails to protect investor privacy.

In addition, V.S.R. § 10-3(e) defines *consumer* as an individual that “seeks to obtain,” or has obtained a financial product or services. In effect, this definition applies the privacy requirements to prospective customers. This definition and its applicability to prospective customers is contrary to both the Reg BI⁷ and Reg S-P. Specifically, Reg BI defines a retail customer as a natural person, or the legal representative of a natural person that *receives* a recommendation, while Reg S-P applies to individuals with whom the covered institution has a customer relationship.

⁶ <http://www.sec.gov/newsroom/press-releases/2024-58>.

⁷ Reg. BI, 17 § C.F.R. 240.151-1(b)(1).

VI. Vulnerable adults

While not addressed in the current proposal, V.S.R. § 8-3 implements FINRA Rule 2165 by allowing firms to delay disbursements when financial exploitation is suspected. Through this rulemaking, Vermont has the opportunity to provide greater protection for seniors and other vulnerable adults. SIFMA urges the department to work with the legislature to enshrine the requirements in statutes. However, in lieu of a statutory change, SIFMA recommends the following enhancement to make sure that Vermonters have the most impactful protections available.

1. Expanding Investor Protections by Allowing Holds on Transactions. As currently written V.S.R. 8-3(e) allows a broker-dealer (BD) or investment adviser (IA) to delay a disbursement from an account of an older or vulnerable person when financial exploitation is suspected. This is certainly helpful as it prevents a client's assets from leaving the account while the suspicious behavior is being investigated. However, revising the regulation to permit holds on transactions as well as disbursements would provide substantial added protection.

There are various scenarios in which failing to place a hold on a suspicious transaction could cause substantial damage to the senior or vulnerable account holder. For example, the current proposal would not allow a broker-dealer or investment adviser who suspected financial exploitation to delay changes in account ownership, changes in beneficiaries, or the purchasing of an investment product for the benefit of the suspected wrongdoer. In addition, it would not protect against a wrongdoer who wanted to exploit a senior into liquidating a long-held stock or terminating an annuity; such actions, however, would result in significant cost, penalties or tax consequences - even before a disbursement request is received.

2. Expand Investor Protection Through Broader Third-Party Contact Provisions and Avoid Clashes with Federal Privacy Law. Currently, under FINRA rules, federal law⁸ and contract law, firm personnel can reach out to persons designated by the client to help protect client assets and respond to possible financial exploitation. At least 21 states⁹ also permit firm personnel to reach out to third parties "reasonably associated" with the senior or vulnerable adult when financial exploitation is suspected. We believe this additional language enhances investor protection, particularly in those instances where either no third party has been designated or - notably - the designated third party is the person suspected of financial exploitation. We encourage you to incorporate this broader concept into your regulations by expressly stating that firms can reach out to any third party permitted under state or federal law or regulation or the rules of a self-regulatory organization.

⁸ For example, Section 502(3) of the federal Gramm-Leach-Bliley Act permits firms to reach out to a non-affiliated party for several reasons, including to protect a customer from actual or potential fraud or to protect the confidentiality or security of the financial institutions' records pertaining to a consumer.

⁹ These states are Alabama, Arizona, Arkansas, Colorado, Hawaii, Idaho, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New Mexico, North Dakota, Oklahoma, South Carolina, Texas, Utah, West Virginia & Wyoming

3. Protect Investors Through a Flexible Extension by the Division. The Vermont regulation currently allows for a hold to expire after a determination that the disbursement will not result in exploitation; or 15 business days unless the agencies request an extension, in which case the hold expires 25 business days after the hold was initially placed. However, most situations involving suspected exploitation take longer than 25 days to resolve.¹⁰ Further, requiring a court to extend the hold can be time-consuming and costly, and it places unnecessary strain on under-resourced court systems. SIFMA supports a flexible extension designed to allow time for a state agency, such as Adult Protective Services or the Department, to perform necessary investigations.

FINRA Rule 2165, as revised, now provides firms with the ability to extend a hold for an additional 30 days, for a total of 55 days, conditional on a report being made to the appropriate state agency or regulator.¹¹ We likewise support this language and expressed our support in our comment [letter](#) to FINRA.

Thank you again for the opportunity to comment on the proposed rulemaking. If you have any questions or would like to further discuss these issues, please contact Andrew Guggenheim at (202)962-7444 or aguggenheim@sifma.org.

Sincerely,



Andrew D. Guggenheim
Managing Director & Associate General Counsel
SIFMA

¹⁰ The National Adult Protective Services Association (NAPSA) [said](#) the average investigation into senior financial exploitation takes 52.6 days to conclude. In addition, in its [Proposed Amendments to FINRA Rule 2165 and Retrospective Rule Review Report](#), FINRA reported in a 2019 survey that more than 50% of respondents (firms) stated that they had been unable to resolve an investigation of suspected financial exploitation within the 25-business day period because the matter was being reviewed by a state agency or a court. FINRA reported that for matters that took longer than 25-business days to resolve, about 35% of survey respondents said that it took on average of 26-50 days to resolve and 59% said that it took on average 51 – 100 days to resolve.

¹¹ [Proposed Amendments to FINRA Rule 2165 and Retrospective Rule Review Report](#)



**FINANCIAL
SERVICES
INSTITUTE**

VOICE OF INDEPENDENT
FINANCIAL SERVICES
FIRMS AND INDEPENDENT
FINANCIAL ADVISORS

VIA ELECTRONIC MAIL

January 8, 2026

Russ McCracken
Assistant General Counsel
Department of Financial Regulation
89 Main Street
Montpelier, Vermont 05620
Russ.mccracken@vermont.gov

Re: Vermont Securities Regulations

Dear Mr. McCracken:

On October 22, 2025, the Vermont Department of Financial Regulation (“DFR”) published its request for public comment on proposed changes and updates to its securities rules (the “Proposal”). The Proposal makes various updates and changes to the Vermont securities rules, including incorporating Regulation Best Interest (“Reg BI”) by reference.

The Financial Services Institute (“FSI”) appreciates the opportunity to comment on this important proposal, consistent with our mission to preserve and advance access to independent financial advice for Main Street Americans. The proposed regulation appropriately reflects the importance of harmonizing state and federal securities rules. As more fully set out below, FSI applauds that focus and urges the Department to further harmonize the Proposal.

Background on FSI Members

FSI was founded in 2004 and is the only organization advocating on behalf of independent financial services firms and their affiliated independent financial advisors. FSI represents 130,000 advisors, through its member firms, across all 50 states, serving Main Street Americans with affordable, competent, and unbiased financial advice. The independent financial services community has been an important and active part of the lives of American investors for more than 50 years. In the US, there are more than 175,000 independent financial advisors, which account for approximately 60 percent of all producing registered representatives.¹ These financial advisors are self-employed independent contractors, rather than employees of the Independent Broker-Dealers (IBD).²

FSI’s IBD member firms provide business support to independent financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions. Independent financial advisors are small-business owners and job creators with strong ties to their communities. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses,

¹ Tiburon Strategic Advisors, Research on Independent Advisors (Dec. 18, 2024) (citing 152,200 in 2023).

² The use of the term “financial advisor” or “advisor” in this letter is a reference to an individual who is a registered representative of a broker-dealer, an investment adviser representative of a registered investment adviser, or a dual registrant.

associations, organizations, and retirement plans. Their services include financial education, planning, implementation, and investment monitoring. Due to their unique business model, FSI member firms and their affiliated financial advisors are especially well positioned to provide Main Street Americans with the affordable financial advice, products, and services necessary to achieve their investment goals.

FSI members make substantial contributions to our nation's economy. According to Oxford Economics, FSI members nationwide generate \$35.7 billion in economic activity.³ This activity, in turn, supports 408,743 jobs including direct employees, those employed in the FSI supply chain, and those supported in the broader economy. In addition, FSI members contribute nearly \$7.2 billion annually to federal, state, and local government taxes.³

Discussion

FSI appreciates the opportunity to comment on the Proposal. As more fully set out below, FSI appreciates the DFR's efforts to harmonize with federal law and urges additional harmonization in the report and hold rule. Finally, we applaud the inclusion of the Exam Validity Extension Program rules and call for an additional clarification.

I. The Proposal Appropriately Harmonizes with Federal Law But Should Go Further

A. The Proposal Reflects Admirable Harmonization Efforts

FSI appreciates the several ways in which this proposal harmonizes Vermont and federal requirements. In particular, FSI appreciates that the rules incorporate Reg BI by reference. Incorporating Reg BI by reference is the cleanest, simplest, and most effective way to ensure that broker-dealers are subject to one meaningful conduct standard nationwide. This harmonization simplifies compliance and ensures that investors receive the same protections offered under the federal regulatory standards.

FSI also appreciates the other instances of harmonization in the proposal, including incorporating the office of supervisory jurisdiction and branch office definitions from FINRA Rule 3110 and incorporating the SEC Marketing Rule by reference. As you know, the SEC Marketing Rule modernized endorsement and testimonial rules, and we applaud DFR for ensuring that all registered investment advisers are subject to the same marketing standards.

B. Report and Hold Harmonization Would Improve the Proposal

DFR should modify the Proposal to harmonize with the federal and state consensus on report and hold obligations. We appreciate that Vermont was one of the first states to implement report and hold language when it incorporated the NASAA Model Act to Protect Vulnerable Adults into its rules. Almost a decade later, both FINRA Rule 2165, as well as the majority of state report and hold laws, allow both disbursements and transactions to be delayed. Allowing transaction holds is important because, where a firm receives a disbursement request (1) that requires liquidation of securities and (2) that the firm reasonably believes would result in financial exploitation, the transaction hold allows firms not to execute the sell order that could have tax consequences or may cause a victim to miss out on additional gains. Some firms have

³ Oxford Economics for the Financial Services Institute, The Economic Impact of FSI's Members (2020).

used this authority to put a hold on an address change to ensure that the new address is not an abuser's address. These transaction holds serve investor protection.

In addition to amending the Proposal to add transactions, DFR should also amend the Proposal to mirror the FINRA Rule 2165 timeline. As you know, FINRA now allows a member to hold a disbursement or transaction for up to 55 business days so long as the firm has notified the state securities administrator. This lengthened timeframe resulted from the experience of firms, Adult Protective Services ("APS"), and state securities regulators needing more than 25 business days to reach investigative conclusions. DFR's timeframe should mirror the timeline in the FINRA rule.

II. Another Aspect of the Rule Requires Clarification

A. A Specific REIT Statement of Policy Should Be Incorporated

Continuing in the vein of harmonization, we appreciate DFR incorporating the NASAA REIT Statement of Policy ("SOP") Regarding Real Estate Investment Trusts. However, confusion could be avoided by referencing the specific version of the SOP so that it is clear which version is being incorporated. This also ensures that investors and industry alike have an opportunity to comment on whether future versions of the SOP should be adopted by DFR and effective in Vermont. FSI would support the incorporation by reference were it amended to add, "As Revised and Adopted May 7, 2007; Amended September 7, 2025; Effective January 1, 2026."

B. We Applaud the Incorporation of the EVEP Program

We applaud DFR for incorporating the Exam Validity Extension Program rules into its rulebook. These rules allow advisors to be out of the industry for up to five years so long as they comply with certain Continuing Education requirements. In the twenty-first century, there is an increasing appreciation of the importance of a diverse workforce that enjoys balance between work and home life. These rules, which allow a financial advisor to, for example, spend time raising children or caring for an ailing parent, are an important part of offering that balance to financial advisors and firm executives.

Conclusion

We are committed to constructive engagement in the regulatory process and welcome the opportunity to work with the Vermont DFR on this and other important regulatory efforts.

Thank you for considering FSI's comments. Should you have any questions, please contact me at (202) 393-0022.

Respectfully submitted,



Andrew M. Hartnett
Vice President & Deputy General Counsel

cc: Amanda Smith, Securities Deputy Commissioner, Vermont DFR
David Bellaire, Executive Vice President & General Counsel, FSI



Electronically Submitted to russ.mccracken@vermont.gov

January 8, 2026

Russ McCracken
Assistant General Counsel
Vermont Department of Financial Regulation
89 Main Street | Montpelier, VT 05620

Re: Proposed Rule: DFR Regulation Number: S-2016-01 Vermont Securities Regulations

Dear Mr. McCracken:

On behalf of our members, the Insured Retirement Institute (IRI)¹ writes to share comments on the proposed amendments to the Vermont Securities Regulations (the "Proposal"). We appreciate the Department granting an extension to allow for adequate time to review the Proposal as there were several important changes. As such, we would like to share general comments on the key areas that impact our members:

- 1) There are significant concerns with the new Chapter 10: Privacy of Consumer Financial Information, as it imposes an "opt-in" regime, which currently conflicts with current requirements under federal law.**

Our members are currently required to comply with federal privacy requirements, such as those under the Gramm-Leach-Bliley Act ("GLBA") of 1999 and Regulation S-P (Privacy of Consumer Financial Information), 17 C.F.R. Part 248. Those requirements currently allow financial institutions to disclose nonpublic personal information about a consumer unless a consumer has opted out of the disclosure. We believe an "opt-out" approach is appropriate in conjunction with the other requirements, such as a proper notice, and it is the standard that our members are required to follow under federal law.

¹ The Insured Retirement Institute (IRI) is the leading association for the entire supply chain of insured retirement strategies, including life insurers, asset managers, and distributors such as broker-dealers, banks and marketing organizations. IRI members account for more than 95 percent of annuity assets in the U.S., include the top 10 distributors of annuities ranked by assets under management, and are represented by financial professionals serving millions of Americans. IRI champions retirement security for all through leadership in advocacy, awareness, research, and the advancement of digital solutions within a collaborative industry community.

An outlier opt-in regime leads to a patchwork of compliance requirements, which can create practical compliance challenges for broker-dealers and investment advisers. A patchwork of requirements creates an unnecessary burden and potential confusion for customers, particularly when there are already protections in place under existing federal law. As such, we urge the Department to either align this new chapter with federal law, or to include a “safe harbor” provision to make it clear that compliance with GLBA or Regulation S-P constitutes compliance with this new chapter. Financial institutions should be exempt from overlapping and inconsistent requirements when they already comply with a robust set of federal requirements.

- 2) **V.S.R. § 8-43 Protection of Vulnerable Adults from Financial Exploitation should be broadened to include “transactions,” not just disbursements.**

To ensure more comprehensive protections for consumers, and for broker-dealers and investment advisers that utilize this provision, we strongly recommend that V.S.R. § 8-43(e) and (f) be broadened to include “transactions.” There are other changes and actions, such as a change of beneficiary, where a broker-dealer or investment adviser may wish to delay in the event of suspected financial exploitation. This ultimately provides greater protections for consumers as well and is aligned with several other states that have also adopted similar provisions.

- 3) **We strongly support the incorporation of Regulation Best Interest by reference into Vermont’s Securities Regulations (V.S.R. § 2.2(a)(14)).**

We appreciate and support the Department’s proposed incorporation by reference of Securities and Exchange Commission’s Regulation Best Interest (“Reg BI”), which established and standardized a “best interest” standard of conduct for broker-dealers and their agents. We commend the Department for taking this important step and are pleased to provide our support for this provision.

We appreciate the Department’s consideration of these comments, and please don’t hesitate to contact me with any questions or concerns.

Sincerely,

Sarah E. Wood

Sarah Wood
Director, State Policy & Regulatory Affairs
Insured Retirement Institute
swood@irionline.org



Institute
for Portfolio
Alternatives

November 24, 2025

Mr. Russ McCracken
Assistant General Counsel
Vermont Department of Financial Regulation
russ.mccracken@vermont.gov

Re: Proposed Filing Regarding the Vermont Securities Regulations (the "Proposal")

Dear Mr. McCracken:

The Institute for Portfolio Alternatives ("IPA")¹ appreciates the opportunity to comment on the Proposal. The IPA generally does not object to the Proposal, including the proposed amendment to V.S.R. § 2-4(f) to incorporate by reference the North American Securities Administrators Association ("NASAA") Statement of Policy Regarding Real Estate Investment Trusts.

The purpose of this amendment is to keep the Vermont Securities Regulations "consistent with model securities rules developed by the North American Securities Administrators Association."²

The IPA respectfully requests, however, that the Department amend V.S.R. § 2-4 to provide for incorporation by reference of the NASAA Statement of Policy Regarding Real Estate Trusts "as amended on September 7, 2025." The Proposal, at present, would incorporate by reference the current Statement of Policy and all subsequent amendments.³

¹ For more than 40 years, the IPA has served as the leading voice for global asset managers, distributors and service providers in the private markets and alternative investment industry. We deliver best-in-class education for practitioners and champion policies that expand investor access to wealth-building private market strategies, including real estate, credit, infrastructure, private equity and venture capital, among other asset classes. These investments offer lower correlation to public markets, strengthen retirement outcomes and enhance portfolio diversification while operating within robust investor-protection standards. Over the past 25 years, private market and alternative investments have driven more than \$1 trillion in capital formation, playing a critical role in fueling national and local economic growth.

² Proposal at 4.

³ Proposal at 26.



Such a sweeping incorporation by reference would deprive the public of the opportunity to comment on the incorporation of future versions of the Statement of Policy, as NASAA might adopt from time to time. Moreover, incorporation by reference of all subsequent amendments would bind future Departments without giving them a meaningful opportunity to evaluate the merits of those amendments.

The public should be provided an opportunity to comment on the Department's future incorporation of amendments to the Statement of Policy. The IPA therefore recommends that the Department amend V.S.R. § 2-4 to read as follows:

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

(a)-(e) No change.

(f) NASAA Statement of Policy Regarding Real Estate Investment Trusts as amended on September 7, 2025; and

(g) No change.

* * *

Thank you again for the opportunity to comment on the Proposal. Please contact Jeff Evans, IPA director of government affairs and policy (jevans@ipa.com; 202-548-7185), if you have questions regarding the IPA's comments.

Sincerely,



Anya Coverman
President & CEO

McCracken, Russ

From: Alec Long <alec@longadvisorsllc.com>
Sent: Monday, December 1, 2025 12:34 PM
To: Smith, Amanda; McCracken, Russ
Subject: Comments on DFR Regulation Number: S-2016-01 Vermont Securities Regulations

You don't often get email from alec@longadvisorsllc.com. [Learn why this is important](#)

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Hello Amanda and Russ,

I am writing to express my opposition to the proposed amendment that would mandate Errors and Omissions (E&O) insurance for Vermont firms that have discretion or custody of client assets.

Currently, firms have the option to obtain E&O insurance if they deem it necessary for their protection, and clients are also free to choose advisors who carry this type of coverage if they feel it offers them added security.

If E&O insurance truly provides the substantial benefits suggested in the proposal, it seems logical that firms and prospective clients would already be motivated to secure such policies voluntarily. Making it mandatory appears unnecessary. If the asserted benefits are real, clients will naturally favor firms with E&O insurance, and firms will recognize the advantage of carrying it.

As an alternative, I would propose requiring firms to disclose whether or not they maintain E&O insurance. This approach would achieve similar goals of transparency and client protection without imposing potentially significant and unnecessary costs, and it would allow both consumers and advisors to make decisions based on their individual best interests.

Mandating E&O insurance for all firms with discretion or custody would:

- Place a considerable financial burden on many firms, particularly smaller ones where this expense could be substantial.
- Likely increase the cost of this type of insurance for all firms, as insurers would have a guaranteed market requiring the coverage.
- Potentially increase the attractiveness of frivolous litigation in seeking damages due to the creation of a "...larger pool of assets to draw on to cover the cost of settlements or judgments owed to clients..." as described in the letter outlining rationale for the potential change

Thank you for considering my perspective on this matter.

Sincerely,
Alec

December 2, 2025

Via Email Only @ russ.mccracken@vermont.gov

Russ McCracken
Assistant General Counsel
Vermont Department of Financial Regulation
89 Main Street
Montpelier, VT 05620

RE: Comment Letter Regarding DFR Regulation Number: S-2016-01 Vermont Securities Regulations

Dear Mr. McCracken:

I write on behalf of the Public Investors Advocate Bar Association ("PIABA"), an international bar association comprised of attorneys who represent investors in disputes with the securities industry. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums, while also advocating for public education regarding investment fraud and industry misconduct. Our members and their clients have a strong interest in rules promulgated by both state and federal securities regulators relating to both investor protection and disclosure. As such, PIABA frequently comments upon proposed rule changes and retrospective rule reviews in order to protect the rights and fair treatment of the investing public.

Background

We understand the Department of Regulation is proposing changes regarding, among other things, the addition of a requirement that Vermont-domiciled investment advisers controlling client funds carry errors and omissions insurance. Specifically, the requirement adds to the protection of customers by increasing the monetary protections above the much lower minimum adjusted net worth requirements currently in the Rule. PIABA supports this amendment.

Discussion/Position

PIABA applauds the Department of Regulation's proposal to require all member firms to maintain appropriate liability insurance. The proposal addresses the long-standing and well-documented problem of unpaid arbitration awards, which continues to plague the financial services industry and harm investors in every state, including Vermont. Justice requires that investors harmed by financial professionals and their firms are not left injured and without practical remedy merely because they were doing business with, what turned out to be, a thinly-capitalized advisor. PIABA believes that the interests of protecting investors could be advanced even more if Vermont required insurance more generally for financial advisors operating within the state. While the DFR's survey of Vermont-registered investment advisers ahead of its rule proposal concluded it is common for

Vermont investment advisers to maintain E&O insurance, many RIA firms across the country operate without any liability insurance, and some even structure themselves with no intention to ever satisfy adverse arbitration awards.

PIABA has written extensively on this problem in the past. Attached to our Comment Letter is a recent article from PIABA's immediate past president, Adam Gana, and Professor Benjamin Edwards, entitled "The Insurance Solution for Financial Advice Failures." We echo our members' voices here. As PIABA has advocated over the years, requiring financial services providers to carry insurance solves several problems simultaneously, including but not limited to:

1. **Insurance ensures recoverability.** It dramatically reduces the number of unpaid awards by providing an external funding source when a firm fails or disappears. *See, e.g.* Vermont's Department of Financial Regulation's *In Re: Thomas Chadwick et. al.*, NO. 22-011-S.
2. **Insurance enforces discipline.** Insurers price risk. They require firms to implement compliance programs, reject known bad actors, and avoid risky behaviors that lead to claims. In effect, insurers act as a private market discipline mechanism.
3. **Insurance is commonplace and feasible.** States like Oregon and Oklahoma already require investment advisers to carry insurance. Major custodians like Schwab and Fidelity have also implemented insurance mandates for firms on their platforms. These requirements have *not* reduced access to financial advice, and the number of advisers in those jurisdictions *increased* post-implementation.¹
4. **The market supports implementation.** Empirical data show that requiring even modest insurance coverage (e.g., \$1 million per firm) does not drive professionals from the industry.² If anything, mandatory insurance can enhance investor trust and attract more business to reputable, well-insured firms.

Vermont's leading effort to add errors & omission requirements pursuant to V.S.R. § 7 aligns with longstanding efforts within Congress, North American Securities Administrators Association (NASAA), and the SEC to address unpaid awards. Furthermore, Vermont's proposal aligns with the broader, national sentiment and positions on this investor protection issue.

In sum, PIABA supports the amendments, and thanks the Commission and FINRA for the opportunity to comment on these proposals.

Sincerely,



Michael C. Bixby, President
Public Investors Advocate Bar Association

Attachment

¹ See Chuan Qin & Craig McCann, *RIA Insurance Mandates Didn't Reduce Access to Advisory Services*, SLCG ECON. CONSULTING, <https://www.slcg.com/resources/blog/713> (last visited Aug. 28, 2024)

² *Id.*

THE INSURANCE SOLUTION FOR FINANCIAL ADVICE FAILURES

ADAM J. GANA AND BENJAMIN P. EDWARDS¹

ABSTRACT

Solving the retirement savings crisis requires widespread access to reliable financial advice. Yet financial advisers now often operate without insurance, collecting fees and commissions from customers and leaving them penniless when substandard advice causes harm. Instituting insurance coverage requirements would provide protection for investors and allow market forces to discipline misconduct. For decades, advocates and regulators have raised awareness about the millions of unpaid arbitration awards each year; an insurance solution would greatly reduce the harm suffered.

This essay aims to create a roadmap to solve the problem. It identifies the problem and maps out the different levers available to policymakers to increase overall insurance coverage across a fragmented regulatory landscape.

¹ Adam J. Gana is the managing partner of Gana Weinstein LLP and the president of the Public Investor Advocate Bar Association. Benjamin P. Edwards is a Professor of Law at the William S. Boyd School of Law at the University of Nevada, Las Vegas. Thanks to Adam Marchant for research assistance and Jennifer Shaw for thoughtful comments on the draft.

Comments welcomed at benjamin.edwards@unlv.edu.

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I. INTRODUCTION AND BACKGROUND

Investors wronged by wealth management firms often find themselves unable to recover. For example, Bruce Wilkerson reached the Super Bowl as an offensive tackle for the Green Bay Packers in 1996.² After he left the National Football League, having played for the Packers, Jaguars, and Raiders, he worked as a machinist and trusted Resource Horizons Group, a brokerage firm, to manage the wealth he earned by putting his body on the line.³ After one of the brokerage's registered representatives ran a Ponzi scheme, an arbitration within the Financial Industry Regulatory Authority's ("FINRA") Dispute Resolution Forum found Resource Horizons Group liable for over \$600,000 in compensatory damages and another \$1.4 million in damages under the Tennessee Consumer Protection Act.⁴ Yet Wilkerson would never see any recovery because Resource Horizons Group closed its doors without insurance to cover Wilkerson's claim.⁵

For decades, bottom-tier financial services firms have profited by selling high-commission products only to fold once claims for abusive sales practices arrive.⁶ In 2000, the Government Accountability Office found that nearly two-thirds of arbitration awards against stockbrokers and brokerage firms went unpaid.⁷ Often, the brokers involved scurry from one brokerage to another, continuing to exploit investors. This occurs so often that some use the term "cockroaching" to describe "brokers moving from one problem firm to

² Mason Braswell, *Ex-NFL player left out in the cold after \$2 million award*, INVESTMENT NEWS (Jun. 22, 2015), <https://www.investmentnews.com/industry-news/features/ex-nfl-player-left-out-in-the-cold-after-2-million-award-61449>.

³ Benjamin Edwards & Hugh Berkson, *Fix the flaw in financial self-regulation*, THE HILL (Mar. 19, 2018), <https://thehill.com/opinion/finance/379134-fix-the-flaw-in-financial-self-regulation/>.

⁴ *Wilkerson v. Resource Horizons Group, LLC, FINRA Case Number 14-00904*, (available at https://www.finra.org/sites/default/files/ao_documents/14-00904-Award-All%20Public%20Panel-20150311.pdf).

⁵ Melanie Waddel, *Savings of Ex-NFL Player Left Gutted by Unpaid FINRA Arb Award*, THINKADVISOR (Mar. 7, 2018), <https://www.thinkadvisor.com/2018/03/07/ex-nfl-player-wilkerson-deeply-affected-by-unpaid-finra-arb-award/>.

⁶ United States General Accounting Office, SECURITIES ARBITRATION: ACTIONS NEEDED TO ADDRESS PROBLEM OF UNPAID AWARDS, U.S. GOV'T ACCOUNTABILITY OFFICE 33 (2000), <https://www.gao.gov/assets/ggd-00-115.pdf>.

⁷ *Id.* (finding that "an estimated 61 percent . . . of investors who won arbitration awards in 1998 either were not paid or received only partial payment.").

Comments welcomed at benjamin.edwards@unlv.edu.

another.”⁸ Financial advisers will sometimes even shift from selling securities to other financial products simply to evade federal oversight.⁹

Wall Street’s deadbeat firms come in different varieties. Some operate as FINRA-supervised brokerage firms,¹⁰ generally selling securities in exchange for transaction-based compensation.¹¹ Others operate as registered investment advisory firms, generally receiving compensation directly for investment advice about securities.¹² Often, firms and individuals will operate under both regimes simultaneously, with their duties and obligations shifting depending on the hat worn at the time.¹³ Adding to the complexity, many financial advisers also sell insurance products under lax state regulation and supervision.¹⁴

In recent years, business models have shifted, with more brokers and brokerage firms shifting to operate as investment advisers.¹⁵ Private equity firms have accelerated this move by acquiring investment advisory firms for their predictable cash flows and growth.¹⁶

Both brokerage and advisory firms often operate without any insurance and leave investors unable to recover if problems arise.¹⁷ Although the unpaid award problem has been extensively studied and documented in the brokerage

⁸ Jean Eaglesham & Rob Barry, *More Than 5,000 Stockbrokers From Expelled Firms Still Selling Securities*, WALL ST. J. (Oct. 4, 2013), <https://www.wsj.com/articles/more-than-5000-stockbrokers-from-expelled-firms-still-selling-securities-1380843149>.

⁹ Colleen Honigsberg, Edwin Hu & Robert J. Jackson, Jr., *Regulatory Arbitrage and the Persistence of Financial Misconduct*, 74 STAN. L. REV. 737, 742 (2022) (studying “financial advisers who exit federal oversight after committing serious misconduct yet continue to advise investors” in insurance transactions).

¹⁰ FINRA is a trade association of brokerage firms charged with serving as the front-line regulator for brokerage firms. The Securities and Exchange Commission supervises FINRA and a number of other self-regulatory organizations.

¹¹ See SEC, STUDY ON INVESTMENT ADVISERS AND BROKER-DEALERS iii (Jan. 2011) (describing broker-dealers and investment advisory firms) (available at <https://www.sec.gov/files/913studyfinal.pdf>).

¹² *Id.*

¹³ *Id.* at 12-13.

¹⁴ Honigsberg, Hu & Jackson, *supra* note 9, at 740-42.

¹⁵ Justin Mack, *Independent and hybrid RIA channels are adding advisors the fastest, Cerulli report says*, FINANCIAL PLANNING (Nov. 1, 2023), <https://www.financial-planning.com/list/independent-and-hybrid-ria-channels-are-adding-advisors-the-fastest-cerulli-report-says>.

¹⁶ Ian Salisbury, *Your ‘Independent’ Advisor Now Works for Private Equity. What It Could Mean for Your Portfolio.*, BARRON’S (Jun. 14, 2024), <https://www.barrons.com/articles/financial-advisors-private-equity-clients-portfolio-de076c68>.

¹⁷ North American Securities Administrators Association (NASAA), E&O INSURANCE SURVEY REPORT, NASAA 2 (Dec. 2019), <https://www.nasaa.org/wp-content/uploads/2019/12/2019-BD-EO-Survey-Report-Formatted-FINAL.pdf>.

Comments welcomed at benjamin.edwards@unlv.edu.

context,¹⁸ the problem extends beyond brokerages. NASAA enforcement reports show that both investment advisors and brokers regularly misbehave.¹⁹

After decades of harm, federal policymakers have taken notice and demanded action. The U.S. Securities and Exchange Commission (SEC or the “Commission”) Investor Advocate recently called for investment advisers to disclose more information to better understand the scope of the problem in the advisory context.²⁰ Congress has also begun applying pressure for FINRA to take action to address the problem in the broker-dealer space. The Senate Committee on Appropriations recently found that “FINRA has failed to undertake steps to address unpaid arbitration awards by its members.”²¹ It directed that the “SEC shall continue to engage with FINRA to identify ways to reduce and eliminate the occurrence of unpaid awards.”²²

Despite this problem persisting for decades and leaving investors with enormous losses, a solution to dramatically mitigate the problem exists—insurance. In this context, insurance requirements offer two major benefits. First, insurance companies may force brokerages and advisory firms to adopt better practices to maintain coverage at favorable rates. Second, a reasonable degree of insurance will allow more investors to recover in instances when and if harm arrives. Notably, this insurance solution does not guarantee that all investors will recover every dime in every instance of misconduct. Yet, an industry carrying insurance offers investors substantially better protection than an industry without it.

The states have taken some action to improve insurance coverage. Notably, two states—Oregon and Oklahoma—have already moved to require some wealth management firms to carry insurance.²³ Their requirements offer some lessons for a broader insurance mandate. At a minimum, the existing numbers in the aftermath of this natural experiment indicate that creating modest insurance requirements does not lead to any material reduction in the

¹⁸ See Hugh Berkson & David P. Meyer, *Finra Arbitration's Persistent Unpaid Award Problem*, PUBLIC INVESTOR ADVOCATE BAR ASSOCIATION (Sept. 2021), <https://piaba.org/piaba-newsroom/piaba-report-finra-arbitrations-persistent-unpaid-award-problem-september-29-2021> (documenting the unpaid arbitration award problem in the brokerage context).

¹⁹ NASAA, 2020 ENFORCEMENT REPORT 13 (2020), <https://www.nasaa.org/wp-content/uploads/2020/09/2020-Enforcement-Report-Based-on-2019-Data-FINAL.pdf>.

²⁰ SEC OFFICE OF THE INVESTOR ADVOCATE, FISCAL YEAR 2023: REPORT ON ACTIVITIES 43 (Dec. 5, 2023), <https://www.sec.gov/files/2023-oiad-annual-report.pdf> (explaining that “[a]n absence of information prevented Staff from generating reliable statistics about the frequency of SEC-registered adviser arbitration or the number of unpaid arbitration awards”).

²¹ S. REP. NO. 118-206, at 103 (2024).

²² *Id.*

²³ Or. Rev. Stat. Ann. § 59.175; Okla. Admin. Code 660:11-7-11.

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availability of financial advice for main street investors.²⁴ However, the existing insurance requirements only reach a portion of the wealth management firms operating within those jurisdictions.²⁵

This essay aims to explore the critical need for insurance and provide guidance for how to require insurance across a fragmented financial advice industry.²⁶ Part II discusses the imperfect existing insurance requirements and errors and omissions insurance marketplace available today. Part III frames the elements of a successful insurance program and overviews the regulatory mechanisms for instituting insurance requirements.

II. EXISTING INSURANCE REQUIREMENTS ARE IMPERFECT

At present, state and federal law says little about insurance requirements for wealth management firms.²⁷ As financial advisers may be supervised by FINRA, state securities regulators, state insurance regulators, the SEC, or some combination of the foregoing, requiring coverage across the industry will require coordinated action from an array of regulators.

Fragmented and overlapping regulation may partially explain the inaction when it comes to mandatory insurance. For example, if FINRA moved first and mandated that brokerage firms carry insurance, it might place brokerage firms at a competitive disadvantage to state and SEC-registered investment advisory firms. The same may be true if the states or SEC acted first.

Despite the pressure toward inaction, some insurance requirements have emerged and merit consideration at the state level and from clearing firms.²⁸ Critically, current evidence indicates that insurance requirements, as currently implemented, do not appear to meaningfully alter the public's ability to access investment advice.²⁹

A. Limited Existing State Insurance Mandates Have Not Reduced Access to Investment Advice

Many financial advisers now practice without insurance or enough insurance to cover liability.³⁰ Currently, only two states—Oregon and

²⁴ See Qin & McCann, *infra* note 65.

²⁵ OR. REV. STAT. § 59.175 (2018); OKLA. ADMIN. CODE § 660:11-7-11 (2024).

²⁶ See Christine Lazaro & Benjamin P. Edwards, *The Fragmented Regulation of Investment Advice: A Call for Harmonization*, 4 MICH. BUS. & ENTREPRENEURIAL L. REV. 47 (2014) (explaining how fragmented regulatory structures complicate overseeing financial advice).

²⁷ § 59.175; 660:11-7-11.

²⁸ *Id.*

²⁹ See Qin & McCann, *infra* note 64.

³⁰ See NASAA, *supra* note 17.

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Oklahoma—require some financial advisers to carry some professional liability insurance for errors and omissions. Yet both have exemptions for broker-dealers, relying on FINRA to fill the regulatory gap—an invitation FINRA has yet to accept.³¹

In 2018, Oregon began requiring all state-registered investment advisers to carry at least \$1 million in errors and omissions insurance.³² The \$1 million requirement applies to all firms regardless of size, capturing intra-state brokerage operations and state-registered investment advisers.³³

Oregon's requirement does not capture all investment advisers operating in the state because Oregon only oversees a portion of the market. Investment advisers may register with the SEC when their regulatory assets under management reach \$100 million or more.³⁴ At that point, the SEC oversees their operations instead of the state.³⁵

Oregon's flat \$1 million coverage requirement may generate a degree of inequity among financial firms. For example, under Oregon's statute, a firm with \$6 million in assets under management has the same insurance requirements as a firm with \$96 million in assets under management.³⁶ To the extent that policies cost approximately the same, firms with smaller assets under management will pay a higher relative cost than firms with more assets. The requirement may also create an incentive for smaller advisory firms to merge with larger firms to reduce costs or entirely avoid Oregon's insurance requirement by transitioning to SEC oversight.

When Oklahoma followed Oregon's lead in 2020 with an administrative rule requiring state investment advisers to carry \$1 million in errors and omissions insurance, it too missed the opportunity to provide a tailored coverage requirement.³⁷ Notwithstanding the gaps in coverage, the laws increase investor protection in both states to this day.³⁸

Although the insurance mandate itself is simple, both states worked to facilitate compliance. To make sure that all licensees can access the coverage they need, Oregon and Oklahoma both admitted surplus line insurers and risk

³¹ § 59.175; § 660:11-7-11.

³² § 59.175.

³³ *Id.*

³⁴ 17 C.F.R. § 275.203A-1(a)(1) (2011) (“You may, but are not required to register with the Commission if you have assets under management of at least \$100,000,000 but less than \$110,000,000, and you need not withdraw your registration unless you have less than \$90,000,000 of assets under management”).

³⁵ *Id.*

³⁶ § 59.175.

³⁷ § 660:11-7-11.

³⁸ § 59.175; § 660:11-7-11.

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retention and purchasing groups into the state.³⁹ In Oregon, licensees simply submit annual proof of insurance.⁴⁰ Firms that fail to submit proof of insurance risk having their licenses canceled.⁴¹

B. Industry Insurance Requirements

Some financial advisers carry insurance because some custodial platforms insist on insurance for advisers using their platforms.⁴² For example, in 2021, Charles Schwab & Co. (“Schwab”) launched a program to eventually require all Registered Investment Advisers (“RIA”) using its custodial services to carry at least \$1 million in insurance, including errors and omissions coverage.⁴³ Like Oregon and Oklahoma, Schwab undertook measures to ensure that the insurance market could accommodate the new rule, which included working with insurance companies to obtain preferred pricing for Schwab’s clients.⁴⁴

RIA firms voluntarily elected to comply with Schwab’s insurance requirement instead of seeking a different custodial platform. Unlike the states, where in-state advisers had to comply or lose their licenses, Schwab’s users could have readily chosen to shift to a different custodial platform because none of Schwab’s competitors imposed similar requirements.⁴⁵

Instituting the insurance requirement did not reduce Schwab’s market share. Despite 2022 being one of the worst-performing years for stocks and bonds in history, Schwab’s net income still increased after mandating insurance, and Schwab saw rapid RIA growth in 2023.⁴⁶

³⁹ OR. ADMIN. R. 441-175-0185(3) (2018); OKLA. ADMIN. CODE § 660:11-7-21 (2024).

⁴⁰ OR. REV. STAT. § 59.225 (2018).

⁴¹ § 59.225.

⁴² When a person buys securities, a brokerage firm ordinarily keeps custody of the securities for the benefit of the individual. Investment advisers managing client portfolios generally use select brokerage platforms to custody and transact business.

⁴³ *What Insurance Is Required for RIA Firms?*, SCHWAB, <https://advisorservices.schwab.com/navigating-risk-regulation/advisor-insurance> (last visited July 27, 2024).

⁴⁴ See Sam Del Rowe, *Schwab Requiring RIA Firm Clients to Purchase Errors and Omissions, Other Insurance*, FINANCIAL ADVISOR IQ (Dec. 20, 2021), https://www.financialadvisoriq.com/c/3441634/437184/schwab_requiring_firm_clients_purchase_errors_omissions_other_insurance.

⁴⁵ *Id.*

⁴⁶ *2022 Annual Report*, SCHWAB 6 (2022), https://content.schwab.com/web/retail/public/about-schwab/schwab_annual_report_2022.pdf; Diana Britton, *Schwab Benchmarking: RIA Growth Rebounds in 2023*, WEALTH MANAGEMENT (July 18, 2024), <https://www.wealthmanagement.com/ria-news/schwab-benchmarking-ria-growth-rebounds-2023>.

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Schwab's insurance requirement may provide it with a range of benefits. In instances where a claimant names Schwab as a defendant alongside an advisor using its platform, Schwab may now be readily assured that the RIA firm will have coverage and counsel—potentially mitigating Schwab's costs.

Schwab's insurance requirement may also provide a filtering mechanism for uninsurable firms. To the extent that any RIA firm cannot obtain insurance because of risks unique to that RIA firm, Schwab likely benefits by excluding the firm from its platform. Thus, the insurance requirement may allow Schwab to use insurance companies to exclude firms that would draw the most litigation and attendant problems for Schwab from its platform.

Despite Schwab's influence in the marketplace, private insurance requirements have not yet proliferated and changed broader industry practice.⁴⁷ Financial advisers often operate without insurance, and other custodial platforms do not require firms to maintain insurance.

C. Existing Insurance Disclosure Requirements

Insurance disclosure requirements might also play a role in investor protection. Knowledge of insurance coverage can influence an investor's behavior, such as whether to work with an adviser and whether and how to pursue a claim if the adviser causes harm. Yet, as it stands, investors are generally poorly situated to evaluate insurance information and often lack access to basic information about a financial adviser's insurance.⁴⁸

1. Kansas Insurance Disclosure Requirement

In 2012, Kansas began requiring investment advisers to disclose their professional liability insurance status to all current and prospective clients.⁴⁹ In theory, requiring investment advisers to disclose their professional liability insurance information allows clients to take this information into account when deciding between firms.⁵⁰ A disclosure requirement may even drive some financial advisers to obtain insurance to avoid disclosing that they operate without insurance.

Securities law often defaults to a disclosure-oriented model because disclosure plays such a critical role in both the market and the SEC's regulation

⁴⁷ See Sam Del Rowe, *supra* note 43.

⁴⁸ *Does My Investment Advisor Have Insurance?*, SAMUELS YOELIN KANTOR LLP (Oct. 30, 2018), <https://www.investordefenders.com/blog/does-my-investment-advisor-have-insurance/>.

⁴⁹ *In Re: Waiver of Certain Requirements Under K.A.R. 81-14-9 and New Requirement Authorized By K.A.R. 81-14-10 For Disclosure Regarding Insurance Coverage*, 2012 WL 5473856 at *2 (Nov. 7, 2012).

⁵⁰ An Oregon legislator recently proposed a bill that would similarly allow the state to require investment advisers to disclose their policy and coverage information. H.B. 2274, 82nd Or. Leg. Assemb., Reg. Sess. (Or. 2023).

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of public company disclosures.⁵¹ Yet disclosure-oriented rules may not achieve investor protection goals in this context because many people work with financial advisers because they desire informed guidance. Unlike public company disclosures, no market price transmits information about a financial adviser in real-time to other persons seeking information about the financial adviser.⁵² No market mechanism makes uninformed investors aware that sophisticated investors have shunned advisers without insurance.⁵³

In this context, disclosure requirements may even expose the least sophisticated investors to greater risks. If some relatively sophisticated clients alert to risks and leave the adviser, the remaining clients likely face greater peril because the advisor still needs to pay bills and must now generate the same income from a shrinking client base. Unscrupulous advisers may opt to make up the difference by exploiting investors.

Kansas's disclosure requirements may be most useful for investors after harm occurs. Because Kansas firms must disclose their insurance status, investors who have suffered harm can take insurance information into account when deciding whether to pursue relief.⁵⁴

2. Limited Access to Insurance Coverage Information

Despite Kansas's requirement, insurance coverage information often remains a closely guarded secret. In contrast to ordinary litigation, FINRA arbitration does not require its members to produce information about insurance coverage in arbitration.⁵⁵ FINRA's current discovery guide does not require brokers to provide information about any insurance coverage they may have.⁵⁶ As a result, investors may pursue actions against uninsured brokers who cannot afford to pay claims.⁵⁷ In contrast, the Federal Rules of Civil Procedure mandate parties to disclose insurance coverage.⁵⁸

⁵¹ See Troy A. Paredes, *Blinded by the Light: Information Overload and Its Consequences for Securities Regulation*, 81 WASH. L.Q. 417, 418 (2003) ("Securities regulation is motivated, in large part, by the assumption that more information is better than less. Perhaps this is no surprise since the SEC's chief regulatory tool is to require companies to disclose more.").

⁵² See David Harper, *Forces That Move Stock Prices*, INVESTOPEDIA (May 20, 2024), <https://www.investopedia.com/articles/basics/04/100804.asp>.

⁵³ *Id.*

⁵⁴ In Re: Waiver of Certain Requirements Under K.A.R. 81-14-9 and New Requirement Authorized By K.A.R. 81-14-10 For Disclosure Regarding Insurance Coverage, 2012 WL 5473856 at 2 (Nov. 7, 2012).

⁵⁵ See *Discovery Guide*, FINRA (2013), <https://www.finra.org/sites/default/files/ArbMed/p394527.pdf>.

⁵⁶ *Id.*

⁵⁷ See NASAA, *supra* note 17, at 2.

⁵⁸ See FED. R. CIV. P. 26(a)(1)(A)(iv) (requiring disclosure of "any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action").

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Realizing the inequity in its process, in 2018, FINRA requested comments about a potential rule that would require brokers to disclose their insurance information in arbitration proceedings.⁵⁹ Making insurance information presumptively discoverable could prevent wronged investors from digging a hole for themselves by pursuing claims against uninsured brokers that might never be able to satisfy an award.⁶⁰

Requiring parties to exchange information about insurance coverage does not come without risks. The contemplated rule aimed to ensure that insurance coverage information would not overly shift outcomes in arbitrations.⁶¹ FINRA aimed to address concerns that knowledge about insurance coverage might prejudice arbitration panels by designating insurance information as inadmissible absent extraordinary circumstances.⁶²

For reasons that remain unclear, FINRA chose not to move forward with the rule.⁶³ As a result, many investors now proceed with claims against uninsured brokerages incapable of paying damages.⁶⁴

D. Marketplace Impacts from Insurance Requirements

To forestall any regulation, the financial advice industry will sometimes argue that raising standards would hurt the public because it would reduce their access to financial advice. Opponents of mandatory insurance contend that insurance requirements would do more harm than good by reducing the public's ability to find financial advice. Yet the best available evidence indicates that this simply is not true.

Consider how advice markets reacted to the introduction of existing insurance requirements. After implementing errors & omissions insurance mandates, Oregon and Oklahoma did not experience a reduction in financial advisory services.⁶⁵ In fact, after the mandates became effective in each state, the number of investment advisers increased and did not fall relative to other states without a mandate.⁶⁶ An in-depth study of the number of investment advisers in Oregon and Oklahoma before and after the mandates introduction shows

⁵⁹ FINRA, REGULATORY NOTICE 18-22 (2018), <https://www.finra.org/rules-guidance/notices/18-22>.

⁶⁰ See NASAA, *supra* note 17, at 2.

⁶¹ See FINRA, *Discovery Guide*, *supra* note 54.

⁶² *Id.*

⁶³ See FINRA, REGULATORY NOTICE 18-22, *supra* note 58.

⁶⁴ See NASAA, *supra* note 17, at 2.

⁶⁵ Chuan Qin & Craig McCann, *RIA Insurance Mandates Didn't Reduce Access to Advisory Services*, SLCG ECONOMIC CONSULTING (Aug. 2024), <https://www.slcg.com/resources/blog/713> (last visited Aug. 28, 2024).

⁶⁶ *Id.*

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that the insurance requirements had no material effect on the number of financial advisers in either state.⁶⁷

Although the benefit to the public will be significant, industry insurance costs appear low relative to the profitability of financial advice firms. After Schwab's insurance requirement for investment advisors, the number of advisors using Schwab's custodial services also increased despite a severe economic downturn.⁶⁸

Despite the marginal cost, insurance requirements may increase the volume of financial advice business. More widespread insurance requirements could drive demand by making the industry easier to trust. With insurance behind the industry, more members of the public may work with advisers.

III. A FRAMEWORK TO IMPROVE INSURANCE COVERAGE

Widespread insurance coverage would likely benefit both investors and financial professionals. Investors would more often recover damages in instances of misconduct and benefit from any risk reductions generated by insurance company requirements. Responsible financial firms already carrying insurance would no longer operate against competitors without insurance.

A. Elements of A Successful Insurance Program

Successful insurance reforms should aim to achieve some core objectives. We propose three here: (1) ensuring appropriate coverage amounts and terms for firm size; (2) generating functioning markets that price risk and reduce misconduct; and (3) providing information about coverage.

1. Appropriate Coverage Amounts and Terms for Firm Size and Characteristics

Although one-size-fits-all insurance coverage requirements do some good by mandating coverage, they also generate problems. A per claim two-million-dollar coverage requirement will be too small for some firms and too large and expensive for others. Rather, insurance requirements must consider the size of the firm and provide coverage requirements proportional to the amount of risk that a firm imposes on the public. Appropriately tailored insurance requirements would ensure adequate coverage without imposing undue costs on financial services firms.

Insurance coverage requirements should increase with a firm's assets under management. Tying a firm's insurance level to its asset level ensures that it will be able to afford appropriate coverage. One simple solution would be to

⁶⁷ *Id.*

⁶⁸ SCHWAB, *supra* note 46, at 6.

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require firms to maintain the greater of either (1) a million dollars in coverage or (2) insurance coverage equivalent to 2% of assets under management. This would mean that a firm with \$99 million in client assets would need just under \$2 million in coverage. In contrast, a firm with only \$15 million in assets would only need to carry a million in coverage.⁶⁹

Regulators crafting insurance requirements should also ensure that policy terms do not render protective benefits illusory. For example, a firm might acquire coverage with a high per-incident deductible. Functionally, these policies mean that insurance funds will only become available for a claim after the deductible has been met and each claim must meet its own deductible before tapping into coverage. If the insurance policy only applied after the firm spent more than \$250,000 in costs for defense, a firm facing five or six claims arising out of selling a toxic financial product to investors might face up-front costs greater than the insurance policy's coverage amount and simply opt to go out of business.

This does not mean that no firms should be able to use higher-deductible coverage. A regulatory response here should aim to preserve flexibility while ensuring that insurance coverage improves outcomes. One solution to this problem would be to require firms using high-deductible policies to hold cash or other high-quality assets equivalent to their insurance deductibles.

Here, risk does not always scale uniformly between firms. Some firms pose heightened risks to the public and might benefit from additional coverage. For example, FINRA internally designates certain firms as “restricted” and selects them for a higher degree of oversight because of the risks their operations pose to the public.⁷⁰ Although FINRA does not currently require these firms to carry *any* insurance, a uniform insurance requirement would do enormous good simply by ensuring that these toxic firms carried insurance as well.

⁶⁹ Tying the insurance requirement to a firm's asset level avoids the need to index for inflation or make other changes. As the firms grow, their insurance should grow with them.

⁷⁰ See *Rule 4111 Frequently Asked Questions*, FINRA, <https://www.finra.org/rules-guidance/key-topics/protecting-investors-from-misconduct#:~:text=Firms%20with%20a%20Significant%20History%20of%20Misconduct,-FINRA%20Rule%204111&text=Rule%204111%20allows%20FINRA%20to,numeric%2C%20threshold%2Dbased%20criteria> (last visited Aug. 29, 2024) (explaining that the “rule allows FINRA to impose new obligations on broker-dealers with significantly higher levels of risk-related disclosures than other similarly sized peers, based on numeric, threshold-based criteria”).

2. Functioning Insurance Markets Price Risk And Reduce Misconduct

Insurance coverage requirements may generate a range of benefits. At the outset, coverage requirements may reduce prices for insured firms by mandating participation. By requiring all firms to procure insurance, risk pools expand—allowing insurance companies to offer coverage at lower prices through economies of scale.

Well-functioning insurance markets also spread risk across firms. Firms hiring financial advisers may not always be able to determine which advisers will generate liability and which ones will not.⁷¹ By requiring the entire industry to maintain insurance, the cost of financial adviser misconduct gets spread across many different firms.

Yet insurance requirements offer another benefit—the ability to price and limit known risks. To the extent that certain firms or individuals pose greater risks to the public—insurance companies now use that information to price their coverage.⁷² Since insurance companies charge more for hiring these high-risk individuals, an insurance requirement may disincentivize firms from hiring them or, at minimum, spread the risk of their bad behavior. These coverage requirements also force riskier firms to internalize the risk their operations create.

For insurance to provide the most benefit, it must cover every financial adviser working with the public. At present, some insurance companies write policies for financial services firms that exclude specific financial advisers from coverage because of identified risks associated with the individual.⁷³ This creates a gap in coverage for those most likely to create harm.⁷⁴

Requiring firms to procure coverage for these higher-risk advisers would generate real benefits. To the extent that a particular financial adviser is too costly to insure, the insurance market may protect the public more swiftly than a regulatory bar by excluding the individual from the industry.

3. Insurance Disclosure

Insurance disclosure requirements may also ensure that investors benefit from coverage. A good disclosure rule would require all investment advisors and

⁷¹ Pricing financial adviser risk may be challenging because of how much complaint data has been expunged from public records. See Benjamin P. Edwards, *Adversarial Failure*, 77 WASH. & LEE L. REV. 1053 (2020) (detailing how a flawed expungement process led to the deletion of public records about complaints against financial advisers).

⁷² See NASAA, *supra* note 17, at 6 (“[I]n general, a firm may reduce the cost of its policy by excluding a high risk representative from coverage”).

⁷³ *Id.*

⁷⁴ *Id.*

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broker-dealers to disclose to current and prospective clients information about insurance coverage and provide their current and prospective clients with a copy of their policy upon request.⁷⁵ Although this will not ensure that every meritorious claim will be paid, it could keep many harmed investors from going deeper into the hole by pursuing claims against firms unable to pay an award.⁷⁶

Disclosure requirements would also allow more sophisticated investors to select financial advisers with greater coverage. This would allow the market to reward financial advisers for carrying additional insurance. Although this solution would not do much to help unsophisticated clients *ex-ante*, they would be better able to assess their options *ex-post* should a claim arise.

B. Possible Implementation Sources

Although the need for widespread insurance for financial services firms appears clear, no single regulator now possesses the power to mandate insurance across the market. Rather, a range of different overlapping state, federal, and self-regulatory organizations must take steps to introduce insurance requirements.

1. Uniform State Legislation or Regulation

At the outset, states retain substantial influence over financial regulation and directly regulate a subset of investment advisers and brokerage firms.⁷⁷ Although states sometimes chart their own course on securities law issues, they often adopt model legislation and regulations promulgated by the North American Securities Administrator's Association. ("NASAA").⁷⁸ Nevada, for example, even explicitly statutorily directs its state securities regulator to consult NASAA's model regulations when crafting rules.⁷⁹

By acting through NASAA and generating uniform insurance legislation and regulations, state securities regulators can increase the odds states will enact

⁷⁵ In Re: Waiver of Certain Requirements Under K.A.R. 81-14-9 and New Requirement Authorized By K.A.R. 81-14-10 For Disclosure Regarding Insurance Coverage, 2012 WL 5473856, at 2 (Nov. 7, 2012).

⁷⁶ See SAMUELS YOELIN KANTOR LLP, *supra* note 48.

⁷⁷ *Guide to Broker-Dealer Registration*, SEC (Apr. 2008), <https://www.sec.gov/about/reports-publications/divisionsmarketregbdguidehtm#III> (Broker-dealers must "apply for broker-dealer registration with each state [they conduct] business"); Advisers Act Rule, 17 C.F.R. § 275.203A-1(a)(1) (providing that advisers with less than \$90 million in AUM must withdraw their SEC registration and switch to state registration, advisers with between \$100 million and \$110 million in AUM may elect to register with the SEC, and advisers with over \$110 million in AUM must register with the SEC).

⁷⁸ *NASAA Model Act to Protect Vulnerable Adults from Financial Exploitation*, NASAA, <https://www.nasaa.org/industry-resources/senior-issues/model-act-to-protect-vulnerable-adults-from-financial-exploitation/> (last visited Aug. 23, 2024).

⁷⁹ See NEV. REV. STAT. § 90.785(2)(a) (2023).

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insurance requirements covering a significant portion of the industry. Uniform regulation also offers an additional benefit—when states take the same approach, it minimizes the burden for firms operating across multiple state jurisdictions.

NASAA has succeeded in generating widespread investor protection reforms in the past. For example, its model legislation to protect vulnerable adults from exploitation has been adopted in most states.⁸⁰ NASAA adopted the model legislation in 2016, and most states have enacted it in one form or another, providing substantially greater protection to vulnerable adults in adopting states.

2. Securities and Exchange Commission Action

The SEC may act to impose insurance requirements directly on registered investment advisers and indirectly for brokerage firms.⁸¹ The Commission has direct regulatory authority over registered investment advisers with over \$100 million in assets under management.⁸² It also enjoys a degree of direct authority over brokerage firms and substantial flexibility through its oversight of the Financial Industry Regulatory Authority.⁸³

In an ideal world, all investment advisers and broker-dealers should be required to maintain an errors and omissions insurance policy or policies in the aggregate amount of at least two percent of assets under management as a condition of SEC registration. Yet the road to this goal may be complicated because the Supreme Court recently weakened administrative agencies power to regulate.⁸⁴ Under new precedent, courts no longer defer as much to administrative agencies interpreting and applying somewhat ambiguous statutes.⁸⁵ This does not mean that the SEC should stand idle for fear of some possible challenge.

a. Investment Advisers

The SEC enjoys substantial authority to increase insurance coverage and might opt to do so in different ways. To simply impose an insurance requirement, the Commission could make insurance a condition of

⁸⁰ See NASAA, *supra* note 78.

⁸¹ See 15 U.S.C. § 78s(c) (stating that the SEC may by rule “add to, and delete from ... the rules of a self-regulatory organization ... to insure the fair administration of the self-regulatory organization, to conform its rules to requirements of this chapter ... or otherwise in furtherance of the purposes of this chapter”).

⁸² Advisers Act Rule, 17 C.F.R. § 275.203A-1(a)(1).

⁸³ See Benjamin P. Edwards, *Supreme Risk*, 74 FLA. L. REV. 543, 556-60 (2022) (describing the SEC’s power to oversee SRO regulation).

⁸⁴ See *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2265 (2024) (eliminating *Chevron* deference).

⁸⁵ *Id.*

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registration.⁸⁶ Although the law does not explicitly grant the Commission the power to impose an insurance requirement, the Commission would be within its authority to deem carrying insurance “necessary or appropriate in the public interest or for the protection of investors.”⁸⁷

In the alternative, the Commission might use its power to regulate arbitration agreements to impose a coverage requirement. Dodd-Frank gave the SEC the power to impose conditions on arbitration agreements.⁸⁸ Congress explicitly authorized it to “impose conditions or limitations” on arbitration agreements “if it finds that such prohibition, imposition of conditions, or limitations are in the public interest and for the protection of investors.”⁸⁹ As these arbitration agreements often impose significant costs on investors, the SEC may require firms to maintain an insurance backstop ensuring some ability to pay before forcing investors into a costly dispute resolution forum.

At the same time, the Commission might also require investment advisers to make disclosures about their insurance coverage.⁹⁰ Although this power would not allow it to impose a mandate to purchase insurance, it would force firms to notify their clients about their insurance coverage.

The Commission might simultaneously adopt a severable coverage and disclosure requirement to address the risk that a federal court would deem the insurance requirement beyond the scope of the Commission’s authority.

b. Brokerage Oversight

Brokerage regulation may be more flexible because FINRA, an ostensibly private entity, serves as the primary regulator for brokerages under SEC supervision.⁹¹ At present, FINRA does not need congressional authorization to make investor protection rules.⁹² Rather, the self-regulatory

⁸⁶ See § 15 U.S.C.A. 80b-3(c)(1) (West) (“An investment adviser. . . may be registered by filing with the Commission an application . . . containing such of the following information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors”).

⁸⁷ *Id.*

⁸⁸ 15 U.S.C.A. § 78o (West). The Act also grants the SEC authority to impose requirements through self-regulatory organizations, such as FINRA. *Id.*

⁸⁹ 15 U.S.C.A. § 80b-5(f) (West).

⁹⁰ *Id.*

⁹¹ See Edwards, *supra* note 83 at 556-60 (2022) (describing SRO model).

⁹² See *FINRA Rulemaking Process*, FINRA, <https://www.finra.org/rules-guidance/rulemaking-process#:~:text=Following%20SEC%20approval%2C%20FINRA%20issues,and%20announcements%20the%20effective%20date>. (last visited Aug. 23, 2024).

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organization could simply impose an insurance requirement as a condition of membership.⁹³

FINRA also enjoys the power to solve disclosure problems. It maintains a “discovery guide” to facilitate disclosures in securities arbitration.⁹⁴ FINRA could ensure insurance disclosure as well by simply finalizing the disclosure rule it considered in 2018.⁹⁵

As the federal regulator overseeing FINRA, the SEC enjoys power to cause FINRA to amend its rules. It could do so informally through moral suasion or explicitly through its power to amend FINRA’s rules.⁹⁶

Although the primary regulator for brokerage firms, FINRA could also use its authority to improve investment adviser conduct. Investment advisers generally custody assets through FINRA brokerage firms. FINRA could require that brokerage firms only allow third parties such as investment advisers to manage securities accounts for others if they maintain appropriate insurance. Indeed, as explained above, Schwab has already taken this approach on its own initiative.

IV. CONCLUSION

Ultimately, the need for widespread insurance remains clear. Until now, financial services firms have largely succeeded at externalizing the cost of bad financial advice while keeping the profits for themselves. Insurance solves for some of this problem by causing the industry to internalize some of the costs created by misconduct.

This essay charts a path for improving insurance coverage across a financial advice market governed by a broad coalition of regulators. Although the available tools to impose insurance requirements will differ depending on the regulatory actor, the need remains urgent across the market.

⁹³ To its credit, FINRA has taken some measures to cause brokerage firms known to pose heightened risks to keep more cash on hand to protect future creditors. *See* FINRA Rule 4111, Restricted Firm Obligations. These requirements would be more effective alongside insurance.

⁹⁴ *See* FINRA, *supra* note 55.

⁹⁵ *Id.*

⁹⁶ *See* 15 U.S.C.A. § 78s(c) (West).

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

~~VERMONT SECURITIES REGULATIONS (S-2016-01)~~

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CHAPTER 1
TITLE, AUTHORITY, AND DEFINITIONS

V.S.R. § 1-1. Title; Authority.

Regulations V.S.R. § 1-1 through V.S.R. § ~~8-410-26~~ (the “Vermont Securities Regulations”) are promulgated pursuant to the provisions of the Vermont Uniform Securities Act (2002) (the “Act”), codified at Chapter 150, Title 9 of the Vermont Statutes Annotated, and the powers of the commissioner of the Department of Financial Regulation. To the extent any provision or requirements under the Act are not contained within these regulations, such provision is construed as the commissioner’s policy position with respect to the subject of such provision.

V.S.R. § 1-2. Definition of Terms.

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

- (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) “Access person” means:

(1) Any of the investment adviser’s supervised persons:

(A) Who has access to non-public information regarding any client’s purchase or sale of securities, or non-public information regarding the portfolio holdings of any reportable fund, or

(B) Who is involved in making securities recommendations to clients, or who has access to such recommendations that are non-public.

(2) If providing investment advice is the investment adviser’s primary business, all of its directors, officers and partners are presumed to be access persons.

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

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

- (1) Prepaid expenses, deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discounts and expenses, and all other assets of an intangible nature;
- (2) Advances or loans to a controlling person or employee of the investment adviser; and
- (3) Homes, home furnishings, automobiles, and any other personal assets ~~of a sole proprietor~~ that would not be liquidated in the ordinary course of business.

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

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

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

~~(h)~~(i) “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;

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

(A) Tax liens;

(B) Court ordered judgements;

(C) Wage garnishments;

(D) Bank levies; -or

(E) Treasury or refund offsets.

(10) (A) Subdivisions (1)--(89) 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 the applicable 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 the applicable subdivision (8) above;

Instruction to subdivision ~~(10)~~(8C) 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 subdivisions ~~(1)~~-(89) 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;

~~(8)(3) Is subject to court imposed sanctions in the United States or in any foreign jurisdiction within a five (5) year period before such sale due to a conviction on state, federal or international criminal charges for tax evasion or tax fraud, or subject to any of the following in connection with such conviction:~~

~~(A) Tax liens;~~

~~(B)(A) Court ordered judgements;~~

~~(C)(A) Wage garnishments;~~

~~(D)(A) Bank levies; or~~

~~(E)(A) Treasury or refund offsets.~~

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

(i) ~~(k)~~ (k) “Branch office”

(1) “Broker-dealer branch office” has the meaning given to “branch office” in FINRA Rule 3110, including the supplementary materials thereto. 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:

~~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;~~

~~Any location that is the agent's primary residence if all of the following conditions are met:~~

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

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

~~Neither customer funds nor securities are handled at the location;~~

~~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;~~

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

~~Electronic communications are made through the electronic system of the broker-dealer;~~

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

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

~~A list of all residence locations is maintained by the broker-dealer;~~

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

~~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;~~

~~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;~~

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

~~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 combination related shell company” means a shell company that is formed by an entity that is not a shell company

(1) solely for the purpose of changing the corporate domicile of that entity solely within the United States; or

(2) solely for the purpose of completing a business combination transaction (as defined under 17 CFR § 230.165(f)) among one or more entities other than the company itself, none of which is a shell company.

(m) “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.

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

(o) “Chief compliance officer” means a supervised person with the authority and resources to develop and enforce the investment adviser’s policies and procedures. The individual designated to serve as chief compliance officer must be registered as an investment adviser representative and must have the background and skills appropriate for fulfilling the responsibilities of the position.

~~(p)~~(p) “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.

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

~~(q)~~(r) “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-five percent (25%) or more of a class of voting securities or the power to sell or direct the sale of twenty-five percent (25%) 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-five percent (25%) or more of the capital.

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

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

~~(t)~~(u) “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.

~~(u)~~(v) “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)~~(w) “Department” means the Vermont Department of Financial Regulation.

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

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

- (1) Registered, or approved for registration upon notice of issuance, on a national securities exchange;
- (2) Authorized, or approved for authorization upon notice of issuance, for listing on the national market system of the NASDAQ stock market;
- (3) Issued by an investment company registered under The Investment Company Act of 1940;

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

(2) 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.

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

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

(2) In the fiscal year ending immediately before the fiscal year in which the services of the merger and acquisition broker-dealer 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).

~~(4)~~(3) Inflation Adjustment. On the date that is five (5) years after the date of the enactment of this section, and every five (5) years thereafter, each dollar amount in subdivisions (2)(A)-(B) above must be adjusted by:

(A) Dividing the annual value of the Employment Cost Index For Wages and Salaries, Private Industry Workers (or any successor index), as published by the Bureau of Labor Statistics, for the calendar year preceding the calendar year in which the adjustment is being made by the annual value of such index (or successor) for the calendar year ending December 31, ~~2012~~2020; and

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

~~(3)~~(4) Rounding. Each dollar amount determined under subdivision (2) above must be rounded to the nearest multiple of one hundred thousand dollars (\$ 100,000).

~~(4)~~(aa) "Eligible adult" means:

- (1) An individual sixty-five (65) years of age or older; or
- (2) An individual eighteen (18) years of age or older who the reporting person reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests.

~~(5)~~(bb) "Encryption" is the protection of the confidentiality of data by ensuring that only approved users can view the data.

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

~~(7)~~(dd) "FDIC" means the Federal Deposit Insurance Corporation.

~~(8)~~(ee) "Financial exploitation" means:

- (1) The wrongful or unauthorized taking, withholding, appropriation, or use of money, assets or property of an eligible adult; or
- (2) Any act or omission taken by a person, including through the use of a power of attorney, guardianship, or conservatorship of an eligible adult, to:

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

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

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

~~(m)~~(gg) "GAAP" means Generally Accepted Accounting Principles in the United States.

~~(n)~~(hh) "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.

~~(e)~~(ii) "IARD" means the NASAA Investment Adviser Registration Depository.

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

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

- (2) Does not control, is not controlled by, and is not under common control with the investment adviser; and
- (3) Does not have, and has not had within the past two (2) years, a material business relationship with the investment adviser.

~~(q)~~(kk) “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.

(ll) “Information security” means the protection of investor and firm information, including both physical and electronic records, and data including protection against unauthorized access, disclosure, use, alteration or disruption.

~~(r)~~(mm) “Insolvent” shall have the same meaning as in 9A V.S.A. § 1-201(b)(23), and, in addition, in the case of broker-dealers, a broker-dealer shall be deemed insolvent if it does not demonstrate compliance with the SEC’s net capital rule (17 CFR § 240.15c3-~~31~~) or with the SEC’s customer protection rule (17 CFR § 240.15c3-3).

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

~~(t)~~(oo) “Investment supervisory services” for purposes of V.S.R. § 7-2 (Recordkeeping Requirements for Investment Advisers) means the giving of continual advice about the investment of funds on the basis of each client’s individual needs.

~~(u)~~(pp) “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.

~~(v)~~(qq) “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 the broker-dealer reasonably believes that:

- (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:
 - (A) 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
 - (B) 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 with the assets of the eligible privately held company, including without limitation, for example, by
 - (i) electing executive officers;
 - (ii) approving the annual budget; or
 - (iii) serving as an executive or other executive manager; and
- ~~(1)~~(2) if any person is offered securities in exchange for securities or assets of the eligible privately held company, such person will, 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~~ the management of the issuer 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.

~~(w)~~(rr) “NASAA” means the North American Securities Administrators Association, Inc.

~~(x)~~(ss) “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.

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

~~(z)~~(uu) “NCUA” means the National Credit Union Administration.

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

~~(ww)~~ “Office of Supervisory Jurisdiction” or “OSJ” has the meaning given to that term in FINRA Rule 3110, including the supplementary materials thereto.

~~(bb)~~(xx) “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.

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

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

~~(ee)~~(aaa) “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.

~~(ff)~~(bbb) “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.

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

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

~~(2) Has no or nominal operations; and~~

~~(3) Has:~~

~~(A) No or nominal assets;~~

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

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

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

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

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

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

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

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

~~(jj)(eee)~~ “Qualified individual”, as used in V.S.R. § 8-34 (Protection of Vulnerable Adults from Financial Exploitation) means any broker-dealer agent, investment adviser representative or person who serves in a supervisory, compliance, or legal capacity for a broker-dealer or investment adviser.

~~(kk)(fff)~~ “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).

~~(ll)(ggg)~~ “Registrant” means a person registered under the Act.

(hhh) “Residential supervisory location” or “RSL” means a location designated by a broker-dealer as a residential supervisory location in accordance with, and subject to ongoing compliance with, FINRA Rule 3110.19.

~~(mm)~~(iii) “Sales and advertising literature” means the following, if intended for distribution to prospective investors:

- (1) Any advertisement, pamphlet, circular, brochure, form letter, or other written or electronic sales literature or material; and
- (2) Any script for an oral advertisement or promotional effort.

~~(nn)~~(jjj) “SCOR” means Small Company Offering Registration.

~~(oo)~~(kkk) “SEC” means the U.S. Securities and Exchange Commission.

(lll) “Shell Company” means a company that at the time of a transaction with an eligible privately held company

(1) has no or nominal operations; and

(2) 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.

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

~~(qq)~~(nnn) “Sponsor” of a wrap fee program as used in V.S.R. § 7-67~~(ba)~~(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.

(ooo) “Supervised person” means any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the

investment adviser and is subject to the supervision and control of the investment adviser. The definition includes investment adviser representatives, employees, independent contractors, or other associated persons and supervised personnel, or other person acting on the behalf of the investment adviser.

~~(#)~~(ppp) “Third party portal” means an entity engaging in activities limited to operating an internet website or platform effecting securities transactions.

~~(ss)~~(qqq) “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).

~~(tt)~~(rrr) “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.

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

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

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

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

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

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

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

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

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

- (4) Any natural person who had an individual income in excess of one hundred thousand dollars (\$ 100,000) in each of the two (2) most recent years or joint income with that person's spouse in excess of one hundred fifty thousand dollars (\$ 150,000) in each of those years and has a reasonable expectation of reaching the same income level in the current year;
- (5) Any trust, with total assets between two million five hundred thousand dollars (\$ 2,500,000) and five million dollars (\$ 5,000,000), not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in 17 C.F.R. § 230.506(b)(2)(ii); and
- (6) Any entity in which all of the equity owners are Vermont certified investors.

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

~~(ww)~~(uuu) “Wrap fee program” means an advisory program under which one (1) or more specified fees, not based directly upon transactions in a client’s account, are charged for

investment advisory services and the execution of client transactions. The investment advisory services may include portfolio management or advice concerning the selection of other investment advisers.

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

CHAPTER 2 INCORPORATION BY REFERENCE

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

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

- (1) The Commodity Exchange Act - 7 U.S.C. § 1 through § 27f;
- (2) Registration and Financial Requirements; Risk Assessment - 7 U.S.C. §6f;
- (3) Schedule of Information Required in Registration Statement - 15 U.S.C. §77aa;
- (4) Definitions; Promotions of Efficiency, Competition, and Capital formation - 15 U.S.C. § 77b;
- (5) Classes of Securities under this Subchapter - 15 U.S.C. § 77c;
- (6) Exempted Transactions - 15 U.S.C. § 77d;
- (7) Prohibitions Relating to Interstate Commerce and the Mails - 15 U.S.C. § 77e;
- (8) Fraudulent Interstate Transactions - 15 U.S.C. § 77q;
- (9) Exemption from State Regulation of Securities Offerings - 15 U.S.C. § 77r;
- (10) Definitions and Application - 15 U.S.C. § 78c;
- (11) National Securities Exchanges - 15 U.S.C. § 78f;
- (12) Manipulative and Deceptive Devices - 15 U.S.C. § 78j;
- (13) Trading by Members of Exchanges, Brokers, and Dealers - 15 U.S.C. § 78k;
- (14) Registration Requirements for Securities - 15 U.S.C. § 78l;

- (15) Periodical and Other Reports - 15 U.S.C. § 78m;
- (16) Registration and Regulation of Brokers and Dealers - 15 U.S.C. § 78o;
- (17) Investment Company Act of 1940 - 15 U.S.C. § 80a-1 et seq.;
- (18) Definition of Investment Company - 15 U.S.C. § 80a-3;
- (19) Subclassification of Management Companies - 15 U.S.C. § 80a-5;
- (20) Registration of Investment Advisers - 15 U.S.C. § 80b-3;
- (21) Prevention of Misuse of Nonpublic Information - 15 U.S.C. § 80b-4a;
- (22) Investment Advisory Contracts - 15 U.S.C. § 80b-5;
- (23) Prohibited Transactions by Investment Advisers - 15 U.S.C. § 80b-6;
- (24) Validity of Contracts - 15 U.S.C. § 80b-15;
- (25) Exemption from Tax on Corporations, Certain Trusts, Etc. - 26 U.S.C. § 501;
- (26) Special Rules for Credits and Deductions - 26 U.S.C. § 642;
- (27) Charitable Remainder Trusts - 26 U.S.C. § 664; and
- (28) Employee Retirement Income Security Act Definitions - 29 U.S.C. § 1002.

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

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

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

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

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

- (1) Broker-Dealer Credit Account - 12 C.F.R. § 220.7;
- (2) Accountants' Reports and Attestations - 17 C.F.R. § 210.2-02;
- (3) Communications Not Deemed a Prospectus - 17 C.F.R. § 230.134;
- (4) Intrastate Offers and Sales - 17 C.F.R. § 230.147;
- (5) Conditional Small Issues Exemption - 17 C.F.R. §§ 230.251 et seq.;
- (6) Rules Governing the Limited Offer and Sale of Securities Without Registration Under the Securities Act of 1933 - 17 C.F.R. §§ 230.501 et seq.;
- (7) Form S-1, Registration Statement under the Securities Act of 1933 - 17 C.F.R. § 239.11;
- (8) Hypothecation of Customers' Securities - 17 C.F.R. § 240.8c-1;
- (9) Employment of Manipulative and Deceptive Devices - 17 C.F.R. § 240.10b-5;
- (10) Confirmation of Transactions - 17 C.F.R. § 240.10b-10;
- (11) Exemptions for American 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) Regulation Best Interest - 17 C.F.R. § 240.15l-1;
- (14)(15) Records to be Made by Certain Exchange Members, Brokers, and Dealers - 17 C.F.R. § 240.17a-3;
- (15)(16) Records to be Preserved by Certain Exchange Members, Brokers, and Dealers - 17 C.F.R. § 240.17a-4;
- (16)(17) Reports to be Made by Certain Brokers and Dealers - 17 C.F.R. § 240.17a-5;
- (17)(18) Notification Provisions for Brokers and Dealers - 17 C.F.R. § 240.17a-11;

~~(18)~~(19) Distribution of Shares by Registered Open-End Management Investment Company - 17 C.F.R. § 270.12b-1;

~~(19)~~(20) Venture Capital Fund Defined - 17 C.F.R. § 275.203(l)-1;

~~(20)~~(21) Private Fund Adviser Exemption - 17 C.F.R. § 275.203(m)-1;

~~(21)~~(22) 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 Investment Adviser Marketing - 17 C.F.R. § 275.206(4)-1.

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

- (1) Duties and Conflicts - FINRA Rules § 2000;
- (2) Supervision and Responsibilities Relating to Associated Persons - FINRA Rules § 3000; and
- (3) Books, Records, and Reports - FINRA Rules § 4500.

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

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

- (a) Form 1-A: Regulation A Offering Statement Under the Securities Act of 1933;
- (b) Form ADV: Uniform Application for Investment Adviser Registration;
- (c) Form ADV-W: Uniform Request for Withdrawal of Investment Adviser Registration;
- (d) Form BD: Uniform Application for Broker-Dealer Registration;
- (e) Form BDW or BD-W: Uniform Request for Withdrawal from Registration as a Broker-Dealer;
- (f) Form BR: Uniform Branch Office Registration Form;

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

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

- (a) NASAA Statements of Policy Regarding Church Bonds;

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

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

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

(e) NASAA Statement of Policy Regarding Debt Securities;

(f) NASAA Statement of Policy Regarding Real Estate Investment Trusts; and

(g) NASAA Resolution Declaring Blank Check Blind Pool Offerings to be Fraudulent Practices.
(d) -

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

CHAPTER 3

REGISTRATION OF BROKER-DEALERS AND AGENTS

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

(a) General Provisions.

- (1) An applicant must be at least eighteen (18) years of age. If the applicant is not an individual, then the directors, officers, and managing partners of the applicant must be at least eighteen (18) years of age.
- (2) An agent must not register in association with more than one (1) broker-dealer or issuer at any time, unless management and control of the broker-dealers or issuers are substantially identical. If an agent is associated with or employed by more than one (1) broker-dealer or issuer (i.e., this is predicated on management and control of each such broker-dealer or issuer being substantially identical), then each such broker-dealer or issuer must be duly registered or exempt from registration, and the agent must be registered separately for each such broker-dealer or issuer.
- (3) Supervision: Every registered broker-dealer must employ at its principal office and at each office of supervisory jurisdiction (~~OSJ~~) in this state, at least one person designated to act in a supervisory capacity, who is registered as an agent in this state and has satisfied the supervisory examination requirements of FINRA. If a broker-dealer determines it is necessary to designate one person to act in a supervisory capacity for more than one office of supervisory jurisdiction, the broker-dealer may

do so if the supervision complies with applicable FINRA Rules, including FINRA Rule 3110.03. For any other office in this state, not designated as an ~~OSJ~~office of supervisory jurisdiction, a supervisor must be designated to supervise the office; however, the supervisor need not be located in this state, but must be registered in this state as an agent and satisfy the supervisory examination requirements of FINRA.

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

- (4) A broker-dealer must have at least one (1) agent registered in Vermont.
- (5) An applicant must be an approved FINRA member, unless exempt from FINRA registration.
- (6) An applicant not domiciled in Vermont must be registered with the securities administrator of the state in which it is domiciled.

(b) Registration Requirements for Broker-Dealers.

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

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

- (i) A completed Form BD;
- (ii) The filing fee specified in 9 V.S.A. § 5410(a);
- (iii) A Form BR for every broker-dealer branch office in Vermont as defined in V.S.R. § 1-2(j), and the filing fee specified in 9 V.S.A. § 5410(a); and
- (iv) Any reasonable fee charged by FINRA for filing with the CRD system.

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

- (i) A completed Affidavit of Broker-Dealer Activity Form; and
- (ii) For applicants that have been in business longer than six (6) months, a copy of the firm's most recent FOCUS report (Parts I and II or IIA). For those applicants that are in the process of FINRA membership but not yet approved, the firm's most recent trial balance,

balance sheet, supporting schedules and computation of capital as filed with FINRA; and

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

- (2) Initial Application for Non-FINRA Members. Non-FINRA member broker-dealers must file all materials listed in subdivisions (1)(A) and (B) above directly with the commissioner and must comply with all requirements of this chapter. In lieu of a FOCUS report, non-FINRA member applicants must provide audited financial statements for the applicant's most recent fiscal year and interim financial statements that may be unaudited for the current fiscal year through the most recently completed fiscal quarter. The financial statements must include a statement of financial condition and disclosure of net capital or a supplemental schedule of net capital, as required by V.S.R. § 3-3(b).
- (3) Effective Date of Registration. A registration will be effective forty-five (45) calendar days after the applicant files a complete application unless approved earlier by the commissioner. If the commissioner gives written notice of deficiencies in the application, the application will not be considered complete until the applicant resolves all deficiencies.
- (4) Expiration and Annual Renewal of Registration. Broker-dealer registration expires on December 31 of every year, regardless of when the application was approved. A broker-dealer must file an application for renewal prior to the CRD filing deadline or, if the broker-dealer is not a FINRA member, by December 15 of each year. An application for renewal must include the filing fee specified in 9 V.S.A. § 5410(a) and any reasonable fee charged by FINRA for filing with the CRD system.
- (5) Updates and Amendments. A broker-dealer must file an amendment to Form BD with the CRD or, if the broker-dealer is not a FINRA member, with the commissioner whenever there is any material change to its last filed Form BD within thirty (30) calendar days of the material change. A material change includes but is not limited to:
 - (A) A change in firm name, ownership, management, or control of a broker-dealer, or a change in any of its partners, officers, or persons in similar positions; a change of business address; or the creation or termination of a broker-dealer branch office in Vermont;

- (B) A change in the type of entity, general plan, or nature of a broker-dealer's business, method of operation, or type of securities in which it is dealing or trading;
 - (C) Insolvency, dissolution, liquidation, or a material adverse change or impairment of working capital, or noncompliance with the minimum net capital as required by V.S.R. § 3-3(d);
 - (D) Termination of business or discontinuance of activities as a broker-dealer;
 - (E) The filing of a criminal charge or civil action against a registrant, or a partner or officer, in which a fraudulent, dishonest, or unethical act is alleged or a violation of a securities law is involved; or
 - (F) The entry of an order or proceeding by any court or administrative agency against a registrant denying, suspending, or revoking a registration, or threatening to do so, or enjoining the registrant from engaging in or continuing any conduct or practice in the securities business.
- (6) Withdrawing from Active Registration. A broker-dealer that voluntarily terminates an active registration in Vermont must file the Form BDW with the CRD or, if the broker-dealer is not a FINRA member, with the commissioner within thirty (30) calendar days of such termination.
- (A) Effective Date. Registration termination is effective thirty (30) calendar days after filing of the Form BDW or within such shorter period of time as the commissioner may determine. When a proceeding to revoke, suspend, or impose conditions upon termination is pending or instituted within sixty (60) calendar days after the Form BDW is filed, the termination becomes effective at such time and upon satisfaction of such conditions as the commissioner determines by order.
 - (B) Post-Effective Action. The commissioner may institute a revocation or suspension proceeding under 9 V.S.A. § 5412 up to one (1) year after voluntary termination becomes effective and enter a revocation or suspension order as of the last date on which registration is effective.
- (7) Withdrawn Applications. An applicant for broker-dealer registration that voluntarily withdraws their application must immediately file Form BDW with the CRD or, if the broker-dealer is not a FINRA member, with the commissioner. Such withdrawal is effective upon filing.
- (8) Abandoned Applications. If an applicant for registration as a broker-dealer does not respond in writing within sixty (60) calendar days after receiving a written inquiry or

deficiency letter from the commissioner or the applicant takes no action on a pending application and fails to communicate in writing with the commissioner for sixty (60) calendar days, the commissioner will deem the application abandoned. An applicant must file a new, complete application, as well as the appropriate filing fee to obtain further consideration of an abandoned application.

(c) Registration Requirements for Agents.

(1) Initial Application for Broker-Dealer Agents.

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

- (i) A complete Form U-4;
- (ii) The filing fee specified in 9 V.S.A. § 5410(b);
- (iii) Any reasonable fee charged by FINRA for filing with the CRD system; and

(iv) Unless exempted by subsections (v) – (vii), proof of a valid passing score on

I. the Series 63/Uniform Securities Agent State Law Examination (“Series 63 Examination”) or the Series 66/Uniform Combined State Law Examination (“Series 66 Examination”); and the appropriate FINRA qualification examination(s). Agents registered in Vermont as of June 30, 2016 are exempt from the Series 63 examination requirement.

II. all relevant examinations required by FINRA and accepted by Vermont.

(v) Any individual who has been registered as an agent in any state within two years from the date of filing an application for registration shall not be required to retake the examinations in subsection (iv) to be eligible for registration.

(vi) Any individual who is not registered as an agent in any state for more than two years but less than five years, who was registered as an agent in at least one jurisdiction for at least one year immediately preceding the termination of the agent registration, who has elected to participate in the FINRA Maintaining Qualifications Program pursuant to FINRA Rule 1240(c), and whose appropriate FINRA qualifying

examinations remain valid pursuant to effective participation in the MQP program shall be deemed in compliance with the examination requirements of subsection (iv)(I) as long as the individual elects to participate in the NASAA Examination Validity Extension Program within two years of agent registration termination.

(vii) Any individual who has not been registered as an agent in any state for more than two years but less than five years, who has elected to participate in the FINRA Maintaining Qualifications Program pursuant to FINRA Rule 1240(c), and whose appropriate FINRA qualifying examinations remain valid pursuant to effective participation in the FINRA Maintaining Qualifications Program shall be deemed in compliance with the examination requirements of subsection (iv)(II).

~~(iv)~~(viii) Successful participation in the FINRA Maintaining Qualifications Program shall not extend the Series 66 Examination for purposes of investment adviser representative registration.

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

(2) Initial Application for Issuer Agent Registration.

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

- (i) A completed Form U-4;
- (ii) The filing fee specified in 9 V.S.A. § 5410(b);
- (iii) A passport sized photo of the applicant.

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

(4) **Expiration and Annual Renewal of Registration.** Agent registration expires on December 31 of every year, regardless of when the application was approved. An application for renewal must be filed prior to the CRD filing deadline or, if the broker-dealer or issuer is not a FINRA member, by December 15. An application for

renewal must include the filing fee specified in 9 V.S.A. § 5410(b) and any reasonable fee charged by FINRA for filing with the CRD system.

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

- (A) Registrant's name;
- (B) Residential address;
- (C) Office of employment address; and
- (D) Matters disclosed in the "disclosure questions" portion of Form U-4.

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

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

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

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

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

- (8) Abandoned Applications. Each application that has been on file for sixty (60) calendar days without any action taken by the applicant will be considered withdrawn and abandoned. If a broker-dealer or issuer does not respond on behalf of an applicant for agent registration in writing within sixty (60) calendar days after receiving a written

inquiry or deficiency letter from the commissioner or the broker-dealer takes no action on a pending application and fails to communicate in writing with the commissioner for sixty (60) calendar days, the commissioner will deem the application abandoned. A broker-dealer must file a new, complete application to obtain further consideration of an abandoned application.

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

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

- (a) Unethical Conduct. “Dishonest or unethical practices,” as used in 9 V.S.A. § 5412(d)(13) includes but is not limited to the conduct listed in subsections (e)-(j) 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)~~, and (j) below.
- (c) General Standard of Conduct. Broker-dealers and agents must observe high standards of commercial honor and just and equitable principles of trade in conducting their business. Particular attention should be given to actual conflicts of interest and the appearance of conflicts with respect to broker-dealers and agents and the customers of such broker-dealers and agents, as well as how the broker-dealers and agents handle any such conflicts.
- (d) Conduct Rules. A registered broker-dealer or agent must comply with any applicable fair practice or ethical standard promulgated by FINRA, the SEC, the CFTC or a self-regulatory organization approved by either the SEC or the CFTC, or any other governmental regulatory body or their approved self-regulatory organization.
- (e) Prohibited Conduct. Sales and Business Practices. A broker-dealer and/or agent must adhere to the following practices in conducting their business. For purposes of this subsection (e), a security includes any security as defined by 9 V.S.A. § 5102(28) or 15 U.S.C. § 77b.
- (1) Delays in Execution, Delivery, or Payment. A broker-dealer must not engage in a pattern of unreasonable and unjustifiable delays in execution of orders, liquidation of customers’ accounts, delivery of securities purchased by any of the broker-dealer’s customers, or in the payment upon request of free credit balances reflecting completed transactions of any of its customers.
 - (2) Excessive trading. A broker-dealer or agent must not engage in trading or otherwise induce trading of securities in a customer’s account that is excessive in size or frequency in view of the financial resources and character of the account.

- (3) **Unsuitable Recommendations.** A broker-dealer or agent must not recommend to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that the transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation, risk tolerance, financial and other needs, and any other relevant information known by the broker-dealer or agent.
- (4) **Unauthorized Trading.** A broker-dealer or agent must not execute a transaction on behalf of a customer without authorization to do so.
- (5) **Improper Use of Discretionary Authority.** A broker-dealer or agent must not exercise any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders.
- (6) **Failure to Obtain Margin Agreement.** A broker-dealer or agent must not execute or clear any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account.
- (7) **Failure to Segregate.** A broker-dealer must not hold securities carried for the account of any customer that have been fully paid for or that are excess margin securities, unless the securities are segregated and identified by a method that clearly indicates the interest of the customer in those securities.
- (8) **Improper Hypothecation.** A broker-dealer must not hypothecate a customer's securities beyond its own interest in such securities unless the customer properly executed written consent, except as permitted by 17 C.F.R. § 240.8c-1 or 17 C.F.R. § 240.15c2-1.
- (9) **Unreasonable Charges.** A broker-dealer or agent must not:
 - (A) Enter into a transaction with or for a customer at a price not reasonably related to the current market price of the security;
 - (B) Receive an unreasonable commission or profit; or
 - (C) Charge unreasonable and inequitable fees for services performed, including but not limited to the collection of monies due for principal, dividends, or interest; exchange or transfer of securities; appraisals; safekeeping or custody of securities; and other miscellaneous services related to the broker-dealer's securities business.
- (10) **Failure to Timely Deliver Prospectus.** By the date of confirmation of the transaction, a broker-dealer or agent must deliver a final prospectus or a preliminary

prospectus and additional documentation that includes all information set forth in the final prospectus to a customer purchasing securities in an offering.

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

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

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

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

- (A) Effecting any transaction in a security that involves no change in its beneficial ownership;
- (B) Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of the same security for substantially the same volume, time, and price have been or will be entered for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security. However, nothing in this subdivision prohibits a broker-dealer from entering bona fide agency cross transactions for the broker-dealer's customers;
- (C) Effecting, alone or with one (1) or more other persons, a series of transactions in any security creating actual or apparent active trading in the security or raising or depressing the price of the security for the purpose of inducing the purchase or sale of the security by others;
- (D) Engaging in general solicitation and using aggressive, high-pressure, or deceptive marketing tactics to affect the market price of the security; and

- (E) Using fictitious or nominee accounts.
- (15) Guarantees against Loss. A broker-dealer or agent must not guarantee a customer against loss in any securities account of the customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer or agent.
- (16) Deceptive Advertising. A broker-dealer or agent must not use any advertising or sales presentation in a manner that is deceptive or misleading, including the following:
 - (A) Using words, pictures, or graphs in an advertisement, brochure, flyer, or display to present any nonfactual data or material; any conjecture, unfounded claims or assertions, or unrealistic claims or assertions; or any information that supplements, detracts from, supersedes or defeats the purpose or effect of any prospectus or disclosure; and
 - (B) Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind that purports to report any transaction as a purchase or sale of any security unless the broker-dealer or agent believes that the transaction was a bona fide purchase or sale of the security or that purports to quote the bid price or asked price for any security unless the broker-dealer or agent believes that the quotation represents a bona fide bid for or offer of the security.
- (17) Failure to Disclose Conflicts of Interest. A broker-dealer or agent must disclose to any customer that the broker-dealer is controlled by, controlling, affiliated with, or under common control with the issuer of a security that is offered or sold to the customer. The disclosure must be made before entering into any contract with or for the customer for the purchase or sale of the security, and if the disclosure is not made in writing, the disclosure must be supplemented by the giving or sending of written disclosure before the completion of the transaction.
- (18) Withholding Securities. A broker-dealer must make a bona fide public offering of all of the securities allotted to the broker-dealer for distribution, whether acquired as an underwriter, as a selling group member, or from a member participating in the distribution as an underwriter or selling group member. The following are examples of prohibited conduct without limit:
 - (A) Parking or withholding securities; and
 - (B) Transferring securities to a customer, another broker-dealer, or a fictitious account with the understanding that those securities will be returned to the broker-dealer or the broker-dealer's nominees.

- (19) **Failure to Respond to Customer.** Upon reasonable request, a broker-dealer or agent must deliver to a customer information to which the customer is entitled. A broker-dealer or agent must respond to a formal written request or complaint by or from a customer within fourteen (14) calendar days.
- (20) **Misrepresenting the Possession of Nonpublic Information.** A broker-dealer or agent must not falsely lead a customer to believe that the broker-dealer or agent is in possession of material, nonpublic information that would impact the value of a security.
- (21) **Contradictory Recommendations.** A broker-dealer or agent must not engage in a pattern or practice of making contradictory recommendations to different investors of similar investment objectives for some to sell and others to purchase the same security, at or about the same time, if not justified by the particular circumstances of each investor.
- (22) **Lending, Borrowing, or Maintaining Custody.** An agent must not lend or borrow money or securities from a customer, or act as a custodian for money, securities, or an executed stock power of a customer.
- (23) **Selling Away.** An agent must not effect a securities transaction that is not recorded on the regular books or records of the broker-dealer that the agent represents, unless the transaction is authorized in writing by the broker-dealer before the execution of the transaction.
- (24) **Fictitious Account Information.** An agent must not establish or maintain an account containing fictitious information or establish or maintain a nominee account in order to execute a transaction which would otherwise be prohibited.
- (25) **Unauthorized Profit-Sharing.** An agent must not share directly or indirectly in the profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer that the agent represents.
- (26) **Commission Splitting.** An agent must not divide or otherwise split the agent's commissions, profits, or other compensation from the purchase or sale of securities with any person who is not also registered as an agent for the same broker-dealer or a broker-dealer under direct or indirect common control.
- (27) **Misrepresenting Solicited Transactions.** A broker-dealer or agent must not mark any order ticket or confirmation as unsolicited if the transaction was solicited.
- (28) **Failure to Provide Account Statements.** A broker-dealer or agent must provide to each customer, for any month in which activity has occurred in a customer's account and at least every three (3) months, a statement of account that contains a value for each over-the counter non-NASDAQ equity security in the account based on the closing market bid

on a date certain, if the broker-dealer has been a market maker in the security at any time during the period covered by the statement of account.

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

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

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

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

(f) **Prohibited Conduct. Over-the-Counter Transactions.** A broker-dealer or agent must not engage in the following conduct in connection with the solicitation of a purchase or sale of an over-the-counter, unlisted non-NASDAQ equity security:

(1) Failing to disclose to a customer, at the time of solicitation and on the confirmation, any and all compensation related to a specific securities transaction to be paid to the agent, including commissions, sales charges, and concessions;

(2) In connection with a principal transaction by a broker-dealer that is a market maker, failing to disclose to a customer, both at the time of solicitation and on the confirmation, the existence of a short inventory position in the broker-dealer's account of more than three percent (3%) of the issued and outstanding shares of that class of securities of the issuer;

(3) Conducting sales contests in a particular security;

(4) Failing or refusing to promptly execute sell orders after a solicited purchase by a customer in connection with a principal transaction;

- (5) Soliciting a secondary market transaction if there has not been a bona fide distribution in the primary market;
- (6) Engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same security; and
- (7) Failing to promptly provide the most current prospectus or the most recently filed periodic report filed under 15 U.S.C. § 78m when requested to do so by the customer.

(g) Prohibited Conduct. Designated Security Transactions.

- (1) Except as specified in subdivision (2), in connection with the solicitation of a designated security, a broker-dealer or agent must not:

(A) Fail to disclose to the customer the bid and ask prices at which the broker-dealer effects transactions of the security with individual retail customers, as well as the price spread in both percentage and dollar amounts at the time of solicitation and on the trade confirmation documents; and

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

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

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

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

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

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

Q. How does the spread relate to my investments?

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

Q. How do I compute the spread?

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

Q. Can I sell at any time?

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

Q. Why did I receive this notice?

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

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

A. If you cannot work the problem out with your broker-dealer you may contact the Securities Division of Vermont's Department of Financial Regulation, the U.S. Securities and Exchange Commission, or the Financial Industry Regulatory Authority.

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

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

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

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

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

(h) Prohibited Conduct. Investment Company Shares.

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

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

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

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

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

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

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

(D) Recommending to a customer the purchase of a specific class of investment company shares in connection with a multiclass sales charge or fee arrangement without reasonable grounds to believe that the sales charge or fee

arrangement associated with the class of shares is suitable and appropriate based on the customer's investment objectives, financial situation, other securities holdings, and the associated transaction or other fees;

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

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

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

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

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

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

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

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

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

(i) Prohibited Conduct. Failure to pay an arbitration award, or attempt to avoid payment of arbitration award, or failure to pay any civil penalty.

(1) A broker-dealer or agent must not fail to pay and fully satisfy any final judgment or arbitration award resulting from an investment-related, customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the customer and the broker-dealer or agent, in writing, and the broker-dealer or agent complies with the terms of the alternative payment arrangement.

(2) A broker-dealer or agent must not attempt to avoid payment of any final judgment or arbitration award resulting from an investment-related, customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the customer and the broker-dealer or agent, in writing, and the broker-dealer or agent complies with the terms of the alternative payment arrangements.

(+)(3) A broker-dealer or agent must not fail to pay and fully satisfy any fine, civil penalty, order of restitution, order of disgorgement, or similar monetary payment obligation imposed upon the broker-dealer or agent by the SEC, the securities or other financial services regulator or any state or province, or any self-regulatory organization.

(j) Prohibited Conduct. The use of a senior specific certification or designation.

(1) A broker-dealer or agent must not use a senior specific certification or designation in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either

directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person. Such use shall be a dishonest and unethical practice in the securities, commodities, investment, franchise, banking, finance, or insurance business within the meaning of the Vermont Uniform Securities Act. The prohibited use of such certifications or professional designation includes, but is not limited to, the following:

(A) Using a certification or professional designation by a broker-dealer or agent who has not earned or is otherwise ineligible to use that certification or designation;

(B) Using a nonexistent or self-conferred certification or professional designation;

(C) Using a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the broker-dealer or agent using the certification or professional designation does not have; and

(D) Using a certification or professional designation that was obtained from a designating or certifying organization that:

i Is primarily engaged in the business of instruction in sales or marketing;

ii Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

iii Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

iv Does not have reasonable continuing education requirements for its designees or certificants to maintain the professional designation or certification.

(2) A rebuttable presumption exists that a designating or certifying organization is not disqualified solely for purposes of subdivision (1)(D) above if the organization has been accredited by:

(A) The American National Standards Institute;

(B) The National Commission for Certifying Agencies; or

(C) 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.

(3) 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 broker-dealer or agent has special certification or training in advising or servicing senior citizens or retirees, the factors to be considered must include:

(A) 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

(B) The manner in which the words are combined.

(4) For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title: (1) Indicates seniority or standing within the organization; or (2) Specifies an individual's area of specialization within the organization. For purposes of this subsection, "financial services regulatory agency" includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. § 5412(d)(13), ~~and~~ 9 V.S.A. § 5501(3) and 8 V.S.A. §§ 15 and 24)

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,~~ and enforce supervisory procedures reasonably designed to assist in detecting violations of, preventing violations of, and achieving compliance with the Act, these regulations, and other applicable laws, regulations, and rules of self-regulatory organizations. In

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

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

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

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

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

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

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

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

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

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

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

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

(d) Minimum Net Capital Requirements.

(1) A broker-dealer must comply with:

(A) 17 C.F.R. § 240.15c3-1; and

(B) 17 C.F.R. § 240.15c3-3.

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

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

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

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

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

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

- (1) Directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties to the transaction;
- (2) Engages on behalf of an issuer in a public offering of any class of securities that is registered, or is required to be registered, with the SEC ~~under 15 U.S.C. § 78o(b)~~ under Section 12 of the Securities Exchange Act of 1934, 15 U.S.C. § 78l 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, other than a business combination related shell company;-
- (4) Directly, or indirectly through any of its affiliates, provides financing related to the transfer of ownership of an eligible privately held company;
- (5) Assists any party to obtain financing from an unaffiliated third party without –
 - i complying with all other applicable laws in connection with such assistance, including, if applicable, Regulation T (12 C.F.R. § 220 et seq.); and
 - ii disclosing any compensation in writing to the party;
- (6) Represents both the buyer and the seller in the same transaction without providing clear written disclosure as to the parties the broker represents and obtaining written consent from both parties to the joint representation.
- (7) Facilitates a transaction with a group of buyers formed with the assistance of the merger and acquisition broker-dealer to acquire the eligible privately held company;
- (8) Engages in a transaction involving the transfer of ownership of an eligible privately held company to a passive buyer or group of passive buyers; or
- (9) Binds a party to a transfer of ownership of an eligible privately held company.

(c) Disqualifications. A merger and acquisition broker-dealer is not exempt from registration under this section if the merger and acquisition broker-dealer is subject to (and if and as applicable, including any officer, director, member, manager, partner, or employee of such merger and acquisition broker-dealer):

- (1) Has been barred from association with a broker or dealer by the SEC, any state, or any self-regulatory organization; or
- (2) Is suspended from association with a broker or dealer.

- ~~(1) Suspension or revocation of registration under 15 U.S.C. § 78o(b)(4);~~
- ~~(2) A statutory disqualification described in 15 U.S.C. § 78e(a)(39);~~
- ~~(3) A disqualification under the rules adopted by the SEC under 15 U.S.C. § 77d; or~~
- ~~(4) A final order described in 15 U.S.C. § 78o(b)(4)(H).~~

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

(e) For purposes of V.S.R. § 3-4 and the definition of “merger and acquisition broker-dealer” in V.S.R. § 1-2, the term “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. There is a presumption of control if, upon completion of a transaction, the buyer or group of buyers:

- (1) has the right to vote 25 percent or more of a class of voting securities or the power to sell or direct the sale of 25 percent or more of a class of voting securities; or
- ~~(5)~~(2) in the case of a partnership or limited liability company, has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital.

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

CHAPTER 4 REGISTRATION OF SECURITIES

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

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

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

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

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

(2) Form U-1;

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

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

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

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

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

(f) Reporting Requirements.

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

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

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

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

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

- (b) The commissioner may review any SCOR application in coordination with one (1) or more securities administrators in other states where the issuer filed a SCOR application.
- (c) The commissioner may allow a form of disclosure in a SCOR application other than Form U7, including an application for coordinated review under subsection (b) above, as provided under V.S.R. § 4-1 above.
- (d) The fee set forth in 9 V.S.A. § 5305(b) must accompany a SCOR application.
- (e) The commissioner may require the issuer to file such reports as the commissioner deems appropriate or necessary in such manner and form as may be required by the commissioner.

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

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

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

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

- (1) The issuer or broker-dealer, as applicable, must file a written notice that includes the identity of the issuer and any broker-dealer involved, a description of the transaction, and a statement of the applicable provision of 15 U.S.C. § 77r(b);
- (2) The issuer or broker-dealer, as applicable, must pay the fee provided in 9 V.S.A. § 5302(e) or (f), as applicable; and
- (3) At the request of the commissioner, the issuer or broker-dealer, as applicable, must file with the commissioner any other information or document filed with the SEC.

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

(1) Filing Requirements.

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

day time period falls on a Saturday, Sunday, or a federal or State of Vermont holiday, the due date will be the first business day following that Saturday, Sunday, or such holiday.

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

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

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

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

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

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

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

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

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

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

(4) If an investment company that files a notice under this subsection (c) and the name of the company, portfolio, or series-share class changes, then the investment company must file an additional Form NF for each portfolio or series-share class 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-share class on the new Form NF.

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

(6) Any investment company ~~may~~ shall file notice filings and fees electronically through a centralized securities registration depository or other electronic filing system designated by the commissioner. The depository or system designated by the commissioner must facilitate filings and maintain records in compliance with Vermont law, including the Vermont Public Records Act, and also must maintain secure technology, features, practices and protocols that provide integrity, confidentiality, reliability and availability for filings and records in accordance with Vermont law and standards for filings and records in accordance with Vermont law and standards as determined by the commissioner. Such filing shall be made in accordance with the procedures and controls established by that depository or system and approved by the commissioner. An investment company shall be responsible for any costs and expenses incurred by filing electronically, including any fees charged by the electronic filing system manager.

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

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

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

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

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

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

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

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

(3) Electronic Filing Depository.

(A) Designation. The commissioner designates the EFD to receive and store all Regulation A - Tier 2 Notice Filing Form notice filings and amendments and collect related fees on behalf of the commissioner.

(B) Electronic Filing. Regulation A - Tier 2 Notice Filing Form notice filings and related fees, as well as a Form NF-UIT and related fees for each series of a unit investment trust, must be filed electronically with EFD. In addition, the commissioner, in his or her discretion, may require that any other filings required to be made to the commissioner must be filed electronically with EFD. Any documents or fees required to be filed with the commissioner that are not permitted to be filed with, or cannot be accepted by, EFD must be filed directly with the commissioner.

(C) Electronic Signature. A duly authorized representative of the issuer may affix their electronic signature to the Regulation A - Tier 2 Notice Filing Form 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 5 SECURITIES REGISTRATION EXEMPTIONS

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

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

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

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

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

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

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

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

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

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

- (1) Any offer or sale of a charitable gift annuity within the meaning of and maintained in compliance with 9 V.S.A. §§ 2517-18; or
- (2) Any offer or sale of a security of a fund, other than a charitable gift annuity, that is excluded from the definition of an investment company under 15 U.S.C. § 80a3(c)(10)(B) and which satisfies all of the following:

(A) The fund qualifies as a pooled income fund under section 26 U.S.C. §

642(c)(5) or a charitable remainder annuity trust or a Charitable Remainder Unitrust under 26 U.S.C. § 664(d) and is maintained by an eligible charitable organization.

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

(b) The following persons are exempt from registration and notice filing provisions to the extent their activities are limited to the offer or sale of any security, or the solicitation of a donation, described in V.S.R. § 5-3(a):

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

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

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

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

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

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

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

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

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

(a) Securities Exempt. With respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness, the exemption from registration provided in 9 V.S.A. § 5201(7), applies only where the maximum aggregate amount in cash and other consideration from all sales of securities sold under this exemption within any twelve (12) month period does not

exceed one million dollars (\$ 1,000,000) and where the offer or sale is made without payment of a commission or consulting fee.

- (b) Securities Not Exempt. The offer or sale of a note, bond, debenture, or other evidence of indebtedness by a person described in 9 V.S.A. § 5201(7) who does not qualify for the exemption under subsection (a) above, must be registered under 9 V.S.A. § 5304.
- (c) Notice Information and Requirements. An issuer who qualifies under subsection (a) above must request authorization and file a notice with the commissioner at least thirty (30) calendar days before the first offering or sale under the exemption. Such exemption becomes effective thirty (30) calendar days after a complete filing if the commissioner has not disallowed the exemption. The notice must specify:
 - (1) The material terms of the proposed offer or sale;
 - (2) The identity of the issuer;
 - (3) The amount and type of securities to be sold pursuant to the exemption;
 - (4) A description of the use of proceeds from the offering;
 - (5) The name, business address, and a brief description of the employment responsibilities of each agent who will represent the organization in the offer or sale of the securities in Vermont;
 - (6) Any offering document, prospectus, and/or trust indenture;
 - (7) A consent to service of process (Form U-2 and, if necessary, a Form U-2A);
 - (8) The fee required by 9 V.S.A. § 5305(k); and
 - (9) Any other information requested by the commissioner.
- (d) Sales and Advertising Literature. At least five (5) business days before initial use in Vermont, an issuer or applicant must file a copy of all advertising intended for publication or mass distribution with the commissioner. No advertisement may be published or distributed if the commissioner notifies the issuer not to use such material.
- (e) Scope of the Exemption. The exemption will be effective for a twelve (12) month period commencing after the thirty (30) day period required by subsection (c) above, unless the commissioner deems it effective earlier. An issuer may renew the offering for additional twelve (12) month periods by filing an update to the information required in subsection (c) above and an additional fee as required by 9 V.S.A. § 5305(k).

- (f) Reporting Requirement. Every six (6) months from the date of the first sale, the issuer must file a report with the commissioner containing the number of transactions conducted in Vermont and the amount of securities sold in each transaction.
- (g) "Opt-in" Requirement for Automatic Reinvestment, Renewal, or Rollover Plan. An investor in securities governed by this section may not be enrolled in an automatic reinvestment, renewal, or rollover plan unless the investor affirmatively and in writing "opts-in" to participate in such plan.
- (h) Waiver. The commissioner may waive any term or condition set forth in V.S.R. § 5-4.

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

V.S.R. § 5-5. Church Bond Exemption.

- (a) Exemption. Church bonds and church extension bonds are exempt from registration as long as they comply with this section and the applicable NASAA statements of policy. Accordingly, issuers must apply the NASAA Statements of Policy Regarding Church Bonds and the NASAA Statement of Policy Regarding Church Extension Fund Securities, as applicable, to the proposed offer or sale of such securities. Failure to comply with the provisions of an applicable NASAA Statement of Policy is grounds for disallowance of the exemption from registration provided by 9 V.S.A. § 5201(7).
- (b) Notice Information and Requirements. An issuer who qualifies under this section must request authorization and file a notice with the commissioner at least thirty (30) calendar days before the first offering or sale under the exemption. Such exemption becomes effective thirty (30) calendar days after a complete filing if the commissioner has not disallowed the exemption. The notice must specify:
 - (1) The material terms of the proposed offer or sale;
 - (2) The identity of the issuer;
 - (3) The amount and type of securities to be sold pursuant to the exemption;
 - (4) A description of the use of proceeds from the offering;
 - (5) The name, business address, and a brief description of the employment responsibilities of each agent who will represent the organization in the offer or sale of the securities in Vermont;
 - (6) Any offering document, prospectus, and/or trust indenture;

(7) A consent to service of process (Form U-2 and, if necessary, a Form U-2A) must be included as a part of the notice;

(8) The fee required by 9 V.S.A. § 5305(k); and

(9) Any other information requested by the commissioner.

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

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

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

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

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

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

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

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

(1) Sales are made only to accredited investors;

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

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

(A) In an organizational or developmental stage;

(B) A blank check or shell company; or

(C) In bankruptcy or receivership.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V.S.R. § 5-8. Manual Exemption.

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

- (1) Mergent's Industrial Manual;
- (2) Mergent's International Manual;
- (3) OTCQX Best Market Manual; and
- (4) Any other manual the commissioner designates by order.

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

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

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

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

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

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

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

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

(1) Registers with or is a member of a self-regulatory organization, stock exchange, or the Bureau des Services Financiers in Canada;

(2) Maintains good standing in its provincial or territorial registration and its registration with or membership in a self-regulatory organization, stock exchange, or the Bureau des Services Financiers in Canada; and

(3) Effects or attempts to effect transactions in securities only with or for the following individuals:

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

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

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

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

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

V.S.R. § 5-11. Vermont Crowdfunding.

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

(1) New Offerings.

- (A) An issuer must be either (i) registered with the Vermont Secretary of State; or (ii) authorized to transact business in Vermont by the Vermont Secretary of State;
- (B) Sales of securities must only be made to residents of Vermont;
- (C) All offering and marketing materials must specify the offering is for Vermont residents only;
- (D) An issuer must pay the fee prescribed in 9 V.S.A. § 5305(k); and
- (E) An offering must meet all other requirements of the federal exemption for intrastate offerings pursuant to 17 C.F.R. § 230.147A.

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

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

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

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

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

(1) An issuer may be formed under the laws of any State or the District of Columbia and must be either (i) registered with the Vermont Secretary of State; or (ii) authorized to transact business in Vermont by the Vermont Secretary of State;

(2) An issuer must file the fee prescribed in 9 V.S.A. § 5305(b); and

(3) An offering must meet all other requirements of the federal exemption for limited offerings and sales of securities pursuant to 17 C.F.R. § 230.504.

(d) General Requirements

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

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

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

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

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

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

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

(A) Accredited investors have no individual investment limit;

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

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

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

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

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

(4) Filing Requirements.

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

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

(ii) A copy of the offering document;

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

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

(v) The filing fee prescribed above.

- (5) Effective Date of Offering. Unless the commissioner provides written comment or clears the offering earlier, each offering will be effective fifteen (15) business days after an issuer files all required documents.
- (6) Offering Period. The offering period must not exceed twelve (12) months. An issuer may extend the offering in twelve (12) month increments by renewing its initial filing, including payment of a renewal fee as specified above, unless the minimum offering raise is not met in the first twelve (12) month period.
- (7) Offering Document. An issuer must deliver an offering document to each offeree at least twenty-four (24) hours prior to any sale of securities under this regulation. The offering document does not have a prescribed format; however, an issuer must fully disclose all material information and not make any factual misstatements or omissions. Further, an issuer must attempt to balance any discussion of the potential rewards of the offering with a discussion of possible risks. A duly authorized representative of an issuer must sign the offering document certifying that reasonable efforts were made to verify the material accuracy and completeness of the information contained therein. The offering document must include or attach as exhibits the following financial disclosures, as applicable:
- (i) Issuers with less than one year of operating history must include a balance sheet listing its assets and liabilities. The balance sheet may be unaudited and prepared internally.
 - (ii) Issuers with more than one year of operating history must include balance sheets and income statements for the previous three fiscal years in which they operated. If the issuer's operating history is more than one year but less than three years, balance sheets and income statements for the issuer's entire operating history are required. The balance sheets and income statements may be unaudited and prepared internally.
 - (iii) Issuers issuing preferred stock, bonds, or convertible debt securities must demonstrate a reasonable expectation of being able to pay dividend or interest obligations of the securities. These issuers must include statements of cash flow, balance sheets, and income statements for the three previous fiscal years in which they operated. The financial statements may be unaudited and prepared internally. Issuers with less than three years of operating history are presumptively ineligible to issue preferred stock, bonds, or convertible debt securities under this section. However, the Commissioner may approve such offerings upon a showing of adequate capitalization, sufficient disclosure of risk to investors, or other mitigating factors.

(iv) Notwithstanding the allowances of this subsection, issuers with any level of operating history that are in possession of audited financial forms or forms prepared by a third party must include these forms. If the available audited or third-party forms do not fully cover the time frames or types specified in this subsection, they may be supplemented with internally prepared forms. This subsection does not abrogate the requirement of audited financials found in subsection (d)(1).

~~(7)~~(8) Limitation on Use. The exemptions set forth in subsection (a) and (b) and the registration procedure set forth in (c) shall be unavailable for:

- (A) Offerings involving a bad actor;
- (B) Offerings in which it is proposed to issue debt, stock, or other equity interest in a development stage company without a specific business plan or purpose, or in which an issuer has indicated that its business is to engage in a merger or acquisition with an unidentified company or companies, or other unidentified entities or persons, or without an allocation of proceeds to sufficiently identifiable properties or objectives (i.e., “blind pool” or “blank check” offerings);
- (C) Offerings involving petroleum exploration or production, mining, or other extractive industries; and
- (D) Offerings involving an investment company as defined and classified under 15 U.S.C. § 80a-3(a).

~~(8)~~(9) Antifraud Provisions. Nothing in this section relieves issuers, broker-dealers and their agents, or investment advisers and their representatives from the antifraud and enforcement provisions of the Act, this regulation, federal securities laws, the securities laws of other states or the rules of any government approved self-regulatory organization.

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

~~(10)~~(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, and telephone number ~~and social security number~~ for any of the third party portal's officers, directors, partners, members, twenty percent (20%) shareholders and promoters presently connected with the issuer in any capacity.

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

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

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

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

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

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

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

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

- (E) The fee it charges an issuer for an offering of securities on the Internet site is a fixed amount for each offering, a variable amount based on the length of time that the securities are offered on the Internet site, or a combination of such fixed and variable amounts; and
 - (F) Neither the third party portal, nor any director, executive officer, general partner, managing member, or other person with management authority over the third party portal, is disqualified as a bad actor.
- (3) Federally Registered Broker-Dealers or Funding Portal. A third party portal is not required to register as a broker-dealer under 9 V.S.A. § 5406 if the third party portal is:
- (A) Registered as a broker-dealer under 15 U.S.C. § 78o; or
 - (B) A funding portal registered under 15 U.S.C. § 77d-1 and the SEC has adopted rules under authority of 15 U.S.C. § 78c(h) governing funding portals.
- (4) Records. For a period of five years, the third-party portal must maintain records of all offers and sales of securities effected through the internet site and of all communications that occur on or through the platform. ~~and The third-party portal must~~ provide the commissioner with ready access to the records upon request. The commissioner may access, inspect, and review any internet site registered under ~~this~~ V.S.R. § 5-11(d) as well as its records.

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

CHAPTER 6 COMMUNICATIONS

V.S.R. § 6-1. Prospectus.

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

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

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

(A) Part II of Form 1-A;

(B) Part I of Form S-1;

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

(D) Any other form the commissioner allows.

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

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

V.S.R. § 6-2. Internet Communication.

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

- (1) The internet communication indicates that the security is not being offered to residents of Vermont;
- (2) The internet communication indicates that the security is only being offered to residents of states where the offer is registered or exempt from registration, if the communication originates within Vermont;
- (3) The internet communication is limited to the dissemination of general information on an investment opportunity;
- (4) The internet communication does not result in the rendering of personalized investment advice in states where the offer is registered or exempt;
- (5) The internet communication contains a mechanism designed to prevent residents of states where the offer is not registered or exempt from registration from viewing the full offering materials; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V.S.R. § 6-3. Advertising.

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

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

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

- (1) A statement that the advertisement does not constitute an offer to sell or the solicitation of an offer to buy a security; and
- (2) The name and address of a person from whom a written prospectus can be obtained.

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

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

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

- (1) The issuer is or will be a business entity organized under the laws of, and with a principal place of business in, a State or Territory of the United States, the District of Columbia or a Province of Canada; and
- (2) The offeror intends to register the security or file pursuant to an exemption in Vermont and conduct its offering pursuant to either 15 U.S.C. § 77c(a)(11), 17 C.F.R. § 230.147, 17 C.F.R. § 230.147A, 17 C.F.R. § 230.251(a)(1), or 17 C.F.R. § 230.504

(b) **General Requirements.**

- (1) **Initial Filing.** Twenty-one (21) calendar days prior to the initial solicitation of interest under this rule, the offeror must file with the commissioner:
 - (A) A Solicitation of Interest Form;
 - (B) The script of any broadcast to be made and a copy of any notice to be published; and
 - (C) Any other materials to be used to conduct solicitations of interest.
- (2) **Amendments.** Seven (7) calendar days prior to usage, the offeror must file with the commissioner any amendments to the foregoing materials or additional materials to be used to conduct solicitations of interest, except for materials provided to a particular offeree pursuant to a request by that offeree.
- (3) **Unapproved Materials.** An offeror must not distribute or use any materials that the commissioner denied or did not approve for use to solicit indications of interest.
- (4) **Sales.** During the solicitation of interest period, the offeror must not solicit or accept money, subscription, or commitment to purchase securities.

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

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

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

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

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

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

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

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

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

(2) Extemporaneous Communications. Except for scripted broadcasts and published notices, the offeror does not communicate with any offeree about the contemplated offering unless the offeree is provided with the most current Solicitation of Interest

Form at or before the time of the communication or within seven (7) calendar days from the communication.

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

- (1) Offerings involving a bad actor;
- (2) Offerings in which it is proposed to issue stock or other equity interest in a development stage company without a specific business plan or purpose, or in which the issuer has indicated that its business is to engage in a merger or acquisition with an unidentified company or companies, or other unidentified entities or persons, or without an allocation of proceeds to sufficiently identifiable properties or objectives (i.e., “blind pool” or “blank check” offerings);
- (3) Offerings involving petroleum exploration or production, mining, or other extractive industries; and
- (4) A hedge fund, commodity pool, private equity fund, or similar investment vehicle.

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

- (1) The failure to comply did not pertain to a condition directly intended to protect that particular individual or entity;
- (2) The failure to comply was insignificant with respect to the offering as a whole; and
- (3) A good faith and reasonable attempt was made to comply with all applicable conditions of subsections (b) and (c).

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

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

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

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

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

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

(b) Use of Electronic Offering Documents and Subscription Agreements

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

(A) Each Offering Document:

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

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

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

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

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

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

- (i) Obtains informed consent from the investor or prospective investor to receive Offering Documents electronically;
- (ii) Ensures that the investor or prospective investor receives timely, adequate, and direct notice when an electronic Offering Document has been delivered;
- (iii) Employs safeguards to ensure that delivery of offering documents occurred at or before the time required by law in relation to the time of sale; and
- (iv) Maintains evidence of delivery by keeping records of its electronic delivery of Offering Documents and makes those records available on demand by the ~~Vermont Department of Financial Regulation~~.

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

- (A) Before completion of any Subscription Agreement, the issuer or agent acting on behalf of the issuer must review with the prospective investor all appropriate documentation related to the prospective investment including documents and instructions on how to complete the Subscription Agreement;
- (B) Mechanisms are established to ensure a prospective investor reviews all required disclosures and scrolls through the document in its entirety prior to initialing and/or signing; and
- (C) Unless otherwise allowed by the Department, a single Subscription Agreement is used to subscribe a prospective investor in no more than one offering.

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

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

- (5) Informed consent to receive Offering Documents electronically pursuant to (b)(2)(A) in this section may be obtained in connection with each new offering or globally, either by the issuer or by an agent acting on behalf of the issuer. The investor may revoke this consent at any time by informing the party to whom the consent was given, or, if such party is no longer available, the issuer.
- (6) Investment opportunities shall not be conditioned on participation in the electronic Offering Documents and Subscription Agreements initiative.
- (7) Investors or prospective investors who decline to participate in an electronic Offering Documents and Subscription Agreements initiative shall not be subjected to higher costs—other than the actual direct cost of printing, mailing, processing, and storing Offering Documents and subscription agreements—as a result of their lack of participation in the initiative, and no discount shall be given for participating in an electronic Offering Documents and Subscription Agreements initiative.
- (8) Entities participating in an electronic initiative shall maintain, and shall require participating underwriters, dealer-managers, placement agents, broker-dealers, and/or other selling agents to maintain, written policies and procedures covering the use of electronic Offering Documents and Subscription Agreements.
- (9) Entities and their contractors and agents having custody and possession of electronic Offering Documents, including electronic subscription agreements, shall store them in a non-rewriteable and non-erasable format.
- (10) This section does not change or waive any other requirement of law concerning registration or presale disclosure of securities offerings.

(c) Policy Regarding Use of Electronic Signatures

- (1) An issuer of securities or agent acting on behalf of the issuer may provide for the use of electronic signatures provided:
 - (A) The process by which electronic signatures are obtained:
 - (i) Will be implemented in compliance with the Electronic Signatures in Global and National Commerce Act (“Federal E-Sign”) and the Uniform Electronic Transactions Act, including an appropriate level of security and assurances of accuracy, and where applicable, required state and federal disclosures;
 - (ii) Will employ an authentication process to establish signer credentials;

- (iii) Will employ security features that protect signed records from alteration; and
- (iv) Will provide for retention of electronically signed documents in compliance with applicable laws and regulations, by either the issuer or agent acting on behalf of the issuer;
- (B) An investor or prospective investor shall expressly opt in to the electronic signature initiative, and participation may be terminated at any time; and
- (C) Investment opportunities shall not be conditioned on participation in the electronic signature initiative.
- (2) Entities that participate in an electronic signature initiative shall maintain, and shall require underwriters, dealer-managers, placement agents, broker-dealers, and other selling agents to maintain, written policies and procedures covering the use of electronic signatures.
- (3) An election to participate in an electronic signature initiative pursuant to (c)(1)(B) in this section may be obtained by an issuer in connection with each new offering, or by an agent acting on behalf of the issuer. The investor may revoke this consent at any time by informing the party to whom the consent was given, or, if such party is no longer available, the issuer.

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

CHAPTER 7
INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

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

(a) General Provisions.

- (1) An applicant must be at least eighteen (18) years of age. If the applicant is not an individual, then the directors, officers, and managing partners of the applicant must all be at least eighteen (18) years of age.
- (2) An applicant must register or qualify to engage in business as an investment adviser or investment adviser representative in the State of the applicant's principal place of business.
- (3) An investment adviser must have at least one (1) investment adviser representative registered in Vermont.

(b) Application Requirements for Investment Advisers.

(1) Initial Application.

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

- (i) A complete Form ADV;
- (ii) The fee required by 9 V.S.A. § 5410(c);
- (iii) Any reasonable fee for filing through the IARD/CRD system;
- (iv) A brochure written in accordance with V.S.R. § 7-67(ba), unless the applicant intends to use Part 2A of Form ADV as its brochure; and
- (v) For each investment adviser representative in an investment adviser branch office different than that listed on Form ADV, a Form BR and the branch office registration fee required in 9 V.S.A. § 5410(c).

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

- (i) A copy of the investment adviser's surety bond and Form U-SB, if required under V.S.R. § 7-5(e);
- (ii) The proposed client contract(s) written in accordance with V.S.R. § 73(d)(13);
- (iii) A privacy policy written in accordance with V.S.R. § ~~7-3(d)(13)(B)~~7-6(e);
- (iv) Certification of supervisory procedures written in accordance with V.S.R. § 7-6(a)(2);
- (v) Financial statements that demonstrate compliance with the requirements of V.S.R. § 7-5(d);
- (vi) A completed Affidavit of Investment Adviser Activity Form; and
- (vii) Any other document the commissioner requests.

(2) Annual Requirements.

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

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

(3) Periodic Amendments.

(A) Changes to Form ADV. An investment adviser must file any amendments to the investment adviser's Form ADV with the IARD within thirty (30) days of the event that requires the filing of the amendment. Such changes include occurrences listed in the instructions of Form ADV.

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

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

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

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

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

(c) **Application Requirements for Investment Adviser Representatives.**

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

- (A) A completed Form U-4;
- (B) Proof of compliance by the investment adviser representative with the examination requirements of subdivision (4) below, unless exempt under subdivision (4)(B) below;
- (C) The filing fee required by 9 V.S.A. § 5410(d);
- (D) Any reasonable fee for filing through the IARD/CRD system; and
- (E) A Form BR and the investment adviser branch office registration fee required by 9 V.S.A. § 5410(c) if different than the address listed on the investment adviser's Form ADV, unless the investment adviser filed Form BR on the investment adviser representative's behalf.

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

(3) **Updates and Amendments.**

- (A) **Forms.** Within thirty (30) calendar days of a change to Form U-4 and/or Form BR, each investment adviser representative or associated investment adviser must file:
 - (i) Any amendments to the investment adviser representative's Form U-4 with the IARD/CRD.
 - (ii) File any amendments to the investment adviser representative's Form BR with the IARD/CRD.

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

(4) Examination Requirements for Investment Adviser Representatives.

(A) General Requirements. An individual applying to be registered as an investment adviser representative, unless covered by an exemption or waiver in subsections (B) or (C) below, must provide the commissioner with evidence of a valid passing score on: ~~the appropriate FINRA qualification examinations.~~

(i) the NASAA Uniform Investment Adviser Law Examination (Series 65) within two years of the date of application; or

(ii) (I) the NASAA Uniform Combined State Law Examination (Series 66) and the FINRA General Securities Representative Examination (Series 7) within two years of the date of application, and

(II) the FINRA Securities Industry Essentials Examination (SIE) within four years of the date of application.

~~(A)~~(B) Exemptions.

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

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

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

(ii) Professional Designation. Compliance with subsection (A) is waived if the applicant has been awarded any of the following designations and at the time of filing an application is current and in good standing: 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 of Financial Services, 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) Certified Investment Management Analyst (CIMA) awarded by the Investment & Wealth Institute; or

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

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

(ii) Any individual who has been registered as an investment adviser representative in any state within two years from the date of filing an application for registration shall not be required to retake the examinations in subsection (A) to be eligible for registration.

(iii) An individual whose registration as an investment adviser representative has been terminated for more than two years but less than five years may maintain the validity of their NASAA Uniform Investment Adviser Law Examination (Series 65) or the investment adviser representative portion of the NASAA Uniform Combined State Law Examination (Series 66), as applicable, without being employed by or associated with an investment adviser or federal covered investment adviser if the individual meets all of the following:

(I) The individual previously took and passed the examination for which they seek to maintain validity under this rule;

(II) The individual was registered as an investment adviser representative for at least one year immediately preceding the termination of the investment adviser representative registration;

(III) The individual was not subject to a statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934 while registered as an investment adviser representative or at any period after termination of the registration;

(IV) The person elects to participate in the Exam Validity Extension Program (“EVEP”) under this paragraph within two years from the effective date of the termination of the investment adviser representative registration;

(V) The individual does not have a deficiency under the investment adviser representative continuing education program at the time the investment adviser representative registration becomes ineffective;

(VI) The person completes annually on or before December 31 of each calendar year in which the person participates in the EVEP:

a. six (6) Credits of IAR CE Ethics and Professional Responsibility Content offered by an Authorized Provider, including at least three (3) hours covering the topic of ethics, and

b. six (6) Credits of IAR CE Products and Practice Content offered by an Authorized Provider;

(VII) An individual who elects to participate in EVEP is required to complete credits required by V.S.R. § 7-1(c)(4)(B)(iii)(VI) for each calendar year that elapses after the individual’s investment adviser representative registration became ineffective regardless of when the individual elects to participate in EVEP; and

(VIII) An individual who complies with the FINRA Maintaining Qualification Program under FINRA Rule 1240(c) shall be considered in compliance with V.S.R. § 7-1(c)(4)(B)(iii)(VI)(b).

(iv) As used in V.S.R. § 7-1(c), the terms defined in V.S.R. § 7-1(f) have the meaning set forth in that section.

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

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

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

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

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

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

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

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

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

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

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

(f) Investment Adviser Representative Continuing Education.

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

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

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

(2) Agent of FINRA-Registered Broker-Dealer Compliance. An investment adviser representative who is also registered as an agent of a FINRA member broker-dealer and who complies with FINRA's continuing education requirements is considered to be in compliance with the subrule (1)(B) IAR Products and Practice Requirement for each applicable Reporting Period so long as FINRA continuing education content meets all of the following baseline criteria as determined by NASAA:

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

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

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

(3) Credentialing Organization Continuing Education Compliance. Credits of continuing education completed by an investment adviser representative who was awarded and currently holds a credential that qualifies for an examination waiver under ~~Rule USA 2002-412(e)-1(d)~~ V.S.R. § 7-1(c)(4)(B)(ii) comply with subrules (1)(A) and (1)(B) of this rule provided all of the following are true:

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

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

- (C) The continuing education content provided by the credentialing organization during the relevant Reporting Period is Approved IAR Continuing Education Content.
- (4) IAR Continuing Education Reporting. Every investment adviser representative is responsible for ensuring that the Authorized Provider reports the investment adviser representative's completion of the applicable IAR continuing education requirements.
- (5) No Carry-Forward. An investment adviser representative who completes Credits of continuing education in excess of the amount required for the Reporting Period may not carry forward excess credits to a subsequent Reporting Period.
- (6) Failure to Complete or Report. An investment adviser representative who fails to comply with this rule by the end of a Reporting Period will renew as "CE Inactive" at the close of the calendar year in this state until the investment adviser representative completes and reports all required IAR continuing education Credits for all Reporting Periods as required by this rule. An investment adviser who is CE inactive at the close of the next calendar year is not eligible for investment adviser representative registration or renewal of an investment adviser representative registration.
- (7) Discretionary Waiver by the Commissioner. The ~~Commissioner~~commissioner may, in the ~~Commissioner's~~commissioner's discretion, waive any requirements of this rule.
- (8) Home State. An investment adviser representative registered or required to be registered in this state who is registered as an investment adviser representative in the individual's Home State is considered to be in compliance with this rule provided that both of the following are true:
- (A) The investment adviser representative's Home State has continuing education requirements that are at least as stringent as the NASAA Model Rule on Investment Adviser Representative Education.
- (B) The investment adviser representative is in compliance with the Home State's investment adviser representative continuing education requirements.
- (9) Unregistered Periods. An investment adviser representative who was previously registered under the Act and became unregistered must complete IAR continuing education for all reporting periods that occurred between the time that the investment adviser representative became unregistered and when the person became registered again under the Act unless the investment adviser representative takes and passes the examination or receives an examination waiver as required by Section 7-1(c)(2)(3)(~~C4~~) in connection with the subsequent application for registration.
- (10) Definitions. As used in V.S.R. §§ 7-1(c) and (f), the following terms mean:

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

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

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

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

~~(E)~~ “FINRA” means the Financial Industry Regulatory Authority.

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

~~(G)~~(E) “IAR Ethics and Professional Responsibility Content” means Approved IAR Continuing Education Content that addresses an investment adviser representative’s ethical and regulatory obligations.

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

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

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

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

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

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

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

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

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

(2) Additional Requirements for Private Fund Advisers to Certain 3(c)(1) Funds. In order to qualify for the exemption described in subsection (1a) 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)(1)(A)-(C)~~ above, must comply with the following requirements:

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

(B) At the time of purchase, the private fund adviser must disclose the following in writing to each beneficial owner of a 3(c)(1) fund that is neither a venture capital fund nor a 3(c)(7) fund:

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

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

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

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

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

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

(5) Electronic Filing. The report filings described in subdivision ~~(a)(2)(1)(B)~~ above must be made electronically through the IARD. A report is deemed filed when the report and the fee required by 9 V.S.A. § 5410 are filed and accepted by the IARD on Vermont's behalf.

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

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

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

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. §§ ~~5203~~5403; 5404)

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

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

- (1) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.
- (2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.
- (3) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank, broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated. For purposes of this section, "discretionary power" shall not include discretion regarding the price or the time at which a transaction is to be effected if the client has directed or approved the purchase or sale of a definite amount of a particular security before the order is given by the investment adviser.
- (4) All check books, bank statements, canceled checks and cash reconciliations of the investment adviser.
- (5) All bills or statements (or copies of), paid or unpaid, relating to the investment adviser's business as an investment adviser.
- (6) All trial balances, financial statements prepared in accordance with generally accepted accounting principles, and internal audit working papers relating to the investment adviser's business as an investment adviser. For purposes of this subsection, "financial statements" shall mean a balance sheet ~~prepared in accordance with generally accepted accounting principles~~, an income statement, and a cash flow statement, each of which is prepared in accordance with GAAP and a net worth computation, if applicable, as required by V.S.R. § 7-5(d).
- (7) Originals of all written communications received and copies of all written communications sent by the investment adviser relating to:
 - (A) any recommendation made or proposed to be made and any advice given or proposed to be given,
 - (B) any receipt, disbursement or delivery of funds or securities, or

(C) the placing or execution of any order to purchase or sell any security, provided, however,

(i) that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, and

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

- (8) A list or other record of all accounts which identifies the accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities, or transactions of any client.
- (9) A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser.
- (10) A copy in writing of each agreement entered into by the investment adviser with any client, and all other written agreements otherwise relating to the investment adviser's business as an investment adviser.
- (11) A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser), and if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.
- (12) (A) A record of every transaction in a security in which the investment adviser or any advisory representative (as defined in subdivision 12(B) herein) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except
- (i) Transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and

- (ii) Transactions in securities that are direct obligations of the United States.

The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e. purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(B) For purposes of this subdivision (12), the term "advisory representative" shall mean any partner, officer or director of the investment adviser; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations:

- (i) Any person in a control relationship to the investment adviser;
- (ii) Any affiliated person of a controlling person; and
- (iii) Any affiliated person of an affiliated person.

(C) An investment adviser shall not be deemed to have violated the provisions of this subdivision (12) because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(13) (A) Notwithstanding the provisions of subdivision (12) above, where the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except:

- (i) Transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and
- (ii) Transactions in securities which are direct obligations of the United States.

The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e. purchase, sale, or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(B) An investment adviser is “primarily engaged in a business or businesses other than advising investment advisory clients” when, for each of its most recent three fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived, on an unconsolidated basis, more than 50% of

- (i) Its total sales and revenues, and
- (ii) Its income (or loss) before income taxes and extraordinary items, from such other business or businesses.

(C) For purposes of this subdivision (13), the term “advisory representative”, when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, shall mean any partner, officer, director or employee of the investment adviser who participates in any way in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons, who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of such recommendations or of the information concerning the recommendations:

- (i) Any person in a control relationship to the investment adviser;
- (ii) Any affiliated person of a controlling person; and

(iii) Any affiliated person of an affiliated person.

(D) An investment adviser shall not be deemed to have violated the provisions of this subdivision (13) because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(14) A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of the investment adviser in accordance with the provisions of V.S.R. § 7-67(ab), and a record of the dates that each written statement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

(15) For each client that was obtained by the adviser by means of a solicitor:

(A) Evidence of a written agreement to which the adviser is a party related to the payment of a cash fee or any other economic benefit of such fee;

(B) A signed and dated acknowledgment of receipt from the client evidencing the client's receipt of the investment adviser's disclosure statement and a written disclosure statement of the solicitor; and,

(C) A copy of the solicitor's written disclosure statement. The written agreement, acknowledgment and solicitor disclosure statement will be considered to be in compliance if such documents are in compliance with Rule 275.206(4)-~~3~~1 of the Investment Advisers Act of 1940.

(16) All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including but not limited to electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser); provided, however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this subdivision.

(17) A file containing a copy of all written communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee, and regarding any written customer or client complaint.

(18) Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.

(19) Written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

(20) A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self regulatory organization and that pertains to the registrant or its ~~investment advisory~~ representatives as that term is defined in subdivision (12)(B) of this subsection, which file must contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

(21) Copies, with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form U-4 and each amendment to Disclosure Reporting Pages (DRPs U-4) must be retained by the investment adviser (filing on behalf of the investment adviser representative) and must be made available for inspection upon regulatory request.

(22) Where the adviser inadvertently held or obtained a client's securities or funds and returned them to the client within three business days of receiving them or has forwarded checks drawn by clients and made payable to third parties within three business days of receipt the adviser shall keep the following records:

A ledger or other listing of all securities or funds held or obtained, including the following information:

- (A) Issuer;
- (B) Type of security and series;
- (C) Date of issue;
- (D) For debt instruments, the denomination, interest rate and maturity date;
- (E) Certificate number, including alphabetical prefix or suffix;
- (F) Name in which registered;
- (G) Date given to the adviser;
- (H) Date sent to client, ~~or sender,~~ or third party;

- (I) Form of delivery to client or sender, or third party, or copy of the form of delivery to client, or sender, or third party;
- (J) Mail confirmation number, if applicable, or confirmation by client, ~~or sender,~~ or third party of the fund's or security's return; and
- (K) Date each check was received by the adviser.

(23) If an investment adviser obtains possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving any public offering that comply with the exception from custody under V.S.R. § 7-5(b)(2)(B) the adviser shall keep the following records;

- (A) A record showing the issuer or current transfer agent's name address, phone number -and other applicable contract information pertaining to the party responsible for recording client interests in the securities; and
- (B) A copy of any legend, shareholder agreement or other agreement showing that those securities are transferable only with the prior consent of the issuer or holders of the outstanding securities of the issuer.

(24) A copy of any notice required to be delivered by the Security Breach Notice Act, 9 V.S.A. § 2435.

(b) (1) If an investment adviser has custody, as that term is defined in V.S.R. § 7-5(a), the records required to be made and kept under subsection (a) above shall include:

- (A) A copy of any and all documents executed by the client (including a limited power of attorney) under which the adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the adviser's instruction to the custodian.
- (B) A journal or other record showing all purchases, sales, receipts, and deliveries of securities (including certificate numbers) for all accounts and all other debits and credits to the accounts.
- (C) A separate ledger account for each client showing all purchases, sales, receipts, and deliveries of securities, the date and price of each purchase and sale, and all debits and credits.
- (D) Copies of confirmations of all transactions effected by or for the account of any client.

(E) A record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount or interest of each client, and the location of each security.

(F) A copy of each of the client's quarterly account statements, as generated and delivered by the qualified custodian. If the adviser also generates a statement that is delivered to the client, the adviser shall also maintain copies of such statements along with the date such statements were sent to the clients.

(G) If applicable to the adviser's situation, a copy of the special examination report verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination.

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

(I) If applicable, evidence of the client's designation of an independent representative.

(2) If an investment adviser has custody because it advises a pooled investment vehicle, as defined in V.S.R. § 7-5(a)(1)(C), the adviser shall also keep the following records:

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

(B) Where the adviser complies with V.S.R. § 7-5(b)(2)(C) the records required to be made and kept shall include:

(i) The date(s) of the audit;

(ii) A copy of the audited financial statements; and

(iii) Evidence of the mailing of the audited financial to all limited partners, members, or other beneficial owners within 120 days of the end of its fiscal year.

(C) Where the adviser complies with V.S.R. § 7-5(b)(1)(D)(iii) the records required to be made and kept shall include:

(i) A copy of the written agreement with the independent party reviewing all fees and expenses, indicating the responsibilities of the independent third party.

- (ii) Copies of all invoices and receipts showing approval by the independent party for payment through the qualified custodian.
- (c) Every investment adviser subject to subsection (a) of this section who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate, and current:
 - (1) Records showing separately for each client the securities purchased and sold, and the date, amount, and price of each purchase and sale.
 - (2) For each security in which any client has a current position, information from which the investment adviser can promptly furnish the name of each client, and the current amount or interest of the client.
- (d) Any books or records required by this section may be maintained by the investment adviser in such manner that the identity of any client to whom the investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.
- (e) Every investment adviser subject to subsection (a) of this section shall preserve the following records in the manner prescribed:
 - (1) All books and records required to be made under the provisions of subsection (a) to (c)(1), inclusive, of this section (except for books and records required to be made under the provisions of subdivisions (a)(11) and (a)(16) of this section), shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser.
 - (2) Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.
 - (3) Books and records required to be made under the provisions of subdivisions (a)(11) and (a)(16) of this section shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in an appropriate office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated (including by electronic media), directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication.

(4) Books and records required to be made under the provisions of subdivisions (a)(17) to (a)(23~~2~~), inclusive, of this section shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser, or for the time period during which the investment adviser was registered or required to be registered in the state, if less.

(5) Notwithstanding other record preservation requirements of this section, the following records or copies shall be required to be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:

(A) Records required to be preserved under subdivisions (a)(3), (a)(7)-(10), (a)(14)-(15), (a)(17)-(19), (b) and (c) inclusive, of this section; and

(B) The records or copies required under the provisions of subdivisions (a)(11) and (a)(16) of this section, which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business location's physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the period described in subsection (e) of this section.

(f) An investment adviser subject to subsection (a) of this section, before ceasing to conduct or discontinuing business as an investment adviser shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section, and shall notify the commissioner in writing of the exact address where the books and records will be maintained during the period.

(g) (1) Pursuant to V.S.R. § 7-2(e) the records required to be maintained and preserved may be immediately produced or reproduced, and maintained and preserved for the required time, by an investment adviser on:

(A) Paper or hard copy form, as those records are kept in their original form; or

(B) Micrographic media, including microfilm, microfiche, or any similar medium; or

(C) Electronic storage media, including any digital storage medium or system that meets the terms of this section.

(2) The investment adviser must:

(A) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

(B) Provide promptly any of the following that the commissioner (by its examiners or other representatives) may request:

(i) A legible, true, and complete copy of the record in the medium and format in which it is stored;

(ii) A legible, true, and complete printout of the record; and

(iii) Means to access, view, and print the records; and

(C) Separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section.

(3) In the case of records created or maintained on electronic storage media, the investment adviser must establish and maintain procedures:

(A) To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

(B) To limit access to the records to properly authorized personnel and the commissioner (including its examiners and other representatives); and

(C) To reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

(h) Any book or other record made, kept, maintained, and preserved in compliance with Rules 17a-3 [17 C.F.R. 240.17a-3] and 17a-4 [17 C.F.R. 240.17a-4] under the Securities Exchange Act of 1934, which is substantially the same as the book or other record required to be made, kept, maintained, and preserved under this section, shall be deemed to be made, kept, maintained, and preserved in compliance with this section.

(i) Every investment adviser registered or required to be registered in this state and that has its principal place of business in a state other than this state shall be exempt from the requirements of this section, provided the investment adviser is licensed in such state and is in compliance with such state's recordkeeping requirements.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. § 5411)

V.S.R. § 7-3. Dishonest and Unethical Practices of Investment Advisers, Investment Adviser Representatives, and Federal Covered Investment Advisers.

- (a) Unethical Conduct. “Dishonest or unethical practices,” as used in 9 V.S.A. § 5412(d)(13) includes but is not limited to the conduct prohibited in this section.
- (b) Fraudulent Conduct. “An act, practice, or course of business that operates or would operate as a fraud or deceit,” as used in 9 V.S.A. § 5502(a)(3) includes but is not limited to the conduct prohibited in subdivisions (d)(6) and (9)-(11) and subsections (e)-(hi).
- (c) General Standard of Conduct. Each investment adviser or investment adviser representative must observe high standards of commercial honor and just and equitable principles of trade in the conduct of the person’s business. An investment adviser or investment adviser representative is a fiduciary and must act primarily for the benefit of its clients.
- (d) Prohibited Conduct. Sales and Business Practices. An investment adviser or investment adviser representative must adhere to the provisions specified in this subsection in the conduct of the person’s business.
- (1) Unsuitable Recommendations. An investment adviser or investment adviser representative must not recommend the purchase, sale, or exchange of any security to any client to whom investment supervisory, management, or consulting services are provided without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client’s investment objectives, financial situation, financial needs, risk tolerance, and any other information known by the investment adviser or investment adviser representative;
 - (2) Improper Use of Discretionary Authority. An investment adviser or investment adviser representative must not exercise any discretionary power in placing an order for the purchase or sale of securities for any client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power is limited to the price and/or the time at which an order is executed for a definite amount of a specified security;
 - (3) Excessive Trading. An investment adviser or investment adviser representative must not induce trading in a client’s account that is excessive in size or frequency in light of the financial resources, investment objectives, and character of the account;
 - (4) Unauthorized Trading. An investment adviser or investment adviser representative must not:

- (A) Place an order to purchase or sell a security for the account of a client without authority to do so; or
 - (B) Place an order to purchase or sell a security for the account of a client upon instruction of a third party without first obtaining a written third-party trading authorization from the client;
- (5) Borrowing from or Lending to a Client. An investment adviser or investment adviser representative must not:
- (A) Borrow money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds; or
 - (B) Loan money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser;
- (6) Misrepresenting Qualifications, Services, or Fees. An investment adviser or investment adviser representative must not misrepresent to any advisory client or prospective client:
- (A) The qualifications of the investment adviser, investment adviser representative, or any employee of the investment adviser;
 - (B) The nature of the advisory services being offered or fees to be charged for the service; and
 - (C) A material fact, overtly or by omitting material facts necessary to make any statements made regarding qualifications, services, or fees not misleading in light of the circumstances in which the statement was made;
- (7) Failure to Disclose Source of Report. An investment adviser or investment adviser representative must not provide a report or recommendation to any advisory client prepared by someone other than the investment adviser or investment adviser representative without disclosing that fact. This prohibition does not apply to published research reports or statistical analyses used to render advice or a research report is ordered in the normal course of providing service;
- (8) Unreasonable Fees: An investment adviser or investment adviser representative must not charge a client an unreasonable fee.
- (A) Advisory fees must be reasonable in relation to:

- (i) The complexity and nature of the services provided;
 - (ii) Fees charged by other investment advisers or investment adviser representatives for similar services in the geographic area in which the client resides; and
 - (iii) The likelihood that the services provided by the investment adviser or investment adviser representative will result in returns in excess of the fee charged;
- (B) An investment adviser must not charge commissions to a client for the sale of securities pursuant to the investment adviser or investment adviser representative's advice unless such fees or charges are credited toward any advisory fee charged by the investment adviser or investment adviser representative;
- (9) Prohibited Conduct. Reverse Churning. An investment adviser and an investment adviser representative must ensure that a fee-based program is appropriate for a particular customer, taking into account the services provided, cost, trade volume, level and type of assets and customer preferences. Specifically, the following activity by an investment adviser or investment adviser representative may trigger suspicion of prohibited reverse churning:
- (A) Purchase securities in a customer's brokerage account, then move such securities into a fee-based account, when the securities transaction could have been initially made in the fee-based account without paying a brokerage commission;
 - (B) Place or leave customers in a fee-based account when most of the investments in the account consist primarily of cash or cash equivalents; or
 - (C) Place or leave customers in a fee-based account, when very few, if any, trades are made in the account;
- (10) Failure to Disclose Conflicts of Interest. Before rendering any advice to a client, an investment adviser or investment adviser representative must disclose in writing any material conflict of interest relating to the investment adviser, investment adviser representative, or any of the investment adviser's employees that could reasonably be expected to impair unbiased and objective advice, including but not limited to:

- (A) Compensation arrangements connected with advisory services to the client that are in addition to compensation from the client for the advisory services; and
 - (B) Charging a client an advisory fee for rendering advice without disclosing that a commission for executing transactions pursuant to such advice will be received by the investment adviser or its investment adviser representative and that such commission will be credited toward any advisory fee charged;
- (11) **Guaranteeing Performance.** An investment adviser or investment adviser representative must not guarantee a client that a specific result will occur with advice rendered;
- (12) **Deceptive Advertising.** An investment adviser or investment adviser representative must not publish, circulate, or distribute any advertisement that does not comply with 17 C.F.R. § 275.206(4)-1, notwithstanding the fact that the investment adviser may be exempt from federal registration pursuant 15 U.S.C. § 80b3(b);
- (13) **Failure to Protect Confidential Information.**
- (A) An investment adviser or investment adviser representative must not disclose the identity, affairs, or investments of any client unless required by law to do so or the client consents to the disclosure;
 - ~~(B) — An investment adviser must establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to 15 U.S.C. § 80b-4a, notwithstanding the fact that the investment adviser may be exempt from federal registration pursuant to 15 U.S.C. § 80b-3(b); and~~
- ~~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 written consent of any other party to the contract.

(B) Containing performance-based fees contrary to the provisions of 15 U.S.C. § 80b-5, except as permitted by 17 C.F.R. § 275.205-3; and

(C) That includes any condition, stipulation, or provision binding a person to waive compliance with any provision of the act or engage in any practice contrary to the provisions of 15 U.S.C. § 80b-15 or any other provision of the Investment Advisers Act of 1940.

(15) Indirect Misconduct. An investment adviser or investment adviser representative must not engage in any conduct or any act, indirectly or through or by another person, that would be unlawful for the person to do directly under the provisions of the Act or these regulations.

(e) Prohibited Conduct. Failure to Disclose Financial Condition and Disciplinary History.

(1) An investment adviser must disclose to any client or prospective client all material facts with respect to:

(A) A failure to meet the minimum financial requirements of V.S.R. § 7-5(d);
or

(B) Any financial condition of the investment adviser or legal or disciplinary event that is material to an evaluation of the investment adviser's integrity or ability to meet contractual commitments to clients, including all information required to be disclosed on Form ADV Parts 2A and 2B.

~~(2) — A rebuttable presumption exists that the following legal or disciplinary events involving the investment adviser or a management person of the investment adviser are material to an evaluation of the investment adviser's integrity for a period of ten (10) years from the date of the event, unless the event was resolved in the investment~~

adviser's or management person's favor or was subsequently reversed, suspended, or vacated:

(A) A criminal or civil action in a court of competent jurisdiction resulting in:

(i) — The individual being convicted of a felony or misdemeanor, or is the named subject of a pending criminal proceeding, for a crime involving an investment related business or fraud, false statements, omissions, wrongful taking of property, bribery, forgery, counterfeiting, extortion, or crimes of a similar nature;

(ii) — The individual being found to be involved in a violation of an investment related statute or regulation; or

(iii) — The individual being the subject of any order, judgment, or decree permanently or temporarily enjoining the person or otherwise limiting the person from engaging in any investment related activity;

(B) Any administrative proceedings before any federal or state regulatory agency resulting in:

(i) — A finding that the individual caused an investment related business to lose its authorization to do business; or

(ii) — A finding that the individual violated an investment related statute or regulation and was the subject of an order by the agency denying, suspending, or revoking the authorization of the person to act in, or barring or suspending the person's association with, an investment related business, or otherwise significantly limiting the person's investment related activities; and

(C) Any self regulatory organization proceeding resulting in:

(i) — A finding that the individual caused an investment related business to lose its authorization to do business; or

(ii) — A finding that the individual violated the self regulatory organization's rules and was the subject of an order by the self regulatory organization barring or suspending the person from association with other members, expelling the person from membership, fining the person more than two thousand five hundred dollars (\$ 2,500), or otherwise significantly limiting the person's investment related activities.

~~(3)~~(2) The information required to be disclosed by this subsection (e) must be disclosed to clients before further investment advice is given to the clients. The information must be disclosed to prospective clients at least forty-eight (48) hours before entering into any written or oral investment advisory contract, or no later than the time of entering into the contract if the client has the right to terminate the contract without penalty within five (5) business days after entering into the contract;

(4) — For purposes of calculating the ten (10) year period during which events are presumed to be material under subdivision (2) above, the date of a reportable event is either:

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

(B) The date on which the final order, judgment, or decree was entered.

~~(5)~~(3) Compliance with this subsection does not relieve any investment adviser from any other disclosure requirement of any federal or state law.

(f) Prohibited Conduct. Cash Payment for Client Solicitations. Any person who acts as a solicitor for an investment adviser is deemed to be an investment adviser representative under the Act. An investment adviser or investment adviser representative must not engage a solicitor with respect to solicitation activities unless the solicitation arrangement meets the following requirements:

(1) The cash fee must be paid pursuant to a written agreement to which the investment adviser is a party. The written agreement to be kept as required by V.S.R. § 7-2(a)(15) must:

(A) Describe the solicitation activities to be engaged in by the solicitor on behalf of the investment adviser and the compensation received;

(B) Contain an undertaking by the solicitor to perform the solicitor's duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of the Act and these regulations; and

(C) Require the solicitor to provide the client with a current copy of the investment adviser's written disclosure statement required under the brochure delivery requirements of V.S.R. § 7-6(b)7 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 has complieds with the written agreement required by subdivision (14) belowabove, and the investment adviser has a reasonable basis for believing that the solicitor has complieds 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.

(5)(6) For purposes of V.S.R. § 7-3(f), the term client includes any prospective client.

(g) Prohibited Conduct, Agency Cross Transactions.

(1) An investment adviser must not effect an agency cross transaction for an advisory client unless:

(A) The advisory client executes a written consent prospectively authorizing the investment adviser to effect agency cross transactions for the client;

(B) Before obtaining this written consent from the client, the investment adviser makes full written disclosure to the client that, with respect to agency cross

transactions, the investment adviser will act as broker-dealer for both parties to the transaction, receive commissions from both parties, and have a potentially conflicting division of loyalties and responsibilities;

(C) At or before the completion of each agency cross transaction, the investment adviser sends the client a written confirmation. The written confirmation must include all of the following information:

(i) A statement of the nature of the transaction;

(ii) The date the transaction took place;

(iii) An offer to furnish, upon request, the time when the transaction took place; and

(iv) The source and amount of any other remuneration that the investment adviser will receive in connection with the transaction. In the case of a purchase in which the investment adviser was not participating in a distribution or a tender offer, the written confirmation may state whether the investment adviser will receive any other remuneration and that the investment adviser will furnish the source and amount of remuneration to the client upon the client's written request;

(D) At least annually, the investment adviser sends each client a written disclosure statement identifying the total number of agency cross transactions during the period since the date of the last disclosure statement and the total amount of all commissions or other remuneration that the investment adviser will receive in connection with agency cross transactions for the client during the period;

(E) Each written disclosure and confirmation required by this subsection includes a conspicuous statement that the client may revoke the written consent required under subdivision (A) above at any time by providing written notice to the investment adviser; and

(F) No agency cross transaction is effected in which the same investment adviser recommended the transaction to both any seller and any purchaser.

(2) Nothing in this subsection relieves any person of any fiduciary duty or other obligation to which a person may be subject under any law.

(h) Prohibited Conduct. Failure to pay an arbitration award or, attempt to avoid payment of arbitration award, or failure to pay any civil penalty.

- (1) An investment adviseer must not fail to pay and fully satisfy any final judgment or arbitration award resulting from an investment-related, customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the customer and the investment adviseer, in writing, and the investment adviseer complies with the terms of the alternative payment arrangement.
- (2) An investment adviseer must not attempt to avoid payment of any final judgment or arbitration award resulting from an investment-related, customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the customer and the investment adviseer, in writing, and the investment adviseer complies with the terms of the alternative payment arrangements.
- (3) An investment adviser must not fail to pay and fully satisfy any fine, civil penalty, order of restitution, order of disgorgement, or similar monetary payment obligation imposed upon the investment adviser or investment adviser representative by the SEC, the securities or other financial services regulator of any state or province, or any self-regulatory organization.

(i) Prohibited Conduct. The use of a senior specific certification or designation.

(1) An investment adviser or investment adviser representative must not use a senior specific certification or designation in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person. Such use shall be a dishonest and unethical practice in the securities, commodities, investment, franchise, banking, finance, or insurance business within the meaning of the Vermont Uniform Securities Act. The prohibited use of such certifications or professional designation includes, but is not limited to, the following:

- (A) Using a certification or professional designation by an investment adviser or investment adviser representative who has not earned or is otherwise ineligible to use that certification or designation;
- (B) Using a nonexistent or self-conferred certification or professional designation;
- (C) Using a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the investment adviser or investment adviser representative using the certification or professional designation does not have; and

(D) Using a certification or professional designation that was obtained from a designating or certifying organization that:

- v Is primarily engaged in the business of instruction in sales or marketing;
- vi Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;
- vii Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or
- viii Does not have reasonable continuing education requirements for its designees or certificants to maintain the professional designation or certification.

(2) A rebuttable presumption exists that a designating or certifying organization is not disqualified solely for purposes of subdivision (1)(D) above if the organization has been accredited by:

(A) The American National Standards Institute;

(B) The National Commission for Certifying Agencies; or

(C) 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.

(3) 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 an investment adviser or investment adviser representative has special certification or training in advising or servicing senior citizens or retirees, the factors to be considered must include:

(A) 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

(B) The manner in which the words are combined.

(4) For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title: (1) Indicates seniority or

standing within the organization; or (2) Specifies an individual's area of specialization within the organization. For purposes of this subsection, "financial services regulatory agency" includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

(j) Applicability to Federal Covered Investment Advisers. To the extent permitted by federal law, the provisions of this regulation governing investment advisers also apply to federal covered investment advisers.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. §§ 5412(d)(13), ~~and 5502~~ and 8 V.S.A. §§ 15 and 24)

V.S.R. § 7-4. Notice Filing Requirements for Federal Covered Investment Advisers.

(a) Initial Notice Filing. The notice filing for a federal covered investment adviser pursuant to 9 V.S.A. § 5405 must be filed on Form ADV with the IARD. A notice filing of a federal covered investment adviser is deemed filed when the fee required by 9 V.S.A. § 5410(e) and the Form ADV are filed with and accepted by the IARD.

(b) Part 2 of Form ADV. Until the IARD accepts the electronic filing of part 2 of Form ADV, part 2 is deemed to be filed if a federal covered investment adviser provides part 2 within five (5) business days of a request by the commissioner.

(c) Renewal Notice Filing. The annual renewal of the notice filing for a federal covered investment adviser pursuant to 9 V.S.A. § 5405 must be filed with the IARD. The renewal of the notice filing for a federal covered investment adviser is deemed filed when the fee required by 9 V.S.A. § 5410(e) is filed with and accepted by the IARD.

(d) Updates and Amendments. Each federal covered investment adviser must file with the IARD any amendments to the federal covered investment adviser's Form ADV.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. § 5405(c))

V.S.R. § 7-5. Custody of Client Funds or Securities; Financial Reporting; Minimum Net Worth; Bonding.

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

(1) Each of the following circumstances shall be deemed to constitute custody for purposes of this section:

(A) Possession of client funds or securities, unless the investment adviser receives them inadvertently and returns them to the sender within three (3) business days of receiving them and the investment adviser maintains the records required under V.S.R. § 7-2(a)(22);

(B) Any arrangement, including a general power of attorney, under which an investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser's instruction to the custodian;

(C) Any arrangement that gives an investment adviser or its supervised person legal ownership of or access to client funds or securities, which may include an arrangement in which the investment adviser or its supervised person is the trustee of a trust, the general partner of a limited partnership, the managing member of a limited liability company, or a comparable position for a pooled investment vehicle; and

(D) Where the investment adviser, or its representative, has obtained possession of the identification number and confidential password to a client's account, and this password access provides the investment adviser, or its representative, with the ability to withdraw funds or securities or transfer them to an account not in the client's name. However, the power to rebalance alone, without any means to withdraw or transfer the assets will not constitute custody.

(2) Receipt of a check drawn by a client and made payable to an unrelated third party does not meet the definition of custody if the investment adviser forwards the check to the third party within three (3) business days of receipt and the investment adviser maintains the records required under V.S.R. § 7-2(a)(22).

(b) Safekeeping of Client Funds and Securities.

(1) Requirements. An investment adviser shall not have custody of client funds or securities unless the investment adviser meets each of the conditions below. An "act, practice, or course of business that operates or would operate as a fraud or deceit," as used in 9 V.S.A. § 5502 and amendments thereto, shall include any violation of this subsection.

(A) Notice to Commissioner. An investment adviser must promptly notify the commissioner on Form ADV that the investment adviser has or will have custody.

(B) Qualified Custodian. A qualified custodian must maintain each client's funds and securities in a separate account under each client's name, or in accounts that contain only funds and securities of the investment adviser's clients under the name of the investment adviser as agent or trustee for each client.

(C) Notice to Clients. If an investment adviser opens an account with a qualified custodian on behalf of its client, either under the client's name or under the investment adviser's name as agent, the investment adviser must promptly notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained.

(D) Account Statements. The investment adviser must ensure that account statements are sent to each client for whom the investment adviser has custody of funds or securities.

(i) Statements Sent by the Qualified Custodian. If a qualified custodian maintains accounts containing funds or securities, the qualified custodian rather than the investment adviser may send account statements to clients only if the investment adviser has a reasonable basis for believing that the qualified custodian sends such account statement at least quarterly to each of the investment adviser's clients for whom the custodian maintains funds or securities. The investment adviser must have a reasonable basis for believing that the statement contains all transactions in the account during the period and identifies the amount of funds and amount of each security in the account at the end of the period.

(ii) Statements Sent by the Investment Adviser. If account statements are not sent by the qualified custodian in accordance with subdivision (i) above, the investment adviser must send an account statement at least quarterly to each client for whom it has custody of funds or securities. The account statement must contain all transactions in the account during the period and identify the amount of funds and amount of each security of which it has custody at the end of the period.

~~(I) 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) 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.

(E)(F) Independent Representatives. A client may designate an independent representative to receive notices and account statements as required in subdivisions (C) and (D) above on the client's behalf.

(F)(G) Direct Fee Deduction. Notwithstanding section (E) above, an investment adviser is not required to obtain a certified public accountant attestation of client

funds and securities if the investment adviser has custody of the funds and securities solely as a consequence of its authority to make withdrawals from client accounts to pay its advisory fee. 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)~~(H) Pooled Investments. Each investment adviser with custody who does not meet the exception provided under subdivision (2)(C) below must:

- (i) Hire an independent party to review all fees, expenses, and capital withdrawals from the pooled accounts.
- (ii) Send all invoices or receipts to the independent party, detailing the amount of the fee, expenses, or capital withdrawal and the method of calculation so that the independent party can determine that the payment is in accordance with the agreement governing the pooled investment vehicle and approve invoice payment for the qualified custodian providing a copy to the investment adviser.
- (iii) Notify the commissioner on Form ADV that the investment adviser intends to use the safeguards specified in this subsection.

(2) Exceptions.

(A) Shares of Mutual Funds. An investment adviser may use the mutual fund's transfer agent in lieu of a qualified custodian for purposes of complying with subdivision (1) above with respect to shares of a mutual fund that is an open-end company as defined in 15 U.S.C. § 80a-5(a)(1).

(B) **Certain Privately Offered Securities.** An investment adviser is not required to comply with subdivision (1) above with respect to securities that are:

- (i) Acquired from the issuer in a transaction or chain of transactions not involving any public offering;
- (ii) Uncertificated, with ownership of the securities recorded only on the books of the issuer or its transfer agent in the name of the client; and
- (iii) Transferable only with the prior consent of the issuer or holders of the outstanding securities of the issuer.

(C) **Limited Partnerships Subject to Annual Audit.** An investment adviser is not required to comply with subdivision (1) above with respect to the account of a limited partnership, limited liability company, or other type of pooled investment vehicle that is subject to audit at least annually and that distributes its audited financial statements prepared in accordance with GAAP to all limited partners, members, or other beneficial owners within one hundred twenty (120) days after the end of its fiscal year. The investment adviser must notify the commissioner on Form ADV that the investment adviser intends to distribute audited financial statements.

(D) **Registered Investment Companies.** An investment adviser is not required to comply with subdivision (1) above with respect to the account of an investment company registered under 15 U.S.C. § 80a-1 et seq.

(E) **Beneficial Trusts.** An investment adviser is not required to comply with the safekeeping requirements of subdivision (1) above if the investment adviser has custody solely because the investment adviser or an investment adviser representative is the trustee for a beneficial trust and meets the following conditions for each trust:

- (i) The beneficial owner of the trust is a parent, grandparent, spouse, sibling, child, or grandchild of the investment adviser or investment adviser representative, including “step” relationships.
- (ii) The investment adviser provides a written statement to each beneficial owner of each account setting forth a description of the requirements of subdivision (1) above and the reasons why the investment adviser will not comply with those requirements.
- (iii) The investment adviser obtains from each beneficial owner a signed and dated statement acknowledging the receipt of the written statement.

(iv) The investment adviser maintains a copy of both documents described in subdivisions (ii) and (iii) above until the account is closed or the investment adviser or investment adviser representative is no longer trustee.

(F) Upon written request and for good cause shown, the commissioner may waive the requirement to use a qualified custodian. As a condition of granting a waiver, the commissioner may require the investment adviser to perform the duties of a qualified custodian as specified in subdivision (1) above.

(c) Financial Reporting Requirements for Investment Advisers.

(1) Balance Sheet and Auditor's Report. An investment adviser with custody of client funds or securities and an investment adviser who accepts the payment of advisory fees at least six (6) months in advance and in excess of five hundred dollars (\$ 500) from any client must make and maintain a balance sheet dated the last day of the investment adviser's fiscal year. Each balance sheet must be:

(A) Audited by an independent certified public accountant in accordance with GAAP; and

(B) Accompanied by a report of the independent auditor containing an unqualified opinion that the balance sheet is a fair presentation of the investment adviser's financial position and is made in conformity with GAAP.

(2) Preparation and Filing Deadlines. The balance sheet and report required by subdivision (1) above must be prepared within ninety (90) days following the end of the investment adviser's fiscal year. The investment adviser must file the balance sheet and report with the commissioner within five (5) days after the commissioner requests them. Failure to timely file the balance sheet and report constitutes grounds for suspension of registration by emergency order under 9 V.S.A. § 5412(f).

(3) Exemptions. An investment adviser is exempt from the requirements of this subsection (c) if the investment adviser:

(A) Qualifies for an exception from the minimum adjusted net worth requirements of subdivision (d)(3); or

(B) Has its principal place of business in a state other than Vermont, is properly registered in that state, and satisfies the financial reporting requirements of that state.

(d) Minimum Financial Requirements.

(1) Positive Net Worth Requirement for Investment Advisers. An investment adviser must maintain a positive adjusted net worth at all times.

(2) Requirements for Investment Advisers with Discretionary Authority. Except as provided in subdivision (7), an investment adviser with discretionary authority over client funds or securities must at all times meet the following requirements:

(A) 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)(A) below.

(B) Professional Services Liability Errors and Omissions Insurance. An investment adviser with discretionary authority over client funds or securities must maintain at all times professional services liability errors and omissions insurance meeting the requirements of subdivisions (3)(B)(i)-(iii) below.

(A)(C) Surety Bond as Substitute. An investment adviser may maintain a surety bond to satisfy the minimum adjusted net worth requirement of subdivision (A) above if the investment adviser is bonded for an amount that is equal to or greater than the required minimum adjusted net worth, provided the adviser meets the positive net worth requirement of subsection (d)(1). -

(3) Requirements for Investment Advisers with Custody. Except as provided in subdivision (7), an investment adviser with custody of client funds or securities must at all times meet the following requirements:

(B)(A) Minimum Adjusted Net Worth for Investment Advisers with Custody. An investment adviser with custody of client funds or securities must maintain a minimum adjusted net worth of thirty-five thousand dollars (\$35,000) at all times, except investment advisers with custody solely because the investment adviser:

- (i) Has fees directly deducted from client accounts and the investment adviser complies with the safekeeping requirements in subdivisions (b)(1)(A)-(F) above and the recordkeeping requirements of V.S.R. § 7-2(b);
- (ii) (B)(ii) Has custody solely due to advising pooled investment vehicles and ~~C~~ complies with the safekeeping requirements in subdivisions (b)(1)(A), (E) and (G) above and the recordkeeping requirements of V.S.R. § 7-2(b); and

(iii) Is trustee for a beneficial trust, if the trust meets the conditions in subdivision (b)(2)(E) above.

(B) Errors and Omissions Insurance. An investment adviser with custody of, or discretionary authority over, client funds or securities must file with the Department proof that the applicant procures and maintains appropriate errors and omissions insurance coverage for investment management and advisory services, with minimum of one million dollars (\$1,000,000) in aggregate coverage, with a reasonable deductible in light of the firm's financial resources. Such insurance must meet the following requirements:

(i) The errors and omissions insurance policy must be issued by an insurer licensed in Vermont or by a surplus lines insurer with which insurance coverage may be placed pursuant to -8 V.S.A. Chapter 138;

(ii) An errors and omissions policy used to satisfy the requirements of this subsection may not contain exclusions for investment management or investment advisory services performed in Vermont or for persons performing investment management or investment advisory services in Vermont; and

(iii) The requirements for errors and omissions insurance may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements, but the investment adviser's errors and omissions insurance coverage meeting these requirements must be in continuous effect, and proof thereof shall be submitted to the Department upon request.

~~(B)~~(C) Surety Bond as Substitute. An investment adviser may maintain a surety bond to satisfy the minimum adjusted net worth requirement of subsection (A) above if the investment adviser is bonded for an amount that is equal to or greater than the required minimum adjusted net worth, provided the adviser meets the positive net worth requirement of subsection (d)(1).

~~(2)~~(4) Notification. An investment adviser must notify the commissioner by the close of business on the next business day if the investment adviser's adjusted net worth is less than the minimum required by this subsection (d) or if the investment adviser does not have in effect errors and omissions insurance coverage that satisfies the requirements of this subsection (d). After filing the notice, the investment adviser must file a report with the commissioner of its financial condition by the close of business on the business day following notice including:

(A) A trial balance of all ledger accounts;

- (B) A statement of all client funds or securities that are not segregated;
- (C) A computation of the aggregate amount of client ledger debit balances; and
- (D) A statement indicating the number of client accounts.

~~(3)~~(5) For purposes of this Rule an investment adviser shall not be deemed to be exercising discretion when it places trade orders with a broker-dealer pursuant to a third-party trading agreement if:

- (A) The investment adviser has executed a separate investment adviser contract exclusively with its client which acknowledges that a third-party trading agreement will be executed to allow the investment adviser to effect securities transactions for the client in the client's broker-dealer account; and
- (B) The investment adviser contract specifically states that the client does not grant discretionary authority to the investment adviser and the investment adviser in fact does not exercise discretion with respect to the account; and
- (C) A third-party trading agreement is executed between the client and a broker-dealer which specifically limits the investment adviser's authority in the client's broker-dealer account to the placement of trade orders and deduction of investment adviser fees.

~~(4)~~(6) Appraisals. The commissioner may require an investment adviser to submit a current appraisal to establish the worth of any asset.

~~(5)~~(7) Exception for Out-of-State Advisers. Every investment adviser that has its principal place of business in a state other than Vermont shall maintain such minimum net worth and errors and omissions insurance as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is licensed in such state and is in compliance with such state's minimum capital and insurance requirements.

(e) Surety Bond.

(1) Additional Bond Requirement. An investment adviser with discretionary authority or custody who does not meet the minimum adjusted net worth requirement of subdivisions (d)(2) and (3) above must also be bonded for the amount of the net worth deficiency rounded up to the nearest five thousand dollars (\$ 5,000) and file a Form U-SB with the commissioner.

(2) Exemptions. An investment adviser is exempt from the requirements of subdivision

(1) above if the investment adviser:

(A) Qualifies for an exception from the minimum adjusted net worth requirements of subdivision (d)(3) above and does not have discretionary authority; or

(B) Has its principal place of business in a state other than Vermont, is properly registered in that state, and satisfies the bonding requirements of that state.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. § 5411)

V.S.R. § 7-6. Operational Requirements for Investment Advisers; Supervisory Procedures;
~~Brochure Delivery.~~

(a) Supervision of Investment Adviser Representatives and Employees.

(1) Annual Review. At least annually, an investment adviser must conduct a review of the businesses in which the investment adviser engages. The review must be reasonably designed to ensure compliance with all applicable laws and regulations.

(2) Supervisory Procedures. An investment adviser must establish, ~~and maintain,~~ and enforce 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 a supervised person as the chief compliance officer responsible for administering the investment adviser's policies and procedures and supervising each investment adviser representative registered with the investment adviser
~~The designation of an appropriately registered investment adviser representative with the authority to oversee the supervisory responsibilities of the investment adviser;~~

~~The assignment of an investment adviser responsible for supervising each investment adviser representative registered with an investment adviser;~~

(ii) That the investment adviser will make reasonable efforts to ensure that all supervisory personnel are qualified to carry out their assigned responsibilities;

(iii) Procedures for conducting, at minimum, an annual review to ensure compliance with the written supervisory policies and procedures;

(iv) Procedures for internal review and written endorsement by supervisory personnel described in subdivision (ii) above of all transaction and correspondence pertaining to the rendering of investment advice; and

(v) Procedures for ensuring the good character, business repute, qualifications, and experience of any person applying for registration in association with the investment adviser.

(3) Code of Ethics.

(A) An investment adviser must establish, maintain, and enforce a written code of ethics that, at a minimum, includes:

(i) A standard (or standards) of business conduct that the investment adviser requires of its supervised persons, which must reflect the

investment adviser's fiduciary obligations and those of its supervised persons;

(ii) Provisions requiring the investment adviser's supervised persons to comply with applicable State and Federal securities laws;

(iii) Provisions requiring all of the investment adviser's access persons to report, and the investment adviser to review, their personal securities transactions and holdings periodically;

(iv) Provisions requiring supervised persons to report any violations of the investment adviser's code of ethics promptly to its chief compliance officer or, provided the investment adviser's chief compliance officer also receives reports of all violations, to other persons designated in the investment adviser's code of ethics; and

(v) Provisions requiring the investment adviser to provide each of its supervised persons with a copy of the investment adviser's code of ethics and any amendments, and requiring the investment adviser's supervised persons to provide it with a written acknowledgment of their receipt of the code and any amendments.

(4) Fee-Based Accounts. An investment adviser must implement supervisory procedures for the periodic review of fee-based accounts to determine whether they remain appropriate for customers owning them.

(5) Supervision of Non-Investment Adviser Branch Offices. The procedures established and the reviews conducted must provide sufficient supervision at remote offices to ensure compliance with applicable securities laws and regulations. Based on the factors specified in subdivision (2) above, the commissioner may require more frequent reviews or more stringent supervision for certain non-investment adviser branch offices.

~~(6) Failure to Supervise. An investment adviser who fails to comply with this subsection (a) is deemed to have, per se, "failed to reasonably supervise" its investment adviser representatives under 9 V.S.A. § 5412(d)(9).~~

(b) Business Continuity and Succession Planning.

(1) Every investment adviser must establish, implement, maintain, and enforce written procedures relating to a business continuity and succession plan.

(2) 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.

(3) The business continuity and succession plan must provide for at least the following:

i The protection, backup, and recovery of books and records.

ii 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.

iii Office relocation in the event of temporary or permanent loss of a principal place of business.

iv Assignment of duties to qualified responsible persons in the event of the death or unavailability of key personnel.

v Otherwise minimizing service disruptions and client harm that could result from a sudden significant business interruption.

(c) Information Security Procedures.

(1) A Vermont registered investment adviser must establish, maintain, and enforce written policies and procedures reasonably designed to ensure information security. In determining whether the information security policies and procedures are reasonably designed, the commissioner may consider:

i The firm's size;

ii The firm's relationships with third parties;

iii The firm's policies, procedures, and training of employees with regard to information security practices;

iv Authentication practices;

v The firm's use of electronic communications;

vi The automatic locking of devices used to conduct the firm's electronic security; and

vii The firm's process for reporting of lost or stolen devices.

(2) A Vermont registered investment adviser must include information security as part of its risk assessment.

(3) The information security policies and procedures must provide for:

i An annual cybersecurity risk assessment;

ii The use of secure email, including use of encryption and digital signatures;

iii Authentication practices for employee access to electronic communications, databases, and media;

iv Procedures for authenticating client instructions received via electronic communication; and

v Disclosure to clients of the risks of using electronic communications.

(4) A Vermont registered investment adviser must maintain evidence of adequate insurance for the risk of cybersecurity breach. Insurance will be deemed adequate if the insurance is proportional to:

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 firm's 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;

(5) A Vermont registered investment adviser must provide identity restoration services at no cost to consumers in the event of a breach in the cybersecurity of consumer nonpublic personal information.

(d) Vulnerable Adults. A Vermont registered investment adviser must establish, maintain, and enforce written policies and procedures reasonably designed to ensure protection of vulnerable adults from financial exploitation and compliance with V.S.R. § 8-3.

(e) Privacy Policy.

(1) A Vermont registered investment adviser must establish, maintain and enforce a privacy policy that meets the requirements of V.S.R. Chapter 10 and is reasonably designed to aid in the client's understanding of how the investment adviser collects and shares, to the extent permitted by state and federal law, non-public personal information.

(2) An investment adviser must deliver a copy of its privacy policy to new clients at the time of engagement and provide clients with a copy of its privacy policy on an annual basis thereafter. The investment adviser must promptly update and deliver to each client an amended privacy policy if any of the information in the policy becomes inaccurate.

(f) Material Non-Public Information. A Vermont registered investment adviser must establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by the investment adviser or any person associated with the investment adviser.

(g) Failure to Supervise. An investment adviser who fails to comply with V.S.R. § 7-6 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).

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. §§ 5407(d); 5411 and 5412(d)(9))

V.S.R. § 7-7. Investment Adviser Brochure Delivery Requirements.

(a) 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.

(b) Offer and Delivery Requirements.

(1A) 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:

(A) Regularly communicates investment advice to the client;

- (B) Formulates investment advice for assets of the client;
- (C) Makes discretionary investment decisions for assets of the client; or
- (D) Sells investment advisory services or solicits, offers, or negotiates for the sale of investment advisory services.

(2) An investment adviser must deliver the documents required in subdivision ~~(1A)~~ 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.

(3) 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.

(c) Delivery to Limited Partners, Members, or Beneficial Owners. If the investment adviser is the general partner of a limited partnership, the manager of a limited liability company, or the trustee of a trust, then for purposes of this subsection the investment adviser must treat each of the partnership's limited partners, the company's members, or the trust's beneficial owners as a client.

(d) Wrap Fee Program Brochures.

- (1) An investment adviser who is a sponsor of a wrap fee program must deliver to every client or prospective client the required brochure containing all information required by Form ADV. Any additional information in a wrap fee brochure must be limited to wrap fee programs that the investment adviser sponsors.
- (2) 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.
- (3) A wrap fee program brochure does not take the place of any brochure supplements that the investment adviser is required to deliver under subdivision (b)~~(21)(A)~~ above.

(e) **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.

(f) **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.

(g) **Other Disclosure Obligations.** Nothing in this subsection relieves any investment adviser from any obligation to disclose information to its clients or advisory clients pursuant to any state or federal law.

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

~~V.S.R. § 7-7. Investment Adviser Business Continuity and Succession Planning.~~

~~(a) Every investment adviser must establish, implement, and maintain written procedures relating to a business continuity and succession plan.~~

~~(b) The business continuity and succession plan must be based upon the facts and circumstances of the investment adviser's business model, including the size of the firm, type(s) of services provided, and the number of locations of the investment adviser.~~

~~(c) The business continuity and succession plan must provide for at least the following:~~

~~(1) The protection, backup, and recovery of books and records.~~

~~(2) Alternate means of communications with customers, key personnel, employees, vendors, service providers (including third party custodians), and regulators, including, but not limited to, providing notice of a significant business interruption or the death or unavailability of key personnel or other disruptions or cessation of business activities.~~

~~(3) Office relocation in the event of temporary or permanent loss of a principal place of business.~~

~~(4) Assignment of duties to qualified responsible persons in the event of the death or unavailability of key personnel.~~

~~(5) Otherwise minimizing service disruptions and client harm that could result from a sudden significant business interruption.~~

~~(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. § 5407(d))~~

~~V.S.R. § 7-8. Cybersecurity Procedures.~~

~~(a) A Vermont registered investment adviser must establish and maintain written policies and procedures reasonably designed to ensure cybersecurity. In determining whether the cybersecurity policies and procedures are reasonably designed, the commissioner may consider:~~

~~(1) The firm's size;~~

~~(2) The firm's relationships with third parties;~~

~~(3) The firm's policies, procedures, and training of employees with regard to cybersecurity practices;~~

~~(4) Authentication practices;~~

~~(5) The firm's use of electronic communications;~~

~~(6) The automatic locking of devices used to conduct the firm's electronic security; and~~

~~(7) The firm's process for reporting of lost or stolen devices.~~

~~(b) A Vermont registered investment adviser must include cybersecurity as part of its risk assessment.~~

~~(c) The cybersecurity policies and procedures must provide for:~~

~~(1) An annual cybersecurity risk assessment;~~

~~(2) The use of secure email, including use of encryption and digital signatures;~~

~~(3) Authentication practices for employee access to electronic communications, databases, and media;~~

~~(4) Procedures for authenticating client instructions received via electronic communication; and~~

~~(5) Disclosure to clients of the risks of using electronic communications.~~

~~(d) A Vermont registered investment adviser must maintain evidence of adequate insurance for the risk of cybersecurity breach. Insurance will be deemed adequate if the insurance is proportional to:~~

~~(1) The firm's size;~~

~~(2) The firm's organizational structure;~~

~~(3) The scope of the firm's business activities;~~

~~(4) The number and location of the firm's offices;~~

~~(5) The nature and complexity of products and services offered;~~

~~(6) The firm's volume of business;~~

~~(7) The number of investment adviser representatives assigned to a location;~~

~~(8) The specification of the office as a non-branch location;~~

~~(e) A Vermont registered investment adviser must provide identity restoration services at no cost to consumers in the event of a breach in the cybersecurity of consumer nonpublic personal information.~~

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

CHAPTER 8

ADDITIONAL PROVISIONS APPLYING TO BROKER-DEALERS, INVESTMENT ADVISERS, AGENTS, REPRESENTATIVES, QUALIFIED INDIVIDUALS, AND OTHERS.

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

(a) **Applicability.** This section applies to broker-dealers and investment advisers on the premises of a depository institution in Vermont. This regulation does not alter or abrogate a broker-dealer or investment adviser's obligations to comply with other applicable laws or regulations that may govern the operations of broker-dealers and their agents and/or investment advisers and their representatives, including but not limited to, supervisory obligations. This regulation does not apply to broker-dealer or investment advisory services provided at financial institutions not offering retail, depository banking services.

(b) Broker-dealers and investment advisers may not access a customer's depository institution records unless the customer has given prior written permission.

(c) Definitions. For purposes of this section the terms "securities firm", "securities customer" and "securities service" are intended to include both broker-dealer and investment adviser firms, customers and services.

(d) Standards for Securities Firms. No broker-dealer or investment adviser shall conduct broker-dealer or investment advisory services on the premise of a depository institution unless the broker-dealer or investment adviser complies initially and continuously with the following requirements:

(1) Distinguishing Services and Products.

(A) Setting. If a broker-dealer or investment adviser occupies or uses physical space in an area on the premises of the depository institution, this area must be sufficiently separated from the retail area of the depository institution. The area must be conspicuously identified as the place of business of the broker-dealer or investment adviser; readily distinguishable from the operations of the depository institution and staffed only by those persons whose affiliation with the broker-dealer or investment adviser is conspicuously identified.

(B) Product Recommendations. A broker-dealer or investment adviser must establish policies and procedures to ensure that customers are fully and clearly informed of the nature and risks of non-deposit investment products, and that distinguish products and services the broker-dealer or investment adviser offers from the retail banking products offered by the hosting depository institution. Recommendations by a broker-dealer or investment adviser concerning nondeposit investment products with a name similar to that of a depository institution must only occur pursuant to policies and procedures reasonably designed to minimize risk of customer confusion.

(C) Networking & Brokerage Affiliate Arrangements. Networking and brokerage affiliate arrangements must be governed by a written agreement that sets forth the responsibilities of the parties and the compensation arrangements. Networking and brokerage affiliate arrangements must provide that supervisory personnel of the broker-dealer or investment adviser and representatives of state securities authorities, where authorized by state law, will be permitted access to the depository institution's premises where the broker-dealer or investment adviser conducts broker-dealer and/or investment advisory services in order to inspect the books and records and other relevant information maintained by the broker-dealer or investment adviser with respect to its broker-dealer and/or investment advisory services. Management of a broker-dealer or investment adviser is responsible for ensuring that any networking or brokerage affiliate

arrangement clearly outlines the duties and responsibilities of all parties, including those of depository institution personnel.

(2) Communications with the Public

(A) Advertising material and other promotional literature, which may be disseminated jointly, must prominently and clearly disclose that the depository institution is not a registered broker-dealer or investment adviser and that securities customers will be dealing exclusively with the registered broker-dealer or investment adviser with respect to securities services. Advertising must make it clear that the broker-dealer or investment adviser and the bank are separate, distinct, and unaffiliated entities and that investment products sold through the securities firm are not deposits insured by any government agency.

(B) The broker-dealer or investment adviser must assume responsibility for reviewing and either approving or disapproving any advertising matter used or intended for use by the depository institution with respect to securities services and must maintain evidence demonstrating that it has done so.

(C) The following shorter, logo format disclosures may be used by a broker-dealer in advertisements and sales literature, including material published, or designed for use, in radio or television broadcasts, Automated Teller Machine ("ATM") screens, billboards, signs, posters and brochures, to comply with the requirements of this section, provided that such disclosures are displayed in a conspicuous manner:

- (i) Not FDIC Insured;
- (ii) No Bank Guarantee; and
- (iii) May Lose Value.

(3) Customer Disclosure.

(A) At or prior to the time that a customer's securities account is opened on the premises of the depository institution, customers must sign a written disclosure that states:

- (i) The securities services are not being provided by the depository institution;
- (ii) The broker-dealer or investment adviser is not a division of the depository institution but is a separate company;

(iii) Any insurance coverage which applies to accounts maintained by the depository institution, such as FDIC or NCUSIF, will not extend to dealings with the broker-dealer or investment adviser.

(B) Signage, directories, and other labeling displayed on depository institution premises must not in any way imply or lead customers or the public to conclude that the broker-dealer or investment adviser operation constitutes a division of the depository institution.

(C) Employees who are jointly employed by the depository institution and the broker-dealer or investment adviser and who are registered agents or investment adviser representatives of the broker-dealer or investment adviser must disclose this dual relationship to securities customers.

(D) The broker-dealer or investment adviser's telephone number must be listed and answered in a fashion as to be unambiguously identified as that of the broker-dealer or investment adviser, not the depository institution. For example, "XYZ Securities at ABC Bank" would be inappropriate while "XYZ Securities" would be appropriate. There must be separate letterhead and business cards for the broker-dealer or investment adviser and the depository institution, although the depository institution address may be shown on both. All securities confirmations and account statements must unambiguously identify the broker-dealer or investment adviser only.

(4) Separation of Functions

(A) The broker-dealer or investment adviser must require that all orders be placed by customers directly with the broker-dealer or investment adviser and not accepted through the depository institution.

(B) The broker-dealer or investment adviser must not permit the depository institution and its employees to participate or aid in any way the offer, sale, or purchase of securities through the facilities of the broker-dealer or investment adviser, except as provided in these guidelines. Any questions concerning such transactions must be directed to and handled by the broker-dealer or investment adviser through persons who are registered as agents or representatives in Vermont. In addition, all accounts of Vermont residents must be opened and supervised by persons who are registered as agents or investment adviser representatives.

(C) The broker-dealer or investment adviser must not permit the depository institution and its employees to advise securities customers as to the advisability of investing in, purchasing, or selling securities through the facilities of the broker-dealer or investment adviser. This does not preclude the depository institution from informing customers of the availability of the securities services

or from distributing securities service advertising and informational material. Nor is this guideline intended to prohibit depository institutions with trust departments from engaging in normal trust functions.

(D) All securities certificates and transactional correspondence (including, without limitation, confirmations, monthly statements, etc.) must be issued directly by the broker-dealer or investment adviser and not by or through the depository institution.

(E) The broker-dealer or investment adviser must not permit the depository institution to accept securities customers' checks or securities certificates in settlement of securities transaction orders placed directly with the broker-dealer or investment adviser.

(F) The broker-dealer or investment adviser must not permit depository institution employees to receive compensation for securities services, either directly or indirectly, unless these employees are registered as agents or investment adviser representatives of the broker-dealer or investment adviser. However, the depository institution itself may receive commission-related compensation for its participation in the networking arrangement based upon a percentage of the revenues generated by the arrangement. Depository institution employees may receive one-time, nominal fees of a fixed amount for referring depository institution customers to a securities firm if such fees do not depend on whether the referral results in a securities transaction.

(G) The broker-dealer or investment adviser may permit depository institution employees to perform only clerical and ministerial functions in dealing with securities customers and in connection with securities transactions unless they are qualified as agents/investment adviser representatives of the broker-dealer or investment adviser and are registered as such in Vermont. The referral of questions or complaints and the mere transmittal of order forms or like information to another person registered as an agent/investment adviser representative of a broker-dealer or investment adviser for action by that person will be deemed a clerical or ministerial function. Other clerical or ministerial functions that would not appear to trigger the Act's securities representative registration requirements include informing potential securities customers that the securities firm provides securities services, delivering blank new account forms and written instructions on their preparation to customers, distributing promotional materials, and directing persons to registered agents of the broker-dealer or investment adviser or a toll-free telephone number.

(H) The broker-dealer or investment adviser shall ensure that unregistered depository institution employees do not engage in any solicitation activity. In addition, the broker-dealer or investment adviser must not permit unregistered depository institution employees to engage in the following activities:

- (i) Open customer accounts or assist in the preparation of new account forms by customers;
- (ii) Make suitability determinations, render investment advice, or make investment recommendations in connection with the purchase or sale of securities;
- (iii) Process orders to purchase or sell securities;
- (iv) Engage in the resolution of complaints regarding the purchase or sale of securities;
- (v) Supervise broker-dealer or investment adviser personnel either directly or indirectly;
- (vi) Assume responsibility for the day-to-day operation and supervision of any place of business of the broker-dealer or investment adviser.

(I) Broker-dealer or investment adviser employees and registered agents or representatives, even if jointly employed by the depository institution, may not have access to depository institution records of securities customers unless the customer grants prior written permission.

(J) The broker-dealer or investment adviser may not deal in any securities of the depository institution or any affiliate thereof on the premises of the depository institution except in unsolicited transactions.

(K) The broker-dealer or investment adviser is responsible for supervising joint employees of the depository institution and the securities firm who are registered agents/investment adviser representatives and for ensuring compliance with all applicable federal and state securities laws and ~~NASD~~ FINRA regulatory requirements including branch office registration under the Act, customer suitability and protection, financial responsibility, training and compliance responsibilities, and recordkeeping and reporting requirements.

(5) Books and Records. The books and records of the broker-dealer or investment adviser must be kept separate from those of the depository institution. The commissioner shall have unimpeded access during the depository institution's business hours to all broker-dealer or investment adviser books and records maintained on the depository institution's premises and to joint employees of the depository institution and the securities firm who are registered as agents or representatives and their personnel records.

- (6) Notification of Termination. The broker-dealer or investment adviser must promptly notify the depository institution if any agent or representative of the broker-dealer or investment adviser who is employed by the depository institution is terminated for cause.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. § 5412)

~~V.S.R. § 8-2. Prohibited Conduct. Use of Senior Specific Certifications and Professional Designations.~~

~~(a) — The use of a senior specific certification or designation by any person in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person, shall be a dishonest and unethical practice in the securities, commodities, investment, franchise, banking, finance, or insurance business within the meaning of the Vermont Uniform Securities Act. The prohibited use of such certifications or professional designation includes, but is not limited to, the following:~~

~~(A) Using a certification or professional designation by a person who has not earned or is otherwise ineligible to use that certification or designation;~~

~~(B) Using a nonexistent or self-conferred certification or professional designation;~~

~~(C) 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~~

~~(D) Using a certification or professional designation that was obtained from a designating or certifying organization that:~~

~~i — Is primarily engaged in the business of instruction in sales or marketing;~~

~~ii — Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;~~

~~iii — Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or~~

~~iv—Does not have reasonable continuing education requirements for its designees or certificatees 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:~~

~~(A)The American National Standards Institute;~~

~~(B)The National Commission for Certifying Agencies; or~~

~~(C)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:~~

~~(A)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~~

~~(B)The manner in which the words are combined.~~

~~(d)—For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title: (1) Indicates seniority or standing within the organization; or (2) Specifies an individual’s area of specialization within the organization. For purposes of this subsection, “financial services regulatory agency” includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.~~

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

V.S.R. § 8-~~32~~. Electronic Filing for Investment Advisers, Investment Adviser Representatives, Broker-Dealers, and Broker-Dealer Agents.

- (a) Designated Entity. The IARD and CRD are authorized to receive and store filings and collect related fees from investment advisers, investment adviser representatives, broker-dealers, and broker-dealer agents on behalf of the commissioner.
- (b) Electronic Filing. Unless otherwise required by these regulations, all applications, amendments, reports, notices, related filings, and fees that are required to be filed by investment advisers, investment adviser representatives, broker-dealers, and broker-dealer agents pursuant to the Act and these regulations must be electronically submitted and transmitted to the IARD and the CRD.
- (c) Electronic Signatures. When a signature is required on any filing made through the IARD or CRD, the applicant or a duly authorized officer of the applicant must affix an electronic signature to the filing by typing the individual's name in the appropriate field and submitting the filing to the IARD or CRD. Submission of a filing in this manner constitutes a legal signature by any individual whose name is typed on the filing.
- (d) Exception to Electronic Filing. Any documents or fees required to be filed with the commissioner that are not permitted to be filed with or cannot be accepted by the IARD or CRD must be filed directly with the commissioner.
- (e) Hardship Exemptions. An investment adviser may apply for an exemption from filing through the IARD or CRD system.

(1) Temporary Hardship Exemption.

(A) Criterion for Exemption. Investment advisers who experience unanticipated technical difficulties that prevent submission of an electronic filing to IARD or CRD may request a temporary hardship exemption from electronic filing requirements.

(B) Application for Exemption. To apply for a temporary hardship exemption, the investment adviser must file a written request with the securities administrator in the state where the investment adviser's principal place of business is located. The request must be submitted in a form approved by that securities administrator, and the request must be filed no later than one (1) business day after the due date for the filing that is the subject of request. The investment adviser must also submit the filing that is the subject of the request in electronic format to IARD or CRD no later than seven (7) business days after the filing was due.

(C) Effective Date. If the request is in proper form, the temporary hardship exemption is deemed effective upon receipt by the securities administrator. Multiple temporary hardship exemption requests within the same calendar year may be disallowed by the securities administrator.

(2) Continuing Hardship Exemption.

(A) Criterion for Exemption. A continuing hardship exemption will not be granted unless the investment adviser is able to demonstrate that the electronic filing requirements of this regulation are prohibitively burdensome.

(B) Application for Exemption. To apply for a continuing hardship exemption, the investment adviser must file a written request with the securities administrator in the state where the investment adviser's principal place of business is located. The request must be submitted in a form approved by the securities administrator, and the request must be filed no later than twenty (20) business days before the due date for the filing that is the subject of the request. If the investment adviser's principal place of business is located in Vermont and the request is filed with the commissioner in a form approved by the commissioner, the request will be either granted or denied by the commissioner within ten (10) business days after the filing of the request.

(C) Effective Date. The exemption is effective upon approval by the securities administrator in the state where the investment adviser's principal place of business is located. The time period of the exemption will be no longer than one (1) year after the date on which the request is filed. If that securities administrator approves the request, the investment adviser must submit filings to the IARD or CRD in paper form, along with the appropriate processing fees, for the period of time for which the exemption is granted no later than five (5) business days after the exemption approval date.

(3) Recognition of Exemption. The decision to grant or deny a request for a hardship exemption is made by the securities administrator in the state where the investment adviser's principal place of business is located, and the commissioner will adhere to that decision.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. §§ 5105 and 5608(c))

V.S.R. § 8-43. Protection of Vulnerable Adults from Financial Exploitation.

(a) Governmental Disclosures. If a qualified individual reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, the qualified individual must promptly notify the commissioner and Adult Protective Services in the Vermont Department of Disabilities, Aging & Independent Living (collectively "the agencies").

(b) Immunity for Governmental Disclosures. A qualified individual who in good faith and exercising reasonable care makes a disclosure of information pursuant to subsection (a) above is immune from administrative or civil enforcement by the Department that might otherwise arise from such disclosure or from any failure to notify the customer of the disclosure.

(c) Third-Party Disclosures. If a qualified individual reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, the qualified individual may notify any third party previously designated by the eligible adult and any third party reasonably associated with the eligible adult. Disclosure may not be made to any designated third party or any third party reasonably associated with the eligible adult who is suspected of financial exploitation or other abuse or exploitation of the eligible adult.

(d) Immunity for Third-Party Disclosures. A qualified individual who, in good faith and exercising reasonable care, complies with subsection (c) above is immune from any administrative or civil enforcement by the Department that might otherwise arise from such disclosure.

(e) Delaying Transactions and Disbursements.

(1) A broker-dealer or investment adviser may delay a disbursement from or a transaction in 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 or transaction may result in financial exploitation of the eligible adult; and

(B) The broker-dealer or investment adviser:

(i) Immediately, and in no event more than two business days after the requested disbursement or transaction, provides written notification of the delay and the reason for the delay to all parties authorized to transact business on the account, unless any such party is reasonably believed to have engaged in suspected or attempted financial exploitation of the eligible adult;

(ii) Immediately, and in no event more than two business days after the requested disbursement or transaction, 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 or transaction.

(2) Any delay of a disbursement or transaction as authorized by this section may continue only until the sooner of:

(A) A determination by the broker-dealer or investment adviser that the disbursement or transaction 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 or the transaction, unless either of the agencies requests that the broker-dealer or investment adviser extend the delay, in which case the delay may be extended an additional must expire no more than twenty-five (25) forty (40) 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 transaction or disbursement of funds or may order other protective relief based on the petition of the commissioner, Adult Protective Services, the broker-dealer or investment adviser who initiated the delay under this subsection, or other interested party.

(f) Immunity for Delaying Transactions or Disbursements. A broker-dealer or investment adviser who, in good faith and exercising reasonable care, complies with subsection (e) above is immune from any administrative or civil enforcement by the Department that might otherwise arise from such delay in a transaction or disbursement in accordance with this section.

(g) Records. A broker-dealer or investment adviser must provide access to or copies of records that are relevant to the suspected or attempted financial exploitation of an eligible adult to agencies charged with administering state adult protective services laws and to law enforcement, either as part of a referral to the agency or to law enforcement, or upon request of the agency or law enforcement pursuant to an investigation. The records may include historical records as well as records relating to the most recent transaction or transactions that may involve financial exploitation of an eligible adult or the financial impairment of an adult. All records made available to the agencies under this section are not considered a public record as defined in 1 V.S.A. § 315 et seq. Nothing in this provision limits or otherwise impedes the authority of the commissioner to access or examine the books and records of broker-dealers and investment advisers as otherwise provided by law.

~~(h) A Vermont registered investment adviser must establish and maintain written policies and procedures reasonably designed to ensure protection of vulnerable adults from financial exploitation and compliance with this subchapter.~~

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

CHAPTER 9
RESTITUTION FOR VICTIMS OF SECURITIES VIOLATIONS.

V.S.R. § 9-1. ~~Victim Restitution Fund~~ Restitution Assistance.

(a) General Provisions.

~~(1) The source of funds for restitution assistance awards is limited to restitution assistance-designated monies in the Department's Special Fund established pursuant to 9 V.S.A. § 5616.~~

~~(1)(2)~~ (2) The capitalized terms used in this Chapter shall have the same meaning as in 9 V.S.A. § 5616.

~~(3) Securities restitution assistance is only available from the Fund for Securities Violations occurring on or after July 1, 2019, the effective date of 9 V.S.A. § 5616.~~

(b) Application Form and Accompanying Documentation.

~~(1) Claimants shall submit a written application on a form prescribed by the Commissioner-commissioner with all required supporting documentation prescribed in the form, and shall include with the written application the following documentation:~~

~~(A) a copy of the court or administrative order awarding restitution to the Victim;~~

~~(B) a copy of Claimant's Driver's License or government issued photo identification;~~

~~(C) a copy of one or more documents connecting the Victim to the reported address (e.g. utility bill, W-2, voided check, etc.); and~~

~~a completed Form W-9.~~

~~(2) If the Victim is deceased, and an executor or heir is completing the application, the following documents are needed, in addition to the documents listed above:~~

~~(A) Open Estate:~~

~~(i) a copy of the death certificate of the Victim;~~

~~(ii) a copy of the Letters Testamentary and/or Letters of Administration;
and~~

~~(iii) a Federal ID Number for the estate.~~

~~(B) Closed Estate:~~

~~(i) a copy of the death certificate of the Victim;~~

~~(ii) a copy of the Letters Testamentary and/or Letters of Administration;~~

~~(iii) a notarized affidavit signed by executor/administrator to collect and distribute funds to the entitled heirs; and~~

~~(iv) A copy of the Final Report of Distribution or Closing Statement.~~

~~(C) Intestate Succession/No Probate:~~

~~(i) a copy of the death certificate of the Victim;~~

~~(ii) a Small Estate Affidavit; and~~

~~(iii)(i) a copy of the deceased Victim's obituary.~~

(2) A Claimant's personal information. The personal information (as defined in 9 V.S.A. § 2430(1)(A)) submitted by the Claimant in connection with an application is confidential. The following information provided in or with an application for restitution assistance is confidential:

(A) the claimant and victim's name, date of birth, physical address, mailing address, e-mail address, and phone number;

(B) each of the items listed in 9 V.S.A. § 2430(10)(A)(i)-(vii) pertaining to the claimant or victim; and

(C) any other information provided in or with an application for restitution assistance that alone, or in combination with the other information provided in or with the application, would allow a person to identify the claimant or victim with reasonable certainty.

(3) The application and accompanying documentation must be filed in the office of the Department in person, by first class or certified mail, or through the Department's ~~Internet~~ web-site.

(c) Review of Applications; Additional Information; Denial.

(1) The ~~Commissioner~~ commissioner shall review all applications ~~to ensure that the applications are for~~ completeness and eligibility for restitution assistance.

(A) If an application is not complete, the application shall be returned to the ~~C~~claimant with a brief statement of the additional information or documentation required.

(B) The ~~Claimant~~ may, not more than shall have thirty (30) days after the date on which the commissioner returns the application receipt of the request for additional information, either to supply all the additional required information or documentation, or appeal to the Commissioner as to the completeness of the application.

(2) The ~~Commissioner~~ commissioner shall deny ~~the~~ an application if:

(A) Monies are not available in the Special Fund for restitution assistance;

~~(A)~~ (B) the Claimant does not furnish additional information application is not complete; or

(B) additional time is not granted by the Commissioner for good cause; or

(C) the Commissioner commissioner determines that the Claimant application does not meet the eligibility requirements for restitution assistance from the Fund established in 9 V.S.A. § 5616 or restitution assistance is otherwise prohibited by in 9 V.S.A. § 5616; or

~~(C)~~ (D) other good cause exists for denial, such as the existence of dishonesty, forgery, fraud, or deceit in connection with an application.

(3) The decisions of the ~~Commissioner~~ commissioner on an application for restitution assistance shall be provided in writing to the claimant and as to the completeness of the application and the Claimant's eligibility are is final.

(d) Amount of Restitution Assistance Awards from the Fund.

(1) ~~A Claimant's~~ The amount of a restitution assistance award depends on the solvency of the Special Fund, and an application's eligibility for restitution does not mean that he or she shall receive the maximum award referenced in 9 V.S.A. § 5616(e)(3)-(4) will be awarded.

(2) When computing the amount of restitution assistance to be paid ~~from the Fund~~, the ~~Commissioner~~ commissioner shall exclude any award of interest contained in the Final Order.

(e) No Windfall to Claimants.

If:

(1) a restitution assistance an award from the Fund is made to a ~~Claimant~~ or victim; and

(2) that ~~Claimant~~ or victim subsequently receives a partial or full payment from the party ordered to pay restitution in the Final Order that covers all or some of the amount provided by the Department in the restitution assistance award;

the ~~Claimant~~ shall refund to the ~~State Department~~ the equivalent portion of the restitution assistance award amount of the payment received from the party ordered to pay restitution in the Final Order.

(f) Forfeiture of Award.

(1) A person shall not engage in dishonesty, forgery, fraud, or deceit in connection with an application for restitution assistance.

(2) A person found by the Commissioner or a court to have engaged in dishonesty, Claimant convicted of forgery, fraud, or deception-deceit in connection with an application for restitution assistance shall claim under 9 V.S.A. § 5616 and this Chapter forfeits to the Department any amount paid in a restitution assistance award and may be subject to penalties and other remedies available pursuant to 9 V.S.A. §§ 5508, 5603, and 5604 or other law. award paid to the Claimant from the Fund.

(2) The Department may file a civil action to recover funds against a Claimant described in subsection (1).

(Authorized by 9 V.S.A. § 5616(e), (j))

CHAPTER 10

PRIVACY OF CONSUMER FINANCIAL INFORMATION.

V.S.R. § 10-1. Purpose, Scope and Compliance

(a) Purpose. This regulation governs the treatment of nonpublic personal information about individuals by broker-dealers and investment advisers that are registered or required to be registered with the Department. This regulation:

(1) Requires a broker-dealer and/or investment adviser to provide notice to individuals about its privacy policies and practices;

(2) Describes the conditions under which a broker-dealer and/or investment adviser may disclose nonpublic personal information about individuals to nonaffiliated third parties; and

(3) Requires broker-dealers and investment advisers to obtain consumer consent prior to disclosing that information, subject to the exceptions in V.S.R. §§ 10-13, 10-14, 10-15 and 10-16 and subject to the federal Fair Credit Reporting Act and Vermont Fair Credit Reporting Act.

(b) Scope. This regulation applies to (1) nonpublic personal information about individuals who obtain financial products or services primarily for personal, family, or household purposes from the broker-dealer and/or investment advisers listed below and (2) all nonpublic personal health information. This regulation does not apply to information about companies or about individuals who obtain financial products or services for business, commercial, or agricultural purposes. This regulation applies to broker-dealers and investment advisers that are registered or required to be registered with the Department. These entities are referred to in this chapter as "you."

(c) Health Information. This regulation applies to all nonpublic personal health information.

(d) Compliance. A broker-dealer and/or investment adviser subject to this regulation regardless of its jurisdiction of domicile shall comply with this regulation for all transactions with Vermont consumers.

V.S.R. § 10-2. Rule of Construction.

The examples in this regulation and the sample clauses in V.S.R. § 10-25 are not exclusive. The examples in this regulation and the sample clauses in V.S.R. § 10-25 provide guidance concerning the regulation's application in ordinary circumstances. The facts and circumstances of each individual situation, however, will determine whether compliance with an example or use of a sample clause, to the extent applicable, constitutes compliance with this regulation.

V.S.R. § 10-3. Definitions.

As used in this Chapter 10, unless the context requires otherwise:

(a) “Affiliate” of a broker-dealer or an investment adviser means any company that controls, is controlled by, or is under common control with the broker-dealer or investment adviser registered with the commissioner broker-dealer and/or investment adviser. In addition, a broker-dealer or investment adviser registered with the commissioner will be deemed an affiliate of a company for the purposes of this regulation if:

(1) that company is regulated under Title V of the Gramm-Leach-Bliley Act

(Pub. L. No. 106-102, 133 Stat. 1338(1999)) by the Federal Trade Commission or by a federal functional regulator; and

(2) rules adopted by the Federal Trade Commission or another federal functional regulator under Title V of the Gramm-Leach-Bliley Act (Pub. L. No. 106-102, 133 Stat. 1338(1999)) treat the broker-dealer or investment adviser as an affiliate of that company.

(b) (1) “Clear and conspicuous” means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

(2) Examples.

(A) Reasonably understandable. You make your notice reasonably understandable if you:

(i) Present the information in the notice in clear, concise sentences, paragraphs, and sections;

(ii) Use short explanatory sentences or bullet lists whenever possible;

(iii) Use definite, concrete, everyday words and active voice whenever possible;

(iv) Avoid multiple negatives;

(v) Avoid legal and highly technical business terminology whenever possible;

(vi) Avoid explanations that are imprecise and readily subject to different interpretations; and

(vii) Avoid contradictory, confusing or misleading language.

(B) Designed to call attention. You design your notice to call attention to the nature and significance of the information in it if you:

(i) Use a plain-language heading to call attention to the notice;

(ii) Use a typeface and type size that are easy to read;

(iii) Provide wide margins and ample line spacing;

(iv) Use boldface or italics for key words; and

(v) Use distinctive type size, style, and graphic devices, such as shading or sidebars when you combine your notice with other information.

(C) Notices on web sites. If you provide a notice on a web page, you design your notice to call attention to the nature and significance of the information in it if you use text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the web site (such as text, graphics, hyperlinks, or sound) do not distract attention from the notice, and you either:

(i) Place the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or

(ii) Place a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature, and relevance of the notice.

(c) "Collect" means to obtain information that you organize or can retrieve by the name of an individual or by identifying number, symbol, or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(d) "Company" means any corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship or similar organization.

(e) (1) "Consumer" means an individual who seeks to obtain, obtains or has obtained a financial product or service from you that is to be used primarily for personal, family, or household purposes, or that individual's legal representative.

(2) Examples. (A) An individual is your consumer if he or she provides nonpublic personal information to you in connection with obtaining or seeking to obtain brokerage

services or investment advisory services, whether or not you provide brokerage services to the individual or establish a continuing relationship with the individual.

(B) An individual is not your consumer if he or she provides you only with his or her name, address, and general areas of investment interest in connection with a request for a prospectus, an investment adviser brochure, or other information about financial products or services.

(C) An individual is not your consumer if he or she has an account with another broker-dealer (the introducing broker-dealer) that carries securities for the individual in a special omnibus account with you (the clearing broker-dealer) in the name of the introducing broker-dealer, and when you receive only the account numbers and transaction information of the introducing broker-dealer's consumers in order to clear transactions.

(D) An individual who is a consumer of another broker-dealer and/or investment adviser is not your consumer solely because you act as agent for, or provide processing or other services to, that broker-dealer and/or investment adviser.

(E) An individual is not your consumer solely because he or she has designated you as trustee for a trust.

(F) An individual is not your consumer solely because he or she is a beneficiary of a trust for which you are a trustee.

(G) An individual is not your consumer solely because he or she is a participant or a beneficiary of an employee benefit plan that you sponsor or for which you act as a trustee or fiduciary.

(f) "Consumer reporting agency" has the same meaning as in section 603(f) of the federal Fair Credit Reporting Act (15 U.S.C. § 1681a(f)) and shall include any "credit reporting agency" within the meaning of 9 V.S.A. § 2480a(3).

(g) "Control" of a company means the power to exercise a controlling influence over the management or policies of a company whether through ownership of securities, by contract, or otherwise. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of any company is presumed to control the company. Any person who does not own more than 25 percent of the voting securities of any company will be presumed not to control the company. Any presumption regarding control may be rebutted by evidence.

(h) "Customer" means a consumer who has a customer relationship with you.

(i) (1) "Customer relationship" means a continuing relationship between a consumer and you under which you provide one or more financial products or services to the consumer that are to be used primarily for personal, family, or household purposes.

(2) Examples. (A) Continuing relationship. A consumer has a continuing relationship with you if:

(i) The consumer has a brokerage account with you, or if a consumer's account is transferred to you from another broker-dealer;

(ii) The consumer has an investment advisory contract with you (whether written or oral);

(iii) The consumer holds an investment product through you, such as when you act as a custodian for securities or for assets in an Individual Retirement Arrangement;

(iv) The consumer purchases a variable insurance product from you;

(v) The consumer has an account with an introducing broker-dealer that clears transactions with and for its customers through you on a fully disclosed basis;

(vi) You hold securities or other assets as collateral for a loan made to the consumer, even if you did not make the loan or do not effect any transactions on behalf of the consumer; or

(vii) You regularly effect or engage in securities transactions with or for a consumer even if you do not hold any assets of the consumer.

(B) No continuing relationship. A consumer does not, however, have a continuing relationship with you if you open an account for the consumer solely for the purpose of liquidating or purchasing securities as an accommodation, i.e., on a one-time basis, without the expectation of engaging in other transactions.

(j) "Federal functional regulator" means:

(1) The Board of Governors of the Federal Reserve System;

(2) The Office of the Comptroller of the Currency;

(3) The Board of Directors of the Federal Deposit Insurance Corporation;

(4) The Director of the Office of Thrift Supervision;

(5) The National Credit Union Administration Board

(6) The Securities and Exchange Commission; and

(7) The Commodity Futures Trading Commission.

(k) (1) "Financial institution" means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. § 1843(k)).

(2) "Financial institution" does not include:

(A) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. § 1 et seq.);

(B) The Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 (12 U.S.C. § 2001 et seq.); or

(C) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights), or similar transactions related to a transaction of a consumer, as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(l) (1) “Financial product or service” means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. § 1843(k)).

(2) “Financial service” includes your evaluation or brokerage of information that you collect in connection with a request or an application from a consumer for a financial product or service.

(m) “Health Care” means:

(1) Preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, services, procedures, tests or counseling that:

(A) Relates to the physical, mental or behavioral condition of an individual; or

(B) Affects the structure or function of the human body or any part of the human body, including the banking of blood, sperm, organs or any other tissue; or

(2) Prescribing, dispensing or furnishing to an individual drugs or biologicals, or medical devices or health care equipment and supplies.

(n) “Health Care Provider” means a physician or other health care practitioner licensed, accredited or certified to perform specified health services consistent with state law, or a health care facility.

(o) “Health Information” means any information or data except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or the consumer that relates to:

(1) The past, present or future physical, mental or behavioral health or condition of an individual;

(2) The provision of health care to an individual; or

(3) Payment for the provision of health care to an individual.

(p) “Investment adviser” has the same meaning as in 9 V.S.A. § 5102(15); “federal covered investment adviser” has the same meaning as in 9 V.S.A. § 5102(6). For purposes of this regulation, the term “investment adviser” shall include a federal covered investment adviser.

(q) (1) “Nonaffiliated third party” means any person except:

(A) Your affiliate; or

(B) A person employed jointly by you and any company that is not your affiliate (but “nonaffiliated third party” includes the other company that jointly employs the person).

(2) Nonaffiliated third party includes any company that is an affiliate solely by virtue of your or your affiliate's direct or indirect ownership or control of the company in conducting merchant banking or investment banking activities of the type described in section 4(k)(4)(H) or insurance company investment activities of the type described in section 4(k)(4)(I) of the Bank Holding Company Act (12 U.S.C. § 1843(k)(4)(H) and(I)) and also includes Vermont merchant banks as described in 8 V.S.A. § 12603.

(r) “Nonpublic personal information” means nonpublic personal financial information and nonpublic personal health information.

(s) (1) “Nonpublic personal financial information” means:

(A) Personally identifiable financial information; and

(B) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available information.

(2) “Nonpublic personal financial information” does not include:

(A) Health information;

(B) Publicly available information, except as included on a list described in subdivision (1)(ii) of this subsection (u); or

(C) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information that is not publicly available information.

(3) Examples of lists. (A) Nonpublic personal financial information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available information, such as account numbers.

(B) Nonpublic personal financial information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available information, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a broker-dealer and/or investment adviser.

(t) "Nonpublic personal health information" means health information:

(1) That identifies an individual who is the subject of the information; or

(2) With respect to which there is a reasonable basis to believe that the information could be used to identify an individual.

(u) (1) "Personally identifiable financial information" means any information:

(A) A consumer provides to you to obtain a financial product or service from you;

(B) About a consumer resulting from any transaction involving a financial product or service between you and a consumer; or

(C) You otherwise obtain about a consumer in connection with providing a financial product or service to that consumer.

(2) Examples.

(A) Information included. Personally identifiable financial information includes:

(i) Information a consumer provides to you on an application to obtain a loan, credit card, or other financial product or service;

(ii) Account balance information, payment history, overdraft history, and credit or debit card purchase information;

(iii) The fact that an individual is or has been one of your customers or has obtained a financial product or service from you;

(iv) Any information about your consumer if it is disclosed in a manner that indicates that the individual is or has been your consumer;

(v) Any information that a consumer provides to you or that you or your agent otherwise obtain in connection with collecting on a loan or servicing a loan;

(vi) Any information you collect through an Internet "cookie" (an information collecting device from a web server); and

(v) Information from a consumer report.

(B) Information not included. Personally identifiable financial information does not include:

(i) Health information;

(ii) A list of names and addresses of customers of an entity that is not a broker-dealer and/or investment adviser; and

(iii) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

(v) (1) "Publicly available information" means any information that you reasonably believe is lawfully made available to the general public from:

(A) Federal, State, or local government records;

(B) Widely distributed media; or

(C) Disclosures to the general public that are required to be made by federal, State, or local law.

(2) Examples.

(A) Reasonable belief

(i) You have a reasonable belief that information about your consumer is lawfully made available to the general public if you have confirmed, or your consumer has represented to you, that the information is publicly available from a source described in paragraphs (v)(1)(A) - (C) of this section;

(ii) You have a reasonable belief that information about your consumer is made available to the general public if you have taken steps to submit the information, in accordance with your internal procedures and policies and with applicable law, to a keeper of federal, State, or local government records that is required by law to make the information publicly available.

(iii) You have a reasonable belief that an individual's telephone number is lawfully made available to the general public if you have located the telephone number in the telephone book or the consumer has informed you that the telephone number is not unlisted.

(iv) You do not have a reasonable belief that information about a consumer is publicly available solely because that information would normally be recorded with a keeper of federal, State, or local government records that is required by law to make the information publicly available, if the consumer has the ability in accordance with applicable law to keep that information nonpublic, such as where a consumer may record a deed in the name of a blind trust.

(B) Government records. Publicly available information in government records includes information in government real estate records and security interest filings.

(C) Widely distributed media. Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper, or a web site that is available to the general

public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

(w) "You" means:

- (1) Any broker-dealer registered or required to be registered with the Department; and
- (2) Any investment adviser registered or required to be registered with the Department including a federal covered investment adviser or who makes the notice filing, or is required to make the notice filing, provided for in 9 V.S.A. § 5405.

V.S.R. § 10-4. Initial Privacy Notice to Consumers Required.

(a) Initial notice requirement. You must provide a clear and conspicuous notice that accurately reflects your privacy policies and practices with respect to nonpublic personal information to:

- (1) Customer. An individual who becomes your customer, not later than when you establish a customer relationship, except as provided in paragraph (e) of this section; and
- (2) Consumer. A consumer, before you disclose any nonpublic personal information about the consumer to any nonaffiliated third party, if you make such a disclosure other than as authorized by V.S.R. §§ 10-14, 10-15 and 10-16.

(b) When initial notice to a consumer is not required. You are not required to provide an initial notice to a consumer under paragraph (a)(2) of this section if:

- (1) You do not disclose any nonpublic personal information about the consumer to any nonaffiliated third party, other than as authorized by V.S.R. §§ 10-14, 10-15 and 10-16 and you do not have a customer relationship with the consumer; or
- (2) A notice has been provided by an affiliate, as long as the notice clearly identifies all affiliates to whom the notice applies and is accurate with respect to you and your other affiliates.

(c) When you establish a customer relationship.

- (1) General rule. You establish a customer relationship when you and the consumer enter into a continuing relationship.
- (2) Special Rule for Loans. You do not have a customer relationship with a consumer if you buy a loan made to the consumer but do not have the servicing rights for that loan.
- (3) Examples of establishing customer relationship. You establish a customer relationship when the consumer:

(A) Effects a securities transaction with you or opens a brokerage account with you under your procedures;

(B) Opens a brokerage account with an introducing broker-dealer that clears transactions with and for its customers through you on a fully disclosed basis; or

(C) Enters into an advisory contract with you (whether in writing or orally).

(d) Existing customers. When an existing customer obtains a new financial product or service from you that is to be used primarily for personal, family, or household purposes, you satisfy the initial notice requirements of paragraph (a) of this section as follows:

(1) You may provide a revised privacy notice, under V.S.R. § 10-8, that covers the customer's new financial product or service; or

(2) If the initial, revised, or annual notice that you most recently provided to that customer was accurate with respect to the new financial product or service, you do not need to provide a new privacy notice under paragraph (a) of this section.

(e) Exceptions to allow subsequent delivery of notice.

(1) You may provide the initial notice required by paragraph (a)(1) of this section within a reasonable time after you establish a customer relationship if:

(A) Establishing the customer relationship is not at the customer's election;

(B) Providing notice not later than when you establish a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time; or

(C) A nonaffiliated broker-dealer or investment adviser establishes a customer relationship between you and a consumer without your prior knowledge.

(2) Examples of exceptions.

(A) Not at customer's election. Establishing a customer relationship is not at the customer's election if the customer's account is transferred to you by a trustee selected by the Securities Investor Protection Corporation ("SIPC") and appointed by a United States Court.

(B) Substantial delay of customer's transaction. Providing notice not later than when you establish a customer relationship would substantially delay the customer's transaction when you and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the financial product or service.

(C) No substantial delay of customer's transaction. Providing notice not later than when you establish a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at your office or through other means by which the customer may view the notice, such as on a web site.

(f) Delivery. When you are required to deliver an initial privacy notice by this section, you must deliver it according to V.S.R. § 10-9. If you use a short-form initial notice for non-customers according to V.S.R. § 10-6(d), you may deliver your privacy notice according to Section V.S.R. § 10-6(d)(3).

V.S.R. § 10-5. Annual privacy notice to customers required.

(a) (1) General rule. You must provide a clear and conspicuous notice to customers that accurately reflects your privacy policies and practices with respect to nonpublic personal information not less than annually during the continuation of the customer relationship.

“Annually” means at least once in any period of 12 consecutive months during which that relationship exists. You may define the 12-consecutive-month period, but you must apply it to the customer on a consistent basis.

(2) Example. You provide a notice annually if you define the 12-consecutive-month period as a calendar year and provide the annual notice to the customer once in each calendar year following the calendar year in which you provided the initial notice. For example, if a customer opens an account on any day of year 1, you must provide an annual notice to that customer by December 31 of year 2.

(b) (1) Termination of customer relationship. You are not required to provide an annual notice to a former customer. A former customer is an individual with whom you no longer have a continuing relationship.

(2) Examples. You no longer have a continuing relationship with a customer if:

(A) The individual's brokerage account is closed;

(B) The individual's investment advisory contract is terminated; or

(C) You no longer have a continuing relationship with an individual if the individual's last known address according to your records is deemed invalid. An address of record is deemed invalid if mail sent to that address by you has been returned by the postal authorities as undeliverable and if subsequent attempts by you to obtain a current valid address for the individual have been unsuccessful.

(c) Special Rule for Loans. If you do not have a customer relationship with a consumer under the special provision for loans in V.S.R. § 10-4(c)(2), then you need not provide an annual notice to that consumer under this section.

(d) Delivery. When you are required to deliver an annual privacy notice by this section, you must deliver it according to V.S.R. § 10-9.

(e) Exception to annual privacy notice requirement.

(1) When exception available. You are not required to deliver an annual privacy notice if:

(A) You provide nonpublic personal information to nonaffiliated third parties only in accordance with the provisions of V.S.R. §§ 10-13, 10-14 and 10-15;

(B) You do not disclose information to or among its affiliates in a manner that would require an opt-in under the Vermont Fair Credit Reporting Act, 9 V.S.A. §2480e;

(C) Any disclosures you are required to make under Section 624 of the federal Fair Credit Reporting Act (15 U.S.C. § 1681s-3) and the federal implementing regulations as modified by 15 U.S.C. § 1681t(b)(2) and the Vermont Fair Credit Reporting Act, if applicable, have been satisfied previously or the annual privacy notice is not the only notice provided to satisfy the requirement in this subsection (C);

(D) You have not changed your policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed to the customer in the most recent privacy notice (whether initial, annual, or revised) provided pursuant to this regulation; and

(E) You post your current privacy notice continuously and in a clear and conspicuous manner on a page of your web site on which the only content is the privacy notice, without requiring the customer to provide any information such as a login name or password or agree to any conditions to access the page.

(2) Delivery of annual privacy notice after you no longer meet requirements for exception. If you have been excepted from delivering an annual privacy notice pursuant to subsection (e)(1) of this section and change your policies or practices in such a way that you no longer meets the requirements for the exception, you must provide a new privacy notice to customers at least 60 days prior to the effective date of the change in your policies or practices. The new privacy notice will be treated as an initial privacy notice for purposes of this regulation and your obligation to provide an annual privacy notice thereafter shall be determined in accordance with the requirements and exceptions of this section.

V.S.R. § 10-6. Information to be Included in Privacy Notices.

(a) General rule. The initial, annual, and revised privacy notices that you provide under V.S.R. §§ 10-4, 10-5, and 10-8 must include each of the following items of information that applies to you or to the consumers to whom you send your privacy notice, in addition to any other information you wish to provide:

(1) The categories of nonpublic personal information that you collect;

(2) The categories of nonpublic personal information that you disclose;

(3) The categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information, other than those parties to whom you disclose information under V.S.R. §§ 10-14, 10-15 and 10-16;

(4) The categories of nonpublic personal information about your former customers that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information about your former customers, other than those parties to whom you disclose information under V.S.R. §§ 10-14, 10-15 and 10-16;

(5) If you disclose nonpublic personal financial information to a third party under V.S.R. § 10-13 (and no other exception in V.S.R. §§ 10-14 or 10-15 applies to that disclosure), a separate statement of the categories of information, as limited by V.S.R. § 10-13, you disclose and the categories of nonaffiliated third parties with whom you have contracted;

(6) An explanation of the consumer's right to opt in under V.S.R. § 10-10(a) prior to the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right at any time;

(7) Any disclosures that you make under Section 603(d)(2)(A)(iii) of the federal Fair Credit Reporting Act (15 U.S.C. § 1681a(d)(2)(A)(iii)) and the federal implementing regulations as modified by 15 U.S.C. § 1681t(b)(2) and the Vermont Fair Credit Reporting Act, 9 V.S.A. § 2480e;

(8) Your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and

(9) Any disclosure that you make under paragraph (b) of this section.

(b) Description of parties subject to exceptions. If you disclose nonpublic personal information to third parties as authorized under V.S.R. §§ 10-14, 10-15 and 10-16, you are not required to list those exceptions in the initial or annual privacy notices required by V.S.R. §§ 10-4 and 10-5. When describing the categories with respect to those parties, you are required to state only that you make disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.

(c) Examples. (1) Categories of nonpublic personal financial information that you collect. You satisfy the requirement to categorize the nonpublic personal financial information that you collect if you categorize the information according to the source of the information, as applicable:

(A) Information from the consumer;

(B) Information about the consumer's transactions with you or your affiliates;

(C) Information about the consumer's transactions with nonaffiliated third parties; and

(D) Information from a consumer-reporting agency.

(2) Categories of nonpublic personal financial information you disclose.

(A) You satisfy the requirement to categorize the nonpublic personal financial information that you disclose if you list the categories described in paragraph (c)(1) of this section, as applicable, and a few examples to illustrate the types of information in each category. These might include:

(i) Information from the consumer, including application information, such as assets and income and identifying information, such as name, address and social security number;

(ii) Transaction information, such as information about balances, payment history and parties to the transaction; and

(iii) Information from consumer reports, such as a consumer's creditworthiness and credit history.

(B) If you reserve the right to disclose all of the nonpublic personal financial information about consumers that you collect, you may simply state that fact without describing the categories or examples of the nonpublic personal financial information you disclose.

(C) You do not adequately categorize the information you disclose if you use only general terms, such as transaction information about the consumer.

(3) Categories of affiliates and nonaffiliated third parties to whom you disclose.

(A) You satisfy the requirement to categorize the affiliates and nonaffiliated third parties to whom you disclose nonpublic personal financial information if you identify the types of businesses in which they engage.

(B) Types of businesses may be described by general terms only if you use a few illustrative examples of significant lines of business. For example, you may use the term financial products or services if it includes appropriate examples of significant lines of businesses, such as life insurer, consumer banking or securities brokerage.

(C) You may categorize the affiliates and nonaffiliated third parties to which you disclose nonpublic personal financial information about consumers using more detailed categories.

(4) Disclosures under exception for service providers and joint marketers. If you disclose nonpublic personal financial information under the exception in V.S.R. § 10-13 to a nonaffiliated third party to market products or services that you offer alone or jointly with another broker-dealer and/or investment adviser, you satisfy the disclosure requirement of paragraph (a)(5) of this section if you:

(A) Subject to the limitation in V.S.R. § 10-13, list the categories of nonpublic personal financial information you disclose, using the same categories and

examples you used to meet the requirements of paragraph (a)(2) of this section, as applicable; and

(B) State whether the third party is:

(i) A service provider that performs marketing services on your behalf or on behalf of you and another broker-dealer and/or investment adviser; or

(ii) A broker-dealer and/or investment adviser with which you have a joint marketing agreement.

(5) Simplified notices. If you do not disclose, and do not wish to reserve the right to disclose, nonpublic personal information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under V.S.R. §§ 10-14, 10-15 and 10-16, you may simply state that fact, in addition to the information you must provide under paragraphs (a)(1), (a)(8), (a)(9), and (b) of this section.

(6) Confidentiality and security. You describe your policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information if you do both of the following:

(A) Describe in general terms who is authorized to have access to the information; and

(B) State whether you have security practices and procedures in place to ensure the confidentiality of the information in accordance with your policy. You are not required to describe technical information about the safeguards you use.

(d) Short-form initial notice with opt-in notice for non-customers.

(1) You may satisfy the initial notice requirements in V.S.R. §§ 10-4(a)(2) and 10-7(d) for a consumer who is not a customer by providing a short-form initial notice at the same time as you deliver an opt-in notice as required in V.S.R. §10-7.

(2) A short-form initial notice must:

(A) Be clear and conspicuous;

(B) State that your privacy notice is available upon request; and

(C) Explain a reasonable means by which the consumer may obtain the privacy notice.

(3) You must deliver your short-form initial notice according to V.S.R. § 10-9. You are not required to deliver your privacy notice with your short-form initial notice. You instead may simply provide the consumer a reasonable means to obtain your privacy

notice. If a consumer who receives your short-form notice requests your privacy notice, you must deliver your privacy notice according to V.S.R. § 10-9.

(4) Examples of obtaining privacy notice. You provide a reasonable means by which a consumer may obtain a copy of your privacy notice if you:

(A) Provide a toll-free telephone number that the consumer may call to request the notice; or

(B) For a consumer who conducts business in person at your office, maintain copies of the notice on hand that you provide to the consumer immediately upon request.

(e) Future disclosures. Your notice may include:

(1) Categories of nonpublic personal financial information that you reserve the right to disclose in the future, but do not currently disclose; and

(2) Categories of affiliates or nonaffiliated third parties to whom you reserve the right in the future to disclose, but to whom you do not currently disclose, nonpublic personal financial information.

(f) Sample clauses. Sample clauses illustrating some of the notice content required by this section are included in Appendix A of this regulation.

(g) Federal Model Privacy Form.

(1) Vermont statutes and regulations relating to consumer privacy contain privacy notice content requirements with significant differences from federal content requirements. Among other differences, Vermont is an “opt-in” state.

(2) Federal regulation S-P (Privacy of Consumer Financial Information), 17 C.F.R. Part 248, contains a model privacy form at Appendix A to Subpart A – Model Privacy Form (“Federal Model Privacy Form”).

(3) A broker-dealer and/or investment adviser that uses the Federal Model Privacy Form consistent with the instructions in Appendix A to Subpart A, as supplemented by the requirements of this subsection, is in compliance with the content notice requirements of this regulation. Use of the Federal Model Privacy Form is not required. You may use other types of privacy notices so long as the notices comply with this regulation.

(4) Vermont laws and regulations require broker-dealer and/or investment advisers to obtain an “opt-in” consent from a consumer prior to sharing nonpublic personal information with an affiliate or with a nonaffiliated third party, except as otherwise

specifically permitted by this regulation. A broker-dealer and/or investment adviser may use the Federal Model Privacy Form to comply with this regulation in either of the following ways:

Option 1. A broker-dealer and/or investment adviser may provide a generalized notice to its Vermont consumers that answers “no” to each of the questions about whether it shares information: (i) “For our affiliates’ everyday business purposes – information about your creditworthiness;” and (ii) “for nonaffiliates to market to you;” **OR**

Option 2. A broker-dealer and/or investment adviser can provide a generalized notice to consumers across a number of states, including Vermont, and answer “yes” to the questions in Option 1 above, provided it includes a discussion on the application of Vermont law in the “Other Important Information” box on page 2 of the Federal Model Privacy Form and complies with the requirements in subsection 5 below.

(5) A broker-dealer and/or investment adviser that chooses to use the Federal Model Privacy Form as provided in Option 2 above shall provide the following information:

(A) The “Other Important Information” box on the Federal Model Privacy Form contains statements that convey the following information:

Other Important Information

For Vermont Members/Customers.

- We will not disclose information about your creditworthiness to our affiliates and will not disclose your personal information, financial information, credit report, or health information to nonaffiliated third parties to market to you, other than as permitted by Vermont law, unless you authorize us to make those disclosures.
- Additional information concerning our privacy policies can be found at [website link] or call [telephone number].

AND

(B) The additional information provided on the broker-dealer and/or investment adviser’s website contains the information required by this regulation; to the extent such information is not already included in the broker-dealer and/or investment adviser’s privacy notice.

V.S.R. § 10-7. Form of Opt-In Notice to Consumers; Opt-In Methods.

(a) (1) Form of opt-in notice. If you are required to provide an opt-in notice under V.S.R. § 10-10(a) then you may not disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party unless you:

(A) Provide to the consumer a clear and conspicuous notice, in writing or electronic form, of the categories of nonpublic personal financial information that may be disclosed and the categories of nonaffiliated third parties to whom you disclose nonpublic personal financial information;

(B) Identify the financial product or services that the consumer obtains from the broker-dealer and/or investment adviser, either singly or jointly, to which the opt-in direction would apply;

(C) Identify the methods by which the consumer may subsequently revoke the opt-in direction;

(D) Clearly and conspicuously request in writing or in electronic form that the consumer affirmatively authorize such disclosure; and

(E) Obtain from the consumer such affirmative consent and such consent has not been withdrawn.

(2) Unreasonable revocation of opt-in direction means. You *do not* provide a reasonable means of revoking an opt-in direction if:

(A) The only means of revoking an opt-in direction is for the consumer to write his or her own letter to effect a revocation; or

(B) The only means revoking an opt-in direction as described in any notice subsequent to the initial notice is to use a check-off box that you provided with the initial notice but did not include with the subsequent notice.

(3) Duration and withdrawal of consent. A consumer's direction to opt in under this subsection is effective until the consumer revokes it in writing or, if the consumer agrees, electronically; further provided however, any withdrawal or revocation of consent is subject to your rights if you acted reasonably in reliance on the consent prior to knowledge of its withdrawal or revocation. When a customer relationship terminates, the customer's opt-in direction continues to apply to the nonpublic personal financial information collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with you, the opt-in direction that applied to the former relationship does not apply to the new relationship.

(4) Joint relationships. If two or more consumers jointly obtain a financial product or service from you, you may only disclose nonpublic personal financial information of a consumer to a nonaffiliated third party after obtaining an affirmative consent

notice from that consumer. Joint information may only be disclosed after obtaining the affirmative consent notice from all joint consumers of the product or service.

(5) Aggregate Lists. You may not disclose any aggregate list of consumers containing or derived from nonpublic personal financial information to a nonaffiliated third party unless you have satisfied, for each consumer on the list, the requirements of subdivisions (A), (B), (C), (D) and (E) of (a)(1) of this section.

(6) Exceptions. This section shall not restrict you from disclosing nonpublic personal financial information as authorized in V.S.R. §§ 10-13, 10-14, 10-15 and 10-16.

(7) Record Retention. You must retain the opt-in authorization or a copy thereof in the record of the consumer who is the subject of disclosure of nonpublic personal financial information.

(b) Delivery. When you are required to deliver an opt-in notice by this section, you must deliver it according to V.S.R. § 10-9.

(c) Same form as initial notice permitted. You may provide the opt-in notice together with or on the same written or electronic form as the initial notice you provide in accordance with V.S.R. § 10-4.

(d) Initial notice required when opt-in notice delivered subsequent to initial notice. If you provide the opt-in notice after the initial notice in accordance with V.S.R. § 10-4, you must also include a copy of the initial notice with the opt-in notice in writing or, if the consumer agrees, electronically.

V.S.R. § 10-8. Revised Privacy Notices.

(a) General rule. Except as otherwise authorized in this regulation, you must not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party other than as described in the initial notice that you provided to that consumer under V.S.R. § 10-4, unless:

- (1) You have provided to the consumer a clear and conspicuous revised notice that accurately describes your policies and practices;
- (2) You have provided to the consumer a new opt-in notice; and
- (3) The consumer provides an affirmative consent to the disclosures described in the notice.

(b) Examples.

(1) Except as otherwise permitted by V.S.R. §§ 10-13, 10-14 and 10-15, you must provide a revised notice before you:

- (A) Disclose a new category of nonpublic personal financial information to any nonaffiliated third party;

(B) Disclose nonpublic personal financial information to a new category of nonaffiliated third party; or

(C) Disclose nonpublic personal financial information about a former customer to a nonaffiliated third party, if that former customer has not given affirmative consent regarding that disclosure.

(2) A revised notice is not required if you disclose nonpublic personal financial information to a new nonaffiliated third party that you adequately described in your prior notice.

(c) Delivery. When you are required to deliver a revised privacy notice by this section, you must deliver it according to V.S.R. § 10-9.

(d) Fair Credit Reporting Acts. Nothing in this regulation shall relieve you of any requirement under the federal or Vermont Fair Credit Reporting Acts or regulations promulgated thereunder with respect to notice and consumer consent for disclosures to affiliates.

V.S.R. § 10-9. Delivering Privacy and Opt-In Notices.

(a) How to provide notices. You must provide any notice that this regulation requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(b) (1) Examples of reasonable expectation of actual notice. You may reasonably expect that a consumer will receive actual notice if you:

(A) Hand-deliver a printed copy of the notice to the consumer;

(B) Mail a printed copy of the notice to the last known address of the consumer;

(C) For the consumer who conducts transactions electronically, post the notice on the electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial product or service;
or

(D) For an isolated transaction with the consumer, such as an ATM transaction, post the notice on the ATM screen and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular financial product or service.

(2) Examples of unreasonable expectation of actual notice. You may *not*, however, reasonably expect that a consumer will receive actual notice of your privacy policies and practices if you:

(A) Only post a sign in your branch or office or generally publish advertisements of your privacy policies and practices; or

(B) Send the notice via electronic mail to a consumer who does not obtain a financial product or service from you electronically.

(c) Annual notices only. You may reasonably expect that a customer will receive actual notice of your annual privacy notice if:

(A) The customer uses your web site to access financial products and services electronically and agrees to receive notices at the web site and you post your current privacy notice continuously in a clear and conspicuous manner on the web site; or

(B) The customer has requested that you refrain from sending any information regarding the customer relationship, and your current privacy notice remains available to the customer upon request.

(d) Oral description of notice insufficient. You may not provide any notice required by this regulation solely by orally explaining the notice, either in person or over the telephone.

(e) Retention or accessibility of notices for customers.

(1) For customers only, you must provide the initial notice required by V.S.R. § 10-4(a)(1), the annual notice required by V.S.R. § 10-5(a), and the revised notice required by V.S.R. § 10-8, so that the customer can retain them or obtain them later in writing or, if the customer agrees to electronic receipt, transmit them in a form that the customer can download and print.

(2) Examples of retention or accessibility. You provide a privacy notice to the customer so that the customer can retain it or obtain it later if you:

(A) Hand-deliver a printed copy of the notice to the customer;

(B) Mail a printed copy of the notice to the last known address of the customer; or

(C) Make your current privacy notice available on a web site (or a link to another web site) for the customer who obtains a financial product or service electronically and agrees to receive the notice at the web site. Electronic receipt must include the ability to download and print the notice.

(f) Joint notice with other broker-dealer and/or investment advisers. You may provide a joint notice from you and one or more of your affiliates or other broker-dealer and/or investment advisers, as identified in the notice, as long as the notice is accurate with respect to you and the other institutions. You may also provide a notice on behalf of another broker-dealer and/or investment adviser.

(g) Joint relationships. If two (2) or more consumers jointly obtain a financial product or service from you, you may satisfy the initial, annual, and revised notice requirements of V.S.R. §§ 10-4(a), 10-5(a) and (9)(a) respectively by providing one notice to those consumers jointly.

V.S.R. § 10-10. Limits on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties.

(a) Conditions for disclosure. Except as otherwise authorized in this regulation, you may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party unless:

- (1) You have provided to the consumer an initial notice as required under V.S.R. § 10-4;
- (2) You have provided to the consumer an opt-in notice under V.S.R. § 10-7 of this regulation; and
- (3) The consumer has authorized the disclosure in writing or, if the consumer agrees, electronically.

(b) Opt in definition. “Opt in” means the written, or if the consumer agrees, electronic authorization by the consumer allowing you to disclose nonpublic personal financial information about that consumer to a nonaffiliated third party, other than as permitted by V.S.R. §§ 10-13, 10-14 and 10-15.

(c) Application of Opt-in to all consumers and all nonpublic personal financial information.

- (1) You must comply with this section, regardless of whether you and the consumer have established a customer relationship.
- (2) Unless you comply with this section, you may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer that you have collected, regardless of whether you collected it before or after providing the opt-in notice.

(d) Partial Opt in. You may allow a consumer to select certain nonpublic personal financial information or certain nonaffiliated third parties with respect to which the consumer wishes to opt in.

V.S.R. § 10-11. Limits on Redisclosure and Reuse of Nonpublic Personal Financial Information.

(a) (1) Information you receive under an exception. If you receive nonpublic personal financial information from a nonaffiliated broker-dealer and/or investment adviser under an exception in V.S.R. §§ 10-14 or 10-15, your disclosure and use of that information is limited as follows:

- (A) You may disclose the information to the affiliates of the broker-dealer and/or investment adviser from which you received the information;
- (B) You may disclose the information to your affiliates, but your affiliates may, in turn, disclose and use the information only to the extent that you may disclose and use the information; and

(C) You may disclose and use the information pursuant to an exception in V.S.R. §§ 10-14 or 10-15 in the ordinary course of business to carry out the activity covered by the exception under which you received the information.

(2) Example. If you receive a customer list from a nonaffiliated broker-dealer and/or investment adviser in order to provide account-processing services under the exception in V.S.R. § 10-14(a), you may disclose that information under any exception in V.S.R. §§ 10-14 or 10-15 in the ordinary course of business in order to provide those services. You could also disclose that information in response to a properly authorized subpoena or in the ordinary course of business to your attorneys, accountants, and auditors. You could not disclose that information to a third party for marketing purposes or use that information for your own marketing purposes.

(b) (1) Information you receive outside of an exception. If you receive nonpublic personal financial information from a nonaffiliated broker-dealer and/or investment adviser other than under an exception in V.S.R. §§ 10-14 or 10-15, you may disclose the information only:

(A) To the affiliates of the broker-dealer and/or investment adviser from which you received the information;

(B) To your affiliates, but your affiliates may, in turn, disclose the information only to the extent that you can disclose the information; and

(C) To any other person, if the disclosure would be lawful if made directly to that person by the broker-dealer and/or investment adviser from which you received the information.

(2) Example. If you obtain a customer list from a nonaffiliated broker-dealer and/or investment adviser outside of the exceptions in V.S.R. §§ 10-14 or 10-15:

(A) You may use that list for your own purposes; and

(B) You may disclose that list to another nonaffiliated third party only if the broker-dealer and/or investment adviser from which you purchased the list could have lawfully disclosed the list to that third party. That is, you may disclose the list in accordance with the privacy policy of the broker-dealer and/or investment adviser from which you received the list, as limited by the absence or limitation of the opt-in direction of each consumer whose nonpublic personal financial information you intend to disclose, and you may disclose the list in accordance with an exception in V.S.R. §§ 10-14 or 10-15, such as in the ordinary course of business to your attorneys, accountants, or auditors.

(c) Information you disclose under an exception. If you disclose nonpublic personal financial information to a nonaffiliated third party under an exception in V.S.R. §§ 10-14 or 10-15, the third party may disclose and use that information only as follows:

(1) The third party may disclose the information to your affiliates;

(2) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

(3) The third party may disclose and use the information pursuant to an exception in Sections 15 or 16 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(d) Information you disclose outside of an exception. If you disclose nonpublic personal financial information to a nonaffiliated third party other than under an exception in V.S.R. §§ 10-14 or 10-15, the third party may disclose the information only:

(1) To your affiliates;

(2) To its affiliates, but its affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

(3) To any other person, if the disclosure would be lawful if you made it directly to that person.

(e) Fair Credit Reporting Acts. Nothing in this regulation shall authorize you to make any disclosures to an affiliate not otherwise in compliance with the requirement of the federal Fair Credit Reporting Act or regulations promulgated thereunder or the Vermont Fair Credit Reporting Act or regulations promulgated thereunder, including, but not limited to, notice and consumer consent.

V.S.R. § 10-12. Limits on Sharing Account Number Information for Marketing Purposes.

(a) General prohibition on disclosure of account numbers. You must not, directly or through an affiliate, disclose, other than to a consumer reporting agency, an account number or similar form of access number or access code for a consumer's credit card account, deposit account, or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer. You shall not provide an account number or similar form of access number or access code, in an encrypted form.

(b) Exceptions. Paragraph (a) of this section does not apply if you disclose an account number or similar form of access number or access code:

(1) To your agent or service provider solely in order to perform marketing for your own products or services, as long as the agent or service provider is not authorized to directly initiate charges to the account; or

(2) To a participant in an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

(c) Example-Account number.

(1) An account number, or similar form of access number or access code, includes a number or code in an encrypted form.

V.S.R. § 10-13. Exception to Opt-In Requirements for Disclosure of Nonpublic Personal Information for Service Providers and Joint Marketing.

(a) General rule.

(1) The opt-in requirements in V.S.R. §§ 10-7 and 10-10 do not apply when you provide nonpublic personal information to a nonaffiliated third party to perform services for you or functions on your behalf, if you:

(A) Provide the initial notice in accordance with V.S.R. § 10-4;

(B) Enter into a contractual agreement with the third party that prohibits the nonaffiliated third party from disclosing or using the information other than to carry out the purposes for which you disclosed the information, including use under an exception in V.S.R. §§ 10-14 or 10-15 in the ordinary course of business to carry out those purposes; and

(C) For joint marketing agreements,

(i) you provide only the consumer's name, contact information and own transaction and experience information within the meaning of the federal Fair Credit Reporting Act, 15 U.S.C. § 1681a(d)(2)(A)(i) and the Vermont Fair Credit Reporting Act, 9 V.S.A. § 2480a(2)(A); and,

(ii) in the event health information is provided as own transaction or experience information as defined in (A) of this subdivision (iii), complies with V.S.R. §§ 10-19.

(2) Examples.

(A) If you disclose nonpublic personal information under this section to a broker-dealer and/or investment adviser with which you perform joint marketing, your contractual agreement with that institution meets the requirements of paragraph (a)(1)(B) of this section if it prohibits the institution from disclosing or using the nonpublic personal information except as necessary to carry out the joint marketing or under an exception in V.S.R. §§ 10-14 or 10-15 in the ordinary course of business to carry out that joint marketing.

(B) If you comply with the provisions of (a)(1)(A) and (B) of this section, you may provide nonpublic personal information to a service provider that is a nonaffiliated third-party agent of yours to enable the agent to offer, renew or service products on your behalf. Such disclosure shall not be subject to the limitations of paragraph (a)(1)(C) of this section.

(b) Service may include joint marketing. The services a nonaffiliated third party performs for you under paragraph (a) of this section may include marketing of your own products or services or marketing of financial products or services offered pursuant to joint agreements between you and one or more broker-dealer and/or investment advisers.

(c) Joint agreement. Definition. For purposes of this section, "joint agreement" means a written contract pursuant to which you and one or more broker-dealer and/or investment advisers jointly offer, endorse, or sponsor a financial product or service.

V.S.R. § 10-14. Exceptions to Notice and Opt-In Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions.

(a) Exceptions for processing and servicing transactions at consumer's request. The requirements for initial notice in V.S.R. § 10-4(a)(2), for the opt-in requirements in V.S.R. §§ 10-7 and 10-10, and for service providers and joint marketing in V.S.R. § 10-13, do not apply if you disclose nonpublic personal financial information as necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes, or in connection with:

- (1) Processing or servicing a financial product or service that a consumer requests or authorizes;
- (2) Maintaining or servicing the consumer's account with you, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or
- (3) A proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer.

(a) Necessary to effect, administer, or enforce a transaction means that the disclosure is:

- (1) Required, or is one of the lawful or appropriate methods, to enforce your rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or
- (2) Required, or is a usual, appropriate, or acceptable method:
 - (A) To carry out the transaction or the product or service business of which the transaction is a part, and record, service, or maintain the consumer's account in the ordinary course of providing the financial service or financial product;
 - (B) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;
 - (C) To provide a confirmation, statement, or other record of the transaction, or information on the status or value of the financial service or financial product to the consumer or the consumer's agent or broker;
 - (D) To accrue or recognize incentives or bonuses associated with the transaction that are provided by you or any other party;

(E) To the extent permitted under applicable law, underwrite insurance at the consumer's request or for reinsurance purposes, or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating, or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects, or as otherwise required or specifically permitted by federal or State law; or

(F) In connection with:

(i) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited, or otherwise paid using a debit, credit, or other payment card, check, or account number, or by other payment means;

(ii) The transfer of receivables, accounts, or interests therein; or

(iii) The audit of debit, credit, or other payment information.

V.S.R. § 10-15. Other Exceptions to Notice and Opt-In Requirements for Disclosure of Nonpublic Personal Financial Information.

(a) Exceptions to opt-in requirements. The requirements for initial notice in V.S.R. § 10-4(a)(2) and for the opt-in requirements in V.S.R. §§ 10-7, 10-10 and service providers and joint marketing under V.S.R. § 10-13 do not apply when you disclose nonpublic personal financial information:

(1) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;

(2) (A) To protect the confidentiality or security of your records pertaining to the consumer, service, product, or transaction;

(B) To protect against or prevent actual or potential fraud or unauthorized transactions, claims or other liabilities;

(C) For required institutional risk control or for resolving consumer disputes or inquiries;

(D) To persons holding a legal or beneficial interest relating to the consumer; or

(E) To persons acting in a fiduciary or representative capacity on behalf of the consumer.

(3) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating you, persons that are assessing your compliance with industry standards, and your attorneys, accountants, and auditors;

(4) To the extent specifically permitted or required under other provisions of law and in accordance with the federal Right to Financial Privacy Act of 1978 (12 U.S.C. § 3401 *et seq.*), to law enforcement agencies (including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, the Securities and Exchange Commission, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping and the Federal Trade Commission) to state and federal civil and administrative authorities (including, but not limited to, a state insurance authority, a state banking authority and a state securities authority), self-regulatory organizations or for an investigation on a matter related to public safety;

(5) (A) To a consumer reporting agency in accordance with the federal Fair Credit Reporting Act (15 U.S.C. § 1681 *et seq.*), or

(B) From a consumer report reported by a consumer reporting agency;

(6) In connection with a proposed or actual affiliation, reorganization, sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely consumers of such business or unit;

(7) (A) To comply with federal, state, or local laws, rules and other applicable legal requirements;

(B) To comply with a properly authorized civil, criminal, or regulatory investigation, or subpoena or summons by federal, state, or local authorities;

(C) To respond to judicial process or government regulatory authorities having jurisdiction over you for examination, compliance, or other purposes as authorized by law; or

(8) In the administration of an order or proceeding under Chapter 150 of Title 9.

(b) Examples of revocation of consent. A consumer may revoke consent by subsequently exercising the right to prevent future disclosures of nonpublic personal financial information as permitted under V.S.R. § 10-7(a).

V.S.R. § 10-16. When Authorization Is Required for Disclosure of Nonpublic Personal Health Information.

(a) General rule. You shall not disclose nonpublic personal health information about a consumer or customer unless an authorization is obtained from the consumer or customer whose nonpublic personal health information is the subject of a requested disclosure.

(b) Exceptions. Nothing in this section shall prohibit, restrict or require an authorization for the disclosure of nonpublic personal health information by a broker-dealer and/or investment adviser for the following:

- (1) Any activity that would permit disclosure without opt in by the consumer or customer pursuant to V.S.R. §§ 10-14 or 10-15 of this rule if the information were nonpublic personal financial information;
- (2) In connection with the conduct by the broker-dealer and/or investment adviser directly of the business of insurance, any activity that would permit disclosure without authorization pursuant to section 17.B or 17.C of Insurance regulation IH-2001-01 (Privacy of Consumer Financial and Health Information regulation);
- (3) Any activity that permits disclosure without authorization pursuant to the federal Health Insurance Portability and Accountability Act privacy rules promulgated by the U.S. Department of Health and Human Services, *except* as provided in section 20 of this regulation; and
- (4) Any activity required pursuant to governmental reporting authority or to comply with legal process.

(c) Additional Functions. Additional categories of disclosures may be added with the approval of the commissioner to the extent they are necessary for appropriate performance of activities that are financial in nature or incidental to such financial activities as described in the section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. § 1843(k)) and are fair and reasonable to the interest of consumers.

V.S.R. § 10-17. Authorizations.

(a) Authorization requirement. A valid authorization to disclose nonpublic personal health information pursuant to V.S.R. § 10-17 shall be in written or electronic form and shall contain all of the following:

- (1) The identity of the consumer or customer who is the subject of the nonpublic personal health information;
- (2) A general description of the types of nonpublic personal health information to be disclosed;
- (3) General descriptions of the parties to whom you disclose nonpublic personal health information, the purpose of the disclosure and how the information will be used;
- (4) The signature of the consumer or customer who is the subject of the nonpublic personal health information or the individual who is legally empowered to grant authority and the date signed; and

(5) Notice of the length of time for which the authorization is valid and that the consumer or customer may revoke the authorization at any time and the procedure for making a revocation.

(b) Time Limits. An authorization for the purposes of V.S.R. § 10-17 shall specify a length of time for which the authorization shall remain valid, which in no event shall be for more than twenty-four (24) months.

(c) Revocation of authorization. A consumer or customer who is the subject of nonpublic personal health information may revoke an authorization provided pursuant to V.S.R. § 10-17 at any time, subject to your rights if you acted in reliance on the authorization prior to notice of the revocation.

(d) Record retention. You shall retain the authorization or a copy thereof in the record of the individual who is the subject of nonpublic personal health information.

V.S.R. § 10-18. Authorization Request Delivery.

A request for authorization and an authorization form may be delivered to a consumer or a customer as part of an opt-in notice pursuant to V.S.R. § 10-9, provided that the request and the authorization form are clear and conspicuous. An authorization form is not required to be delivered to the consumer or customer unless you intend to disclose protected health information pursuant to V.S.R. § 10-16(a).

V.S.R. § 10-19. Relationship to Federal Rules.

Nothing in this regulation modifies, limits, or supersedes the standards and provisions of 45 C.F.R. Parts 160 and 164 governing individually identifiable health information promulgated by the Secretary of Health and Human Services under the authority of sections 262 and 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. §§1320d - 1320d-8); provided, however, you shall be prohibited from making disclosures under the provisions of 45 C.F.R. § 164.514(e)(2) without the consumer's prior written consent. Nothing in this regulation shall be deemed to make applicable any provision of the federal Health Insurance Portability and Accountability Act of 1996 or the regulations promulgated thereunder to any broker-dealer or investment adviser not otherwise subject thereto.

V.S.R. § 10-20. Relationship to State Laws.

Nothing in this article shall preempt or supersede existing state law related to medical records, health or insurance information privacy.

V.S.R. § 10-21. Protection of Fair Credit Reporting Acts.

(a) Transaction and experience information. No inference shall be drawn on the basis of the provisions of this regulation regarding whether information is transaction or experience information under Section 603 of federal Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.).

(b) Vermont Fair Credit Reporting Act. Nothing in this regulation shall be construed to modify, limit or supersede the operation of the Vermont Fair Credit Reporting Act (9 V.S.A. §§ 2480a-2480g). No inference shall be drawn on the basis of the provisions of this regulation regarding whether information is transaction or experience information under section 2480a(2) of the Vermont Fair Credit Reporting Act. This regulation shall not be construed to extend the application of the Vermont Fair Credit Reporting Act to persons who are not residents of Vermont.

V.S.R. § 10-22. Nondiscrimination.

(a) No opt-in discrimination. You shall not unfairly discriminate against a consumer or customer because that consumer or customer has not granted authorization for the disclosure of his or her nonpublic personal financial information pursuant to the provisions of this regulation.

(b) No health opt-in discrimination. You shall not unfairly discriminate against a consumer or customer because that consumer or customer has not granted authorization for the disclosure of his or her nonpublic personal health information pursuant to the provisions of this regulation.

V.S.R. § 10-23. Violations.

In addition to any other sanctions available to the commissioner under Vermont law for violations of this regulation, any violation of this regulation shall be deemed an unfair method of competition or an unfair or deceptive act or practice in the conduct of a broker-dealer or investment adviser for the purposes of Chapter 150 of Title 9 V.S.A.

V.S.R. § 10-24. Severability.

If any section or portion of a section of this regulation or its applicability to any person or circumstance is held invalid by a court, the remainder of the regulation or the applicability of the provision to other persons or circumstances shall not be affected.

V.S.R. § 10-25. Procedures to Safeguard Customer Records and Information.

Every broker-dealer and every investment adviser registered with the commissioner must adopt policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information. These policies and procedures must be reasonably designed to:

(a) Ensure the security and confidentiality of customer records and information;

(b) Protect against any anticipated threats or hazards to the security or integrity of customer records and information; and

(c) Protect against unauthorized access to or use of customer records or information that could result in substantial harm or inconvenience to any customer.

V.S.R. § 10-26. Sample Clauses

You, including if you are a group of financial holding company affiliates that use a common privacy notice, may use the following sample clauses, if the clause is accurate for each institution that uses the notice. (Note that disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act, such as a requirement to permit a consumer to opt-in to disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.)

A-1. Categories of information you collect (all institutions)

You may use this clause, as applicable, to meet the requirement of V.S.R. § 10-6(a)(1) to describe the categories of nonpublic personal financial information you collect.

Sample Clause A-1:

We collect nonpublic personal financial information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information about your transactions with us, our affiliates, or others; and
- Information we receive from a consumer reporting agency.

A-2. Categories of information you disclose (institutions that disclose outside of the exceptions)

You may use one of these clauses, as applicable, to meet the requirement of V.S.R. § 10-6(a)(2) to describe the categories of nonpublic personal financial information you disclose. You may use these clauses if you disclose nonpublic personal financial information other than as permitted by the exceptions in V.S.R. §§ 10-13, 10-14 and 10-15.

Sample Clause A-2, Alternative 1:

We may disclose the following kinds of nonpublic personal financial information about you:

- Information we receive from you on applications or other forms, such as *[provide illustrative examples, such as "your name, address, social security number, assets, and income"]*;

- Information about your transactions with us, our affiliates, or others, such as [provide illustrative examples, such as "your account balance, payment history, parties to transactions, and credit card usage"]; and
- Information we receive from a consumer reporting agency, such as [provide illustrative examples, such as "your creditworthiness and credit history"].

Sample Clause A-2, Alternative 2:

We may disclose all of the information that we collect, as described [describe location in the notice, such as "above" or "below"].

A-3. Categories of information you disclose and parties to whom you disclose (institutions that do not disclose outside of the exceptions)

You may use this clause, as applicable, to meet the requirements of V.S.R. § 10-6(a)(2), (3), and (4) to describe the categories of nonpublic personal financial information about customers and former customers that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose. You may use this clause if you do not disclose nonpublic personal financial information to any party, other than as permitted by the exceptions in V.S.R. §§ 10-14 and 10-15.

Sample Clause A-3:

We do not disclose any nonpublic personal financial information about our customers or former customers to anyone, except as permitted by law.

A-4. Categories of parties to whom you disclose (institutions that disclose outside of the exceptions)

You may use this clause, as applicable, to meet the requirement of V.S.R. § 10-6(a)(3) to describe the categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal financial information. You may use this clause if you disclose nonpublic personal financial information other than as permitted by the exceptions in V.S.R. §§ 10-13, 10-14 and 10-15, as well as when permitted by the exceptions in V.S.R. §§ 10-14 and 10-15.

Sample Clause A-4:

We may disclose nonpublic personal financial information about you to the following types of third parties:

- Financial service providers, such as [provide illustrative examples, such as "mortgage bankers, securities broker-dealers, and insurance agents"]; and
- Non-financial companies, such as [provide illustrative examples, such as "retailers, direct marketers, airlines, and publishers"]; and
- Others, such as [provide illustrative examples, such as "non-profit organizations"]

We may also disclose nonpublic personal financial information about you to nonaffiliated third parties as permitted by law. .

A-5. Service provider/joint marketing exception

You may use one of these clauses, as applicable, to meet the requirements of V.S.R. § 10-6(a)(5) related to the exception for service providers and joint marketers in V.S.R. § 10-13. If you disclose nonpublic personal information under this exception, you must describe the categories of nonpublic personal financial information you disclose and the categories of third parties with whom you have contracted.

Sample Clause A-5, Alternative 1:

We may disclose the following information to companies that perform marketing services on our behalf or to other broker-dealer and/or investment advisers with which we have joint marketing agreements.

Information we receive from you on applications or other forms, such as [provide illustrative examples, such as "your name, address, social security number, assets, and income"]:

- Information about your transactions with us, our affiliates, or others, such as [provide illustrative examples, such as "your account balance, payment history, parties to transactions, and credit card usage"]; and
- Information we receive from a consumer reporting agency, such as [provide illustrative examples, such as "your creditworthiness and credit history"].

Sample Clause A-5, Alternative 2:

We may disclose all of the information we collect, as described [describe location in the notice, such as "above" or "below"] to companies that perform marketing services on our behalf or to other broker-dealer and/or investment advisers with whom we have joint marketing agreements.

Sample Clause A-5, Alternative 3:

We may disclose the following information to other broker-dealer and/or investment advisers with which we have joint marketing agreements:

- The following information we receive from you: "your name and contact information";
- Information about your transactions with us or our affiliates, such as [provide illustrative examples of own transaction and experience information, such as "your account balance, payment history, parties to transactions, and credit card usage"].

A-6. Explanation of opt-in right (institutions that disclose to nonaffiliates outside of the exceptions)

You may use this clause, as applicable, to meet the requirement of V.S.R. § 10-6(a)(6) to provide an explanation of the consumer's right to opt in to the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right. You may use this clause if you disclose nonpublic personal financial information to nonaffiliated third parties other than as permitted by the exceptions in V.S.R. §§ 10-13, 10-14 and 10-15.

Sample Clause A-6-b:

We will not disclose nonpublic personal financial information about you to nonaffiliated third parties (other than disclosures permitted by law), unless you authorize us to make those disclosures. Your authorization must be in writing or, if you agree, in electronic form. If you wish to authorize us to disclose your nonpublic personal financial information to nonaffiliated third parties, you may *[describe a reasonable means of opting in, such as "sign the attached, postage prepaid card and mail it to us"]*.

A-7. Confidentiality and security (all institutions)

You may use this clause, as applicable, to meet the requirement of V.S.R. § 10-6(a)(8) to describe your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

Sample Clause A-7:

We restrict access to nonpublic personal information about you to *[provide an appropriate description, such as "those employees who need to know that information to provide products or services to you"]*. We maintain physical, electronic, and procedural safeguards that comply with federal standards to guard your nonpublic personal information.

(Authorized by 8 V.S.A. §§ 10 and 15, and 9 V.S.A. § 5605)

CHAPTER 11
EFFECTIVE DATE.

V.S.R. § 11-1. Effective Date

(a) The effective date of this rule shall be _____.

(b) Prior versions of this rule were effective on December 16, 2021; August 12, 2019; May 15, 2017; July 1, 2016.

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DEPARTMENT OF FINANCIAL REGULATION
SECURITIES DIVISION
VERMONT SECURITIES REGULATIONS

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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. § 10-26 (the “Vermont Securities Regulations”) are promulgated pursuant to the provisions of the Vermont Uniform Securities Act (2002) (the “Act”), codified at Chapter 150, Title 9 of the Vermont Statutes Annotated, and the powers of the commissioner of the Department of Financial Regulation. To the extent any provision or requirements under the Act are not contained within these regulations, such provision is construed as the commissioner’s policy position with respect to the subject of such provision.

V.S.R. § 1-2. Definition of Terms.

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

- (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) “Access person” means:
 - (1) Any of the investment adviser’s supervised persons:
 - (A) Who has access to non-public information regarding any client’s purchase or sale of securities, or non-public information regarding the portfolio holdings of any reportable fund, or
 - (B) Who is involved in making securities recommendations to clients, or who has access to such recommendations that are non-public.
 - (2) If providing investment advice is the investment adviser’s primary business, all of its directors, officers and partners are presumed to be access persons.
- (d) “Accredited investor” means an accredited investor as defined in Rule 501 of Regulation D of the Securities Act of 1933 (15 U.S.C. 77b(a)(15)(ii); 17 C.F.R. § 230.501).
- (e) “Adjusted net worth” means the excess of total assets over total liabilities as determined in conformity with GAAP and adjusted by excluding the following assets and liabilities:
 - (1) Prepaid expenses, deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discounts and expenses, and all other assets of an intangible nature;
 - (2) Advances or loans to a controlling person or employee of the investment adviser; and
 - (3) Homes, home furnishings, automobiles, and any other personal assets that would not be liquidated in the ordinary course of business.
- (f) “Affiliate” means a person who directly or indirectly controls, is controlled by, or is under common control with another person.

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

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

(i) “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;

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

(A) Tax liens;

(B) Court ordered judgements;

(C) Wage garnishments;

(D) Bank levies; or

(E) Treasury or refund offsets.

(10) (A) Subdivisions (1)-(9) above do 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 the applicable subdivision 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 the applicable subdivision above;

Instruction to subdivision (10)(C) 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 subdivisions (1)-(9) 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;

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

(k) “Branch office”

(1) “Broker-dealer branch office” has the meaning given to “branch office” in FINRA Rule 3110, including the supplementary materials thereto.

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

(l) “Business combination related shell company” means a shell company that is formed by an entity that is not a shell company

(1) solely for the purpose of changing the corporate domicile of that entity solely within the United States; or

- (2) solely for the purpose of completing a business combination transaction (as defined under 17 CFR § 230.165(f)) among one or more entities other than the company itself, none of which is a shell company.
- (m) “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.
- (n) “CFTC” means the U.S. Commodity Futures Trading Commission.
- (o) “Chief compliance officer” means a supervised person with the authority and resources to develop and enforce the investment adviser’s policies and procedures. The individual designated to serve as chief compliance officer must be registered as an investment adviser representative and must have the background and skills appropriate for fulfilling the responsibilities of the position.
- (p) “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.
- (q) “Commissioner” has the same meaning as defined in 9 V.S.A. § 5102(4), or the commissioner’s designee.
- (r) “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-five percent (25%) or more of a class of voting securities or the power to sell or direct the sale of twenty-five percent (25%) 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-five percent (25%) or more of the capital.
- (s) “CRD” means the FINRA Central Registration Depository, the central licensing and registration system for the U.S. securities industry and its regulators.
- (t) “Current brochure” and “current brochure supplement” mean the most recent versions of the brochure or brochure supplements, including all sticker amendments.

(u) “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.

(v) “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.

(w) “Department” means the Vermont Department of Financial Regulation.

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

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

- (1) Registered, or approved for registration upon notice of issuance, on a national securities exchange;
- (2) Authorized, or approved for authorization upon notice of issuance, for listing on the national market system of the NASDAQ stock market;
- (3) Issued by an investment company registered under The Investment Company Act of 1940;

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

- (i) 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
- (ii) 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.

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

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

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

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

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

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

(A) Dividing the annual value of the Employment Cost Index For Wages and Salaries, Private Industry Workers (or any successor index), as published by the Bureau of Labor Statistics, for the calendar year preceding the calendar year in which the adjustment is being made by the annual value of such index (or successor) for the calendar year ending December 31, 2020; and

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

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

(aa) “Eligible adult” means:

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

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

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

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

(dd) "FDIC" means the Federal Deposit Insurance Corporation.

(ee) "Financial exploitation" means:

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

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

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

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

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

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

(hh) "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.

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

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

- (1) Is engaged by an investment adviser to act as a gatekeeper for the payment of fees, expenses, and capital withdrawals from a pooled investment;
- (2) Does not control, is not controlled by, and is not under common control with the investment adviser; and
- (3) Does not have, and has not had within the past two (2) years, a material business relationship with the investment adviser.

(kk) "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.

(ll) “Information security” means the protection of investor and firm information, including both physical and electronic records, and data including protection against unauthorized access, disclosure, use, alteration or disruption.

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

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

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

(pp) “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.

(qq) “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 the broker-dealer reasonably believes that:

(l) upon consummation of the transaction, any person acquiring securities or assets of the eligible privately held company, acting alone or in concert

(A) 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

(B) 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 with the assets of the eligible privately held company, including without limitation, for example, by

- (i) electing executive officers;
- (ii) approving the annual budget; or
- (iii) serving as an executive or other executive manager; and

(2) if any person is offered securities in exchange for securities or assets of the eligible privately held company, such person will, prior to becoming legally bound to consummate the transaction, receive or have reasonable access to the most recent fiscal year-end financial statements of the issuer of the securities as customarily prepared by the management of the issuer 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.

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

(ss) "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.

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

(uu) "NCUA" means the National Credit Union Administration.

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

(ww) "Office of Supervisory Jurisdiction" or "OSJ" has the meaning given to that term in FINRA Rule 3110, including the supplementary materials thereto.

(xx) "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.

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

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

(aaa) “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.

(bbb) “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.

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

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

- (1) A bank or savings association that has deposits insured by the FDIC;
- (2) A broker-dealer registered under the Act who holds client assets in customer accounts;
- (3) A futures commission merchant registered under 7 U.S.C. § 6f, who holds client assets in customer accounts, but only with respect to clients’ funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity and options of the commodity for future delivery; and
- (4) A foreign financial institution that customarily holds financial assets for its customers, if the foreign financial institution keeps the advisory clients’ assets in customer accounts segregated from its proprietary assets.

(eee) “Qualified individual”, as used in V.S.R. § 8-3 (Protection of Vulnerable Adults from Financial Exploitation) means any broker-dealer agent, investment adviser representative or person who serves in a supervisory, compliance, or legal capacity for a broker-dealer or investment adviser.

(fff) “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).

(ggg) “Registrant” means a person registered under the Act.

- (hhh) "Residential supervisory location" or "RSL" means a location designated by a broker-dealer as a residential supervisory location in accordance with, and subject to ongoing compliance with, FINRA Rule 3110.19.
- (iii) "Sales and advertising literature" means the following, if intended for distribution to prospective investors:
- (1) Any advertisement, pamphlet, circular, brochure, form letter, or other written or electronic sales literature or material; and
 - (2) Any script for an oral advertisement or promotional effort.
- (jjj) "SCOR" means Small Company Offering Registration.
- (kkk) "SEC" means the U.S. Securities and Exchange Commission.
- (lll) "Shell Company" means a company that at the time of a transaction with an eligible privately held company
- (1) has no or nominal operations; and
 - (2) 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.
- (mmm) "Solicitor" means any individual, person, or entity who, directly or indirectly, receives a cash fee or any other economic benefit for soliciting, referring, offering or otherwise negotiating for the sale or selling of investment advisory services to clients or prospective clients on behalf of an investment adviser.
- (nnn) "Sponsor" of a wrap fee program as used in V.S.R. § 7-7(a)(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.
- (ooo) "Supervised person" means any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser. The definition includes

investment adviser representatives, employees, independent contractors, or other associated persons and supervised personnel, or other person acting on the behalf of the investment adviser.

- (ppp) "Third party portal" means an entity engaging in activities limited to operating an internet website or platform effecting securities transactions.
- (qqq) "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).
- (rrr) "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.
- (sss) "Vermont certified investor" as used in V.S.R. § 5-11 (Vermont Crowdfunding) means any person who comes within any of the following categories, or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person:
 - (1) Any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in between two million five hundred thousand dollars (\$ 2,500,000) and five million dollars (\$ 5,000,000); any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as described in 29 U.S.C. § 1002, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in between two million five hundred thousand dollars (\$ 2,500,000) and five million dollars (\$ 5,000,000) or, if a self-directed plan, with investment decisions made solely by persons that are certified investors;
 - (2) Any organization described in 26 U.S.C. § 501(c)(3), corporation, Massachusetts Trust or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in between two million five hundred thousand dollars (\$ 2,500,000) and five million dollars (\$ 5,000,000);
 - (3) Any natural person whose individual liquid net worth, or joint net worth with that person's spouse, exceeds five hundred thousand dollars (\$ 500,000);
 - (A) Except as provided in paragraph (3)(B) below, for purposes of calculating net worth under this paragraph (3)(A):
 - (i) The person's primary residence is not included as an asset;

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

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

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

- (4) Any natural person who had an individual income in excess of one hundred thousand dollars (\$ 100,000) in each of the two (2) most recent years or joint income with that person's spouse in excess of one hundred fifty thousand dollars (\$ 150,000) in each of those years and has a reasonable expectation of reaching the same income level in the current year;
- (5) Any trust, with total assets between two million five hundred thousand dollars (\$ 2,500,000) and five million dollars (\$ 5,000,000), not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in 17 C.F.R. § 230.506(b)(2)(ii); and
- (6) Any entity in which all of the equity owners are Vermont certified investors.

- (ttt) "Vermont main street investor" as used in V.S.R. § 5-11 (Vermont Crowdfunding) means any person who does not come within the definition of "Vermont certified investor" or "accredited investor."
- (uuu) "Wrap fee program" means an advisory program under which one (1) or more specified fees, not based directly upon transactions in a client's account, are charged for investment advisory services and the execution of client transactions. The investment advisory

services may include portfolio management or advice concerning the selection of other investment advisers.

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

CHAPTER 2 INCORPORATION BY REFERENCE

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

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

- (1) The Commodity Exchange Act - 7 U.S.C. § 1 through § 27f;
- (2) Registration and Financial Requirements; Risk Assessment - 7 U.S.C. § 6f;
- (3) Schedule of Information Required in Registration Statement - 15 U.S.C. § 77aa;
- (4) Definitions; Promotions of Efficiency, Competition, and Capital formation - 15 U.S.C. § 77b;
- (5) Classes of Securities under this Subchapter - 15 U.S.C. § 77c;
- (6) Exempted Transactions - 15 U.S.C. § 77d;
- (7) Prohibitions Relating to Interstate Commerce and the Mails - 15 U.S.C. § 77e;
- (8) Fraudulent Interstate Transactions - 15 U.S.C. § 77q;
- (9) Exemption from State Regulation of Securities Offerings - 15 U.S.C. § 77r;
- (10) Definitions and Application - 15 U.S.C. § 78c;
- (11) National Securities Exchanges - 15 U.S.C. § 78f;
- (12) Manipulative and Deceptive Devices - 15 U.S.C. § 78j;
- (13) Trading by Members of Exchanges, Brokers, and Dealers - 15 U.S.C. § 78k;
- (14) Registration Requirements for Securities - 15 U.S.C. § 78l;

- (15) Periodical and Other Reports - 15 U.S.C. § 78m;
- (16) Registration and Regulation of Brokers and Dealers - 15 U.S.C. § 78o;
- (17) Investment Company Act of 1940 - 15 U.S.C. § 80a-1 et seq.;
- (18) Definition of Investment Company - 15 U.S.C. § 80a-3;
- (19) Subclassification of Management Companies - 15 U.S.C. § 80a-5;
- (20) Registration of Investment Advisers - 15 U.S.C. § 80b-3;
- (21) Prevention of Misuse of Nonpublic Information - 15 U.S.C. § 80b-4a;
- (22) Investment Advisory Contracts - 15 U.S.C. § 80b-5;
- (23) Prohibited Transactions by Investment Advisers - 15 U.S.C. § 80b-6;
- (24) Validity of Contracts - 15 U.S.C. § 80b-15;
- (25) Exemption from Tax on Corporations, Certain Trusts, Etc. - 26 U.S.C. § 501;
- (26) Special Rules for Credits and Deductions - 26 U.S.C. § 642;
- (27) Charitable Remainder Trusts - 26 U.S.C. § 664; and
- (28) Employee Retirement Income Security Act Definitions - 29 U.S.C. § 1002.

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

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

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

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

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

- (1) Broker-Dealer Credit Account - 12 C.F.R. § 220.7;
- (2) Accountants' Reports and Attestations - 17 C.F.R. § 210.2-02;
- (3) Communications Not Deemed a Prospectus - 17 C.F.R. § 230.134;
- (4) Intrastate Offers and Sales - 17 C.F.R. § 230.147;
- (5) Conditional Small Issues Exemption - 17 C.F.R. §§ 230.251 et seq.;
- (6) Rules Governing the Limited Offer and Sale of Securities Without Registration Under the Securities Act of 1933 - 17 C.F.R. §§ 230.501 et seq.;
- (7) Form S-1, Registration Statement under the Securities Act of 1933 - 17 C.F.R. § 239.11;
- (8) Hypothecation of Customers' Securities - 17 C.F.R. § 240.8c-1;
- (9) Employment of Manipulative and Deceptive Devices - 17 C.F.R. § 240.10b-5;
- (10) Confirmation of Transactions - 17 C.F.R. § 240.10b-10;
- (11) Exemptions for American 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) Regulation Best Interest - 17 C.F.R. § 240.15l-1;
- (15) Records to be Made by Certain Exchange Members, Brokers, and Dealers - 17 C.F.R. § 240.17a-3;
- (16) Records to be Preserved by Certain Exchange Members, Brokers, and Dealers - 17 C.F.R. § 240.17a-4;
- (17) Reports to be Made by Certain Brokers and Dealers - 17 C.F.R. § 240.17a-5;
- (18) Notification Provisions for Brokers and Dealers - 17 C.F.R. § 240.17a-11;

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

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

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

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

(23) Investment Adviser Marketing - 17 C.F.R. § 275.206(4)-1.

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

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

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

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

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

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

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

(b) Form ADV: Uniform Application for Investment Adviser Registration;

(c) Form ADV-W: Uniform Request for Withdrawal of Investment Adviser Registration;

(d) Form BD: Uniform Application for Broker-Dealer Registration;

(e) Form BDW or BD-W: Uniform Request for Withdrawal from Registration as a Broker-Dealer;

(f) Form BR: Uniform Branch Office Registration Form;

(g) Form C: Under federal Regulation Crowdfunding;

- (h) Form D: Notice of Sale of Securities Pursuant to Regulation D, Section 4(6);
- (i) Form F-7: Registration Statement for Securities of Certain Canadian Issuers Offered for Cash Upon the Exercise of Rights Granted to Existing Security Holders;
- (j) Form F-8: Registration Statement for Securities of Certain Canadian Issuers to be issued in Exchange Offers or a Business Combination;
- (k) Form F-10: Registration Statement for Securities of Certain Canadian Issuers;
- (l) Form N-1A: Registration Form Used by Open-End Management Investment Companies;
- (m) Form NF: Uniform Investment Company Notice Filing Form;
- (n) Form NF-UIT: Unit Investment Trust Notice Filing Form;
- (o) Form S-1: Registration Statement under Securities Act of 1933;
- (p) Form U-1: Uniform Application to Register Securities;
- (q) Form U-2: Uniform Consent to Service of Process;
- (r) Form U-2A: Uniform Corporate Resolution;
- (s) Form U-4: Uniform Application for Securities Industry Registration or Transfer;
- (t) Form U-5: Uniform Termination Notice for Securities Industry Registration;
- (u) Form U-7: Uniform Small Company Offering Registration Form;
- (v) Form U-SB: Uniform Surety Bond Form;
- (w) Solicitation of Interest Form; and
- (x) Uniform Notice Regulation A - Tier 2 Offering Form.

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

- (a) NASAA Statements of Policy Regarding Church Bonds;
- (b) NASAA Statement of Policy Regarding Church Extension Fund Securities;

- (c) NASAA Statement of Policy Regarding Dishonest or Unethical Business Practices by Broker-Dealers and Agents in Connection with Investment Company Shares; and
- (d) NASAA Statement of Policy Regarding the Small Company Offering Registration (“SCOR”);
- (e) NASAA Statement of Policy Regarding Debt Securities;
- (f) NASAA Statement of Policy Regarding Real Estate Investment Trusts; and
- (g) NASAA Resolution Declaring Blank Check Blind Pool Offerings to be Fraudulent Practices.

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

CHAPTER 3 REGISTRATION OF BROKER-DEALERS AND AGENTS

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

(a) General Provisions.

- (1) An applicant must be at least eighteen (18) years of age. If the applicant is not an individual, then the directors, officers, and managing partners of the applicant must be at least eighteen (18) years of age.
- (2) An agent must not register in association with more than one (1) broker-dealer or issuer at any time, unless management and control of the broker-dealers or issuers are substantially identical. If an agent is associated with or employed by more than one (1) broker-dealer or issuer (i.e., this is predicated on management and control of each such broker-dealer or issuer being substantially identical), then each such broker-dealer or issuer must be duly registered or exempt from registration, and the agent must be registered separately for each such broker-dealer or issuer.
- (3) Supervision: Every registered broker-dealer must employ at its principal office and at each office of supervisory jurisdiction in this state, at least one person designated to act in a supervisory capacity, who is registered as an agent in this state and has satisfied the supervisory examination requirements of FINRA. If a broker-dealer determines it is necessary to designate one person to act in a supervisory capacity for more than one office of supervisory jurisdiction, the broker-dealer may do so if the supervision complies with applicable FINRA Rules, including FINRA Rule 3110.03. For any other office in this state, not designated as an office of supervisory

jurisdiction, a supervisor must be designated to supervise the office; however, the supervisor need not be located in this state, but must be registered in this state as an agent and satisfy the supervisory examination requirements of FINRA.

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

- (4) A broker-dealer must have at least one (1) agent registered in Vermont.
- (5) An applicant must be an approved FINRA member, unless exempt from FINRA registration.
- (6) An applicant not domiciled in Vermont must be registered with the securities administrator of the state in which it is domiciled.

(b) Registration Requirements for Broker-Dealers.

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

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

- (i) A completed Form BD;
- (ii) The filing fee specified in 9 V.S.A. § 5410(a);
- (iii) A Form BR for every broker-dealer branch office in Vermont as defined in V.S.R. § 1-2(j), and the filing fee specified in 9 V.S.A. § 5410(a); and
- (iv) Any reasonable fee charged by FINRA for filing with the CRD system.

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

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

- (iii) If a broker-dealer indicates on Form BD that the firm plans to offer investment advisory services, the firm must indicate, in writing, whether these services are solely incidental to the broker-dealer's business and describe what, if any, additional compensation the broker-dealer receives for such services.
- (2) Initial Application for Non-FINRA Members. Non-FINRA member broker-dealers must file all materials listed in subdivisions (1)(A) and (B) above directly with the commissioner and must comply with all requirements of this chapter. In lieu of a FOCUS report, non-FINRA member applicants must provide audited financial statements for the applicant's most recent fiscal year and interim financial statements that may be unaudited for the current fiscal year through the most recently completed fiscal quarter. The financial statements must include a statement of financial condition and disclosure of net capital or a supplemental schedule of net capital, as required by V.S.R. § 3-3(b).
- (3) Effective Date of Registration. A registration will be effective forty-five (45) calendar days after the applicant files a complete application unless approved earlier by the commissioner. If the commissioner gives written notice of deficiencies in the application, the application will not be considered complete until the applicant resolves all deficiencies.
- (4) Expiration and Annual Renewal of Registration. Broker-dealer registration expires on December 31 of every year, regardless of when the application was approved. A broker-dealer must file an application for renewal prior to the CRD filing deadline or, if the broker-dealer is not a FINRA member, by December 15 of each year. An application for renewal must include the filing fee specified in 9 V.S.A. § 5410(a) and any reasonable fee charged by FINRA for filing with the CRD system.
- (5) Updates and Amendments. A broker-dealer must file an amendment to Form BD with the CRD or, if the broker-dealer is not a FINRA member, with the commissioner whenever there is any material change to its last filed Form BD within thirty (30) calendar days of the material change. A material change includes but is not limited to:
 - (A) A change in firm name, ownership, management, or control of a broker-dealer, or a change in any of its partners, officers, or persons in similar positions; a change of business address; or the creation or termination of a broker-dealer branch office in Vermont;
 - (B) A change in the type of entity, general plan, or nature of a broker-dealer's business, method of operation, or type of securities in which it is dealing or trading;

- (C) Insolvency, dissolution, liquidation, or a material adverse change or impairment of working capital, or noncompliance with the minimum net capital as required by V.S.R. § 3-3(d);
 - (D) Termination of business or discontinuance of activities as a broker-dealer;
 - (E) The filing of a criminal charge or civil action against a registrant, or a partner or officer, in which a fraudulent, dishonest, or unethical act is alleged or a violation of a securities law is involved; or
 - (F) The entry of an order or proceeding by any court or administrative agency against a registrant denying, suspending, or revoking a registration, or threatening to do so, or enjoining the registrant from engaging in or continuing any conduct or practice in the securities business.
- (6) **Withdrawing from Active Registration.** A broker-dealer that voluntarily terminates an active registration in Vermont must file the Form BDW with the CRD or, if the broker-dealer is not a FINRA member, with the commissioner within thirty (30) calendar days of such termination.
- (A) **Effective Date.** Registration termination is effective thirty (30) calendar days after filing of the Form BDW or within such shorter period of time as the commissioner may determine. When a proceeding to revoke, suspend, or impose conditions upon termination is pending or instituted within sixty (60) calendar days after the Form BDW is filed, the termination becomes effective at such time and upon satisfaction of such conditions as the commissioner determines by order.
 - (B) **Post-Effective Action.** The commissioner may institute a revocation or suspension proceeding under 9 V.S.A. § 5412 up to one (1) year after voluntary termination becomes effective and enter a revocation or suspension order as of the last date on which registration is effective.
- (7) **Withdrawn Applications.** An applicant for broker-dealer registration that voluntarily withdraws their application must immediately file Form BDW with the CRD or, if the broker-dealer is not a FINRA member, with the commissioner. Such withdrawal is effective upon filing.
- (8) **Abandoned Applications.** If an applicant for registration as a broker-dealer does not respond in writing within sixty (60) calendar days after receiving a written inquiry or deficiency letter from the commissioner or the applicant takes no action on a pending application and fails to communicate in writing with the commissioner for sixty (60) calendar days, the commissioner will deem the application abandoned. An applicant

must file a new, complete application, as well as the appropriate filing fee to obtain further consideration of an abandoned application.

(c) Registration Requirements for Agents.

(1) Initial Application for Broker-Dealer Agents.

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

- (i) A complete Form U-4;
- (ii) The filing fee specified in 9 V.S.A. § 5410(b);
- (iii) Any reasonable fee charged by FINRA for filing with the CRD system; and
- (iv) Unless exempted by subsections (v) – (vii), proof of a valid passing score on
 - I. the Series 63/Uniform Securities Agent State Law Examination (“Series 63 Examination”) or the Series 66/Uniform Combined State Law Examination (“Series 66 Examination”); and
 - II. all relevant examinations required by FINRA and accepted by Vermont.
- (v) Any individual who has been registered as an agent in any state within two years from the date of filing an application for registration shall not be required to retake the examinations in subsection (iv) to be eligible for registration.
- (vi) Any individual who is not registered as an agent in any state for more than two years but less than five years, who was registered as an agent in at least one jurisdiction for at least one year immediately preceding the termination of the agent registration, who has elected to participate in the FINRA Maintaining Qualifications Program pursuant to FINRA Rule 1240(c), and whose appropriate FINRA qualifying examinations remain valid pursuant to effective participation in the MQP program shall be deemed in compliance with the examination requirements of subsection (iv)(I) as long as the individual elects to participate in the NASAA Examination Validity Extension Program within two years of agent registration termination.

- (vii) Any individual who has not been registered as an agent in any state for more than two years but less than five years, who has elected to participate in the FINRA Maintaining Qualifications Program pursuant to FINRA Rule 1240(c), and whose appropriate FINRA qualifying examinations remain valid pursuant to effective participation in the FINRA Maintaining Qualifications Program shall be deemed in compliance with the examination requirements of subsection (iv)(II).
- (viii) Successful participation in the FINRA Maintaining Qualifications Program shall not extend the Series 66 Examination for purposes of investment adviser representative registration.

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

(2) Initial Application for Issuer Agent Registration.

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

- (i) A completed Form U-4;
- (ii) The filing fee specified in 9 V.S.A. § 5410(b);
- (iii) A passport sized photo of the applicant.

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

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

(5) Updates and Amendments. Amendments to Form U-4 must be filed on behalf of an agent with the CRD or, if the broker-dealer or issuer is not a FINRA member, with the commissioner whenever there is any material change to the last filed Form U-4 within

thirty (30) calendar days of the material change. Material changes include, but are not limited to, changes in:

- (A) Registrant's name;
- (B) Residential address;
- (C) Office of employment address; and
- (D) Matters disclosed in the "disclosure questions" portion of Form U-4.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) **Failure to Obtain Margin Agreement.** A broker-dealer or agent must not execute or clear any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account.

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

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

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

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

(B) Receive an unreasonable commission or profit; or

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

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

- (11) **Contradicting Prospectus.** A broker-dealer or agent must not contradict or negate the importance of any information contained in a prospectus or any other offering materials with the intent to deceive or mislead.
- (12) **Non-Bona Fide Offers.** A broker-dealer or agent must not offer to buy from or sell to any person any security at a stated price, unless the broker-dealer is prepared to purchase or sell at the price and under the conditions that are stated at the time of the offer to buy or sell.
- (13) **Misrepresentation of Market Price.** A broker-dealer or agent must not represent that a security is being offered to a customer “at the market” price or at a price relevant to the market price, unless the broker-dealer or agent knows or has reasonable grounds to believe that a market for the security exists other than a market made, created, or controlled by the broker-dealer or agent, any person for whom the broker-dealer or agent is acting or with whom the broker-dealer or agent is associated in the distribution of securities, or any person controlled by, controlling, or under common control with the broker-dealer or agent.
- (14) **Market Manipulation.** A broker-dealer or agent must not effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive, or fraudulent device, practice, plan, program, design, or contrivance, including the following:
- (A) Effecting any transaction in a security that involves no change in its beneficial ownership;
 - (B) Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of the same security for substantially the same volume, time, and price have been or will be entered for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security. However, nothing in this subdivision prohibits a broker-dealer from entering bona fide agency cross transactions for the broker-dealer’s customers;
 - (C) Effecting, alone or with one (1) or more other persons, a series of transactions in any security creating actual or apparent active trading in the security or raising or depressing the price of the security for the purpose of inducing the purchase or sale of the security by others;
 - (D) Engaging in general solicitation and using aggressive, high-pressure, or deceptive marketing tactics to affect the market price of the security; and
 - (E) Using fictitious or nominee accounts.

- (15) **Guarantees against Loss.** A broker-dealer or agent must not guarantee a customer against loss in any securities account of the customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer or agent.
- (16) **Deceptive Advertising.** A broker-dealer or agent must not use any advertising or sales presentation in a manner that is deceptive or misleading, including the following:
- (A) Using words, pictures, or graphs in an advertisement, brochure, flyer, or display to present any nonfactual data or material; any conjecture, unfounded claims or assertions, or unrealistic claims or assertions; or any information that supplements, detracts from, supersedes or defeats the purpose or effect of any prospectus or disclosure; and
 - (B) Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind that purports to report any transaction as a purchase or sale of any security unless the broker-dealer or agent believes that the transaction was a bona fide purchase or sale of the security or that purports to quote the bid price or asked price for any security unless the broker-dealer or agent believes that the quotation represents a bona fide bid for or offer of the security.
- (17) **Failure to Disclose Conflicts of Interest.** A broker-dealer or agent must disclose to any customer that the broker-dealer is controlled by, controlling, affiliated with, or under common control with the issuer of a security that is offered or sold to the customer. The disclosure must be made before entering into any contract with or for the customer for the purchase or sale of the security, and if the disclosure is not made in writing, the disclosure must be supplemented by the giving or sending of written disclosure before the completion of the transaction.
- (18) **Withholding Securities.** A broker-dealer must make a bona fide public offering of all of the securities allotted to the broker-dealer for distribution, whether acquired as an underwriter, as a selling group member, or from a member participating in the distribution as an underwriter or selling group member. The following are examples of prohibited conduct without limit:
- (A) Parking or withholding securities; and
 - (B) Transferring securities to a customer, another broker-dealer, or a fictitious account with the understanding that those securities will be returned to the broker-dealer or the broker-dealer's nominees.
- (19) **Failure to Respond to Customer.** Upon reasonable request, a broker-dealer or agent must deliver to a customer information to which the customer is entitled. A broker-

dealer or agent must respond to a formal written request or complaint by or from a customer within fourteen (14) calendar days.

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Prohibited Conduct. Over-the-Counter Transactions. A broker-dealer or agent must not engage in the following conduct in connection with the solicitation of a purchase or sale of an over-the-counter, unlisted non-NASDAQ equity security:

- (1) Failing to disclose to a customer, at the time of solicitation and on the confirmation, any and all compensation related to a specific securities transaction to be paid to the agent, including commissions, sales charges, and concessions;
- (2) In connection with a principal transaction by a broker-dealer that is a market maker, failing to disclose to a customer, both at the time of solicitation and on the confirmation, the existence of a short inventory position in the broker-dealer's account of more than three percent (3%) of the issued and outstanding shares of that class of securities of the issuer;
- (3) Conducting sales contests in a particular security;
- (4) Failing or refusing to promptly execute sell orders after a solicited purchase by a customer in connection with a principal transaction;
- (5) Soliciting a secondary market transaction if there has not been a bona fide distribution in the primary market;

- (6) Engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same security; and
- (7) Failing to promptly provide the most current prospectus or the most recently filed periodic report filed under 15 U.S.C. § 78m when requested to do so by the customer.

(g) Prohibited Conduct. Designated Security Transactions.

- (1) Except as specified in subdivision (2), in connection with the solicitation of a designated security, a broker-dealer or agent must not:

- (A) Fail to disclose to the customer the bid and ask prices at which the broker-dealer effects transactions of the security with individual retail customers, as well as the price spread in both percentage and dollar amounts at the time of solicitation and on the trade confirmation documents; and

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

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

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

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

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

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

Q. How does the spread relate to my investments?

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

Q. How do I compute the spread?

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

Q. Can I sell at any time?

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

Q. Why did I receive this notice?

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

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

A. If you cannot work the problem out with your broker-dealer you may contact the Securities Division of Vermont's Department of Financial Regulation, the U.S. Securities and Exchange Commission, or the Financial Industry Regulatory Authority.

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

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

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

(C) Transactions by a broker-dealer whose commissions, commission equivalents, and markups from transactions in designated securities during each of the

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

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

(h) Prohibited Conduct. Investment Company Shares.

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

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

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

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

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

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

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

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

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

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

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

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

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

(J) Stating or implying to a customer that the purchase of shares shortly before an ex dividend date is advantageous to the customer unless there are specific, clearly described tax or other advantages to the customer, or stating or

implying that a distribution of long-term capital gains by an investment company is part of the income yield from an investment in the shares; and

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

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

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

(i) Prohibited Conduct. Failure to pay an arbitration award, attempt to avoid payment of arbitration award, or failure to pay any civil penalty.

(1) A broker-dealer or agent must not fail to pay and fully satisfy any final judgment or arbitration award resulting from an investment-related, customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the customer and the broker-dealer or agent, in writing, and the broker-dealer or agent complies with the terms of the alternative payment arrangement.

(2) A broker-dealer or agent must not attempt to avoid payment of any final judgment or arbitration award resulting from an investment-related, customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the customer and the broker-dealer or agent, in writing, and the broker-dealer or agent complies with the terms of the alternative payment arrangements.

(3) A broker-dealer or agent must not fail to pay and fully satisfy any fine, civil penalty, order of restitution, order of disgorgement, or similar monetary payment obligation imposed upon the broker-dealer or agent by the SEC, the securities or other financial services regulator or any state or province, or any self-regulatory organization.

(j) Prohibited Conduct. The use of a senior specific certification or designation.

(1) A broker-dealer or agent must not use a senior specific certification or designation in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special

certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person. Such use shall be a dishonest and unethical practice in the securities, commodities, investment, franchise, banking, finance, or insurance business within the meaning of the Vermont Uniform Securities Act. The prohibited use of such certifications or professional designation includes, but is not limited to, the following:

- (A) Using a certification or professional designation by a broker-dealer or agent who has not earned or is otherwise ineligible to use that certification or designation;
- (B) Using a nonexistent or self-conferred certification or professional designation;
- (C) Using a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the broker-dealer or agent using the certification or professional designation does not have; and
- (D) Using a certification or professional designation that was obtained from a designating or certifying organization that:
 - i Is primarily engaged in the business of instruction in sales or marketing;
 - ii Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;
 - iii Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or
 - iv Does not have reasonable continuing education requirements for its designees or certificants to maintain the professional designation or certification.

(2) A rebuttable presumption exists that a designating or certifying organization is not disqualified solely for purposes of subdivision (1)(D) above if the organization has been accredited by:

- (A) The American National Standards Institute;
- (B) The National Commission for Certifying Agencies; or
- (C) 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.

(3) 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 broker-dealer or agent has special certification or training in advising or servicing senior citizens or retirees, the factors to be considered must include:

(A) 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

(B) The manner in which the words are combined.

(4) For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title: (1) Indicates seniority or standing within the organization; or (2) Specifies an individual’s area of specialization within the organization. For purposes of this subsection, “financial services regulatory agency” includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. § 5412(d)(13), 9 V.S.A. § 5501(3) and 8 V.S.A. §§ 15 and 24)

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, maintain, and enforce supervisory procedures reasonably designed to assist in detecting violations of, preventing violations of, and achieving compliance with the Act, these regulations, and other applicable laws, regulations, and rules of self-regulatory organizations. In determining whether supervisory procedures are reasonably designed, relevant factors including the following may be considered by the commissioner:

(A) The firm’s size;

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

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

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

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

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

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

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

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

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

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

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

(d) Minimum Net Capital Requirements.

(1) A broker-dealer must comply with:

(A) 17 C.F.R. § 240.15c3-1; and

(B) 17 C.F.R. § 240.15c3-3.

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

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

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

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

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

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

(1) Directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties to the transaction;

- (2) Engages on behalf of an issuer in a public offering of any class of securities that is registered, or is required to be registered, with the SEC under Section 12 of the Securities Exchange Act of 1934, 15 U.S.C. § 781 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);
- (3) Engages on behalf of any party in a transaction involving a shell, other than a business combination related shell company;
- (4) Directly, or indirectly through any of its affiliates, provides financing related to the transfer of ownership of an eligible privately held company;
- (5) Assists any party to obtain financing from an unaffiliated third party without –
 - i complying with all other applicable laws in connection with such assistance, including, if applicable, Regulation T (12 C.F.R. § 220 et seq.); and
 - ii disclosing any compensation in writing to the party;
- (6) Represents both the buyer and the seller in the same transaction without providing clear written disclosure as to the parties the broker represents and obtaining written consent from both parties to the joint representation.
- (7) Facilitates a transaction with a group of buyers formed with the assistance of the merger and acquisition broker-dealer to acquire the eligible privately held company;
- (8) Engages in a transaction involving the transfer of ownership of an eligible privately held company to a passive buyer or group of passive buyers; or
- (9) Binds a party to a transfer of ownership of an eligible privately held company.

(c) Disqualifications. A merger and acquisition broker-dealer is not exempt from registration under this section if the merger and acquisition broker-dealer is subject to (and if and as applicable, including any officer, director, member, manager, partner, or employee of such merger and acquisition broker-dealer):

- (1) Has been barred from association with a broker or dealer by the SEC, any state, or any self-regulatory organization; or
- (2) Is suspended from association with a broker or dealer.

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

(e) For purposes of V.S.R. § 3-4 and the definition of “merger and acquisition broker-dealer” in V.S.R. § 1-2, the term “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. There is a presumption of control if, upon completion of a transaction, the buyer or group of buyers:

- (1) has the right to vote 25 percent or more of a class of voting securities or the power to sell or direct the sale of 25 percent or more of a class of voting securities; or
- (2) in the case of a partnership or limited liability company, has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital.

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

CHAPTER 4 REGISTRATION OF SECURITIES

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

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

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

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

- (1) All documents and exhibits enumerated in 9 V.S.A. §§ 5304(b)(1)-(18);
- (2) Form U-1;
- (3) Form U-2 and, if applicable, Form U-2A; and
- (4) Any other document or information requested by the commissioner.

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

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

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

(f) Reporting Requirements.

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

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

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

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

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

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

(c) The commissioner may allow a form of disclosure in a SCOR application other than Form U7, including an application for coordinated review under subsection (b) above, as provided under V.S.R. § 4-1 above.

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

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

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

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

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

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

- (1) The issuer or broker-dealer, as applicable, must file a written notice that includes the identity of the issuer and any broker-dealer involved, a description of the transaction, and a statement of the applicable provision of 15 U.S.C. § 77r(b);
- (2) The issuer or broker-dealer, as applicable, must pay the fee provided in 9 V.S.A. § 5302(e) or (f), as applicable; and
- (3) At the request of the commissioner, the issuer or broker-dealer, as applicable, must file with the commissioner any other information or document filed with the SEC.

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

(1) Filing Requirements.

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

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

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

(B) Electronic Filing. Form D notice filings and related fees, as well as a Form NF-UIT and related fees for each series of a unit investment trust, must be filed electronically with EFD. In addition, the commissioner, in his or her discretion, may require that any other filings required to be made to the commissioner must be filed electronically with EFD. Any documents or fees

required to be filed with the commissioner that are not permitted to be filed with, or cannot be accepted by, EFD must be filed directly with the commissioner.

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

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

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

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

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

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

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

(4) If an investment company that files a notice under this subsection (c) and the name of the company, portfolio, or share class changes, then the investment company must file an additional Form NF for each portfolio or share class 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 share class on the new Form NF.

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

(6) Any investment company shall file notice filings and fees electronically through a centralized securities registration depository or other electronic filing system designated by the commissioner. The depository or system designated by the

commissioner must facilitate filings and maintain records in compliance with Vermont law, including the Vermont Public Records Act, and also must maintain secure technology, features, practices and protocols that provide integrity, confidentiality, reliability and availability for filings and records in accordance with Vermont law and standards for filings and records in accordance with Vermont law and standards as determined by the commissioner. Such filing shall be made in accordance with the procedures and controls established by that depository or system and approved by the commissioner. An investment company shall be responsible for any costs and expenses incurred by filing electronically, including any fees charged by the electronic filing system manager.

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

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

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

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

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

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

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

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

(3) Electronic Filing Depository.

(A) Designation. The commissioner designates the EFD to receive and store all Regulation A - Tier 2 Notice Filing Form notice filings and amendments and collect related fees on behalf of the commissioner.

(B) Electronic Filing. Regulation A - Tier 2 Notice Filing Form notice filings and related fees, as well as a Form NF-UIT and related fees for each series of a unit investment trust, must be filed electronically with EFD. In addition, the commissioner, in his or her discretion, may require that any other filings required to be made to the commissioner must be filed electronically with

EFD. Any documents or fees required to be filed with the commissioner that are not permitted to be filed with, or cannot be accepted by, EFD must be filed directly with the commissioner.

(C) Electronic Signature. A duly authorized representative of the issuer may affix their electronic signature to the Regulation A - Tier 2 Notice Filing Form 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.

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

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

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

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

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

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

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

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

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

- (a) This section applies to offers registered in Vermont under 9 V.S.A. § 5303 and with the SEC in accordance with the MJDS adopted in SEC Release Number 33-6902.
- (b) Offerings filed on SEC Form F-7, Form F-8, or Form F-10, become effective the later of three (3) calendar days after filing, or the effective date with the SEC, provided the application for registration is filed contemporaneously with the SEC registration application.
- (c) In a rights offering, SEC Form F-7 will be accepted in lieu of any state form required to claim an exemption for any transaction pursuant to an offer to existing securities holders.
- (d) After the SEC declares an issuer's Form F-8 or Form F-10 registration statement effective, a non-issuer transaction in any class of the issuer's securities is exempt from registration, whether or not the transaction is effected through a broker-dealer.

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

CHAPTER 5 SECURITIES REGISTRATION EXEMPTIONS

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

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

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

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

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

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

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

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

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

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

- (1) Any offer or sale of a charitable gift annuity within the meaning of and maintained in compliance with 9 V.S.A. §§ 2517-18; or
- (2) Any offer or sale of a security of a fund, other than a charitable gift annuity, that is excluded from the definition of an investment company under 15 U.S.C. § 80a3(c)(10)(B) and which satisfies all of the following:
 - (A) The fund qualifies as a pooled income fund under section 26 U.S.C. § 642(c)(5) or a charitable remainder annuity trust or a Charitable Remainder Unitrust under 26 U.S.C. § 664(d) and is maintained by an eligible charitable organization.
 - (B) Donors receive written information describing the material terms of the operation of the fund.

(b) The following persons are exempt from registration and notice filing provisions to the extent their activities are limited to the offer or sale of any security, or the solicitation of a donation, described in V.S.R. § 5-3(a):

- (1) A broker-dealer that does not have a place of business in Vermont is exempt from the registration requirements of 9 V.S.A. § 5401(a);
- (2) An agent is exempt from the registration requirements of 9 V.S.A. § 5402(a);
- (3) An investment adviser is exempt from the registration requirements of 9 V.S.A. § 5403(a);

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

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

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

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

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

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

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

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

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

(1) The material terms of the proposed offer or sale;

(2) The identity of the issuer;

(3) The amount and type of securities to be sold pursuant to the exemption;

- (4) A description of the use of proceeds from the offering;
 - (5) The name, business address, and a brief description of the employment responsibilities of each agent who will represent the organization in the offer or sale of the securities in Vermont;
 - (6) Any offering document, prospectus, and/or trust indenture;
 - (7) A consent to service of process (Form U-2 and, if necessary, a Form U-2A);
 - (8) The fee required by 9 V.S.A. § 5305(k); and
 - (9) Any other information requested by the commissioner.
- (d) Sales and Advertising Literature. At least five (5) business days before initial use in Vermont, an issuer or applicant must file a copy of all advertising intended for publication or mass distribution with the commissioner. No advertisement may be published or distributed if the commissioner notifies the issuer not to use such material.
- (e) Scope of the Exemption. The exemption will be effective for a twelve (12) month period commencing after the thirty (30) day period required by subsection (c) above, unless the commissioner deems it effective earlier. An issuer may renew the offering for additional twelve (12) month periods by filing an update to the information required in subsection (c) above and an additional fee as required by 9 V.S.A. § 5305(k).
- (f) Reporting Requirement. Every six (6) months from the date of the first sale, the issuer must file a report with the commissioner containing the number of transactions conducted in Vermont and the amount of securities sold in each transaction.
- (g) “Opt-in” Requirement for Automatic Reinvestment, Renewal, or Rollover Plan. An investor in securities governed by this section may not be enrolled in an automatic reinvestment, renewal, or rollover plan unless the investor affirmatively and in writing “opts-in” to participate in such plan.

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

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

V.S.R. § 5-5. Church Bond Exemption.

- (a) Exemption. Church bonds and church extension bonds are exempt from registration as long as they comply with this section and the applicable NASAA statements of policy. Accordingly, issuers must apply the NASAA Statements of Policy Regarding Church Bonds

and the NASAA Statement of Policy Regarding Church Extension Fund Securities, as applicable, to the proposed offer or sale of such securities. Failure to comply with the provisions of an applicable NASAA Statement of Policy is grounds for disallowance of the exemption from registration provided by 9 V.S.A. § 5201(7).

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

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

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

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

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

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

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

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

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

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

(1) Sales are made only to accredited investors;

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

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

(A) In an organizational or developmental stage;

(B) A blank check or shell company; or

(C) In bankruptcy or receivership.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V.S.R. § 5-8. Manual Exemption.

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

- (1) Mergent's Industrial Manual;
- (2) Mergent's International Manual;
- (3) OTCQX Best Market Manual; and

(4) Any other manual the commissioner designates by order.

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

(1) The issuer must not be in the organizational stages, bankruptcy or receivership; and

(2) All potential buyers and sellers must be provided information about the issuer, including:

(A) A description of the issuer's business; and

(B) The issuer's balance sheet prepared in accordance with GAAP for the past two fiscal years.

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

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

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

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

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

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

(1) Registers with or is a member of a self-regulatory organization, stock exchange, or the Bureau des Services Financiers in Canada;

(2) Maintains good standing in its provincial or territorial registration and its registration with or membership in a self-regulatory organization, stock exchange, or the Bureau des Services Financiers in Canada; and

(3) Effects or attempts to effect transactions in securities only with or for the following individuals:

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

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

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

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

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

V.S.R. § 5-11. Vermont Crowdfunding.

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

(1) New Offerings.

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

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

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

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

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

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

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

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

(2) Offers and sales of the securities must only be made to residents of Vermont;

(3) Prior to the commencement of any advertising, an issuer must file any advertising materials intended for mass distribution with the commissioner. An issuer may commence their advertising if the offering is effective and an issuer has not received comments to the advertising materials within five (5) business days of filing with the commissioner;

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

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

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

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

(1) An issuer may be formed under the laws of any State or the District of Columbia and must be either (i) registered with the Vermont Secretary of State; or (ii) authorized to transact business in Vermont by the Vermont Secretary of State;

(2) An issuer must file the fee prescribed in 9 V.S.A. § 5305(b); and

(3) An offering must meet all other requirements of the federal exemption for limited offerings and sales of securities pursuant to 17 C.F.R. § 230.504.

(d) General Requirements

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

- (1) **Aggregate Offering Limit.** The maximum aggregate amount in cash and other consideration from all sales of securities sold under this exemption within any twelve (12) month period must not exceed:
 - (A) One million dollars (\$ 1,000,000), if an issuer has not undergone and made available to each prospective investor and the commissioner the documentation resulting from a financial audit with respect to its most recently completed fiscal year and meeting GAAP; or
 - (B) Five million dollars (\$ 5,000,000), if:
 - (i) An issuer has undergone and made available to each prospective investor and the commissioner the documentation resulting from a financial audit with respect to its most recently completed fiscal year and meeting GAAP; or
 - (ii) An issuer has entered into an enforceable revenue producing contract that is satisfactory to the commissioner.
- (2) **Individual Investment Limit.** Sales to Vermont investors must conform to the following limitations:
 - (A) Accredited investors have no individual investment limit;
 - (B) Vermont certified investors are limited to twenty-five thousand dollars (\$ 25,000) per offering; and
 - (C) Vermont main street investors are limited to ten thousand dollars (\$ 10,000) per offering.
- (3) **Minimum Offering Raise.** An issuer must set aside all funds raised as part of an offering in a separate bank account to be held until such time as the minimum offering amount is reached. An issuer must file proof of such account to the commissioner. The minimum offering amount must be no less than twenty-five percent (25%) of the maximum offering amount set by an issuer and disclosed in the offering document. An issuer may increase the aggregate offering amount once if it reaches full subscription. An issuer must notify the commissioner and any previously subscribed investors of the amount of the increase and the intended use of additional proceeds. All investor funds must be returned to investors within thirty (30) calendar days if:
 - (A) An issuer is unable to raise the minimum offering amount during the initial twelve (12) month period from the effective date of the offering without the

minimum offering amount having been received by the depository institution;
or

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

(4) Filing Requirements.

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

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

(ii) A copy of the offering document;

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

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

(v) The filing fee prescribed above.

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

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

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

contained therein. The offering document must include or attach as exhibits the following financial disclosures, as applicable:

- (i) Issuers with less than one year of operating history must include a balance sheet listing its assets and liabilities. The balance sheet may be unaudited and prepared internally.
 - (ii) Issuers with more than one year of operating history must include balance sheets and income statements for the previous three fiscal years in which they operated. If the issuer's operating history is more than one year but less than three years, balance sheets and income statements for the issuer's entire operating history are required. The balance sheets and income statements may be unaudited and prepared internally.
 - (iii) Issuers issuing preferred stock, bonds, or convertible debt securities must demonstrate a reasonable expectation of being able to pay dividend or interest obligations of the securities. These issuers must include statements of cash flow, balance sheets, and income statements for the three previous fiscal years in which they operated. The financial statements may be unaudited and prepared internally. Issuers with less than three years of operating history are presumptively ineligible to issue preferred stock, bonds, or convertible debt securities under this section. However, the commissioner may approve such offerings upon a showing of adequate capitalization, sufficient disclosure of risk to investors, or other mitigating factors.
 - (iv) Notwithstanding the allowances of this subsection, issuers with any level of operating history that are in possession of audited financial forms or forms prepared by a third party must include these forms. If the available audited or third-party forms do not fully cover the time frames or types specified in this subsection, they may be supplemented with internally prepared forms. This subsection does not abrogate the requirement of audited financials found in subsection (d)(1).
- (8) Limitation on Use. The exemptions set forth in subsection (a) and (b) and the registration procedure set forth in (c) shall be unavailable for:

- (A) Offerings involving a bad actor;

- (B) Offerings in which it is proposed to issue debt, stock, or other equity interest in a development stage company without a specific business plan or purpose, or in which an issuer has indicated that its business is to engage in a merger or acquisition with an unidentified company or companies, or other unidentified entities or persons, or without an allocation of proceeds to sufficiently identifiable properties or objectives (i.e., “blind pool” or “blank check” offerings);
 - (C) Offerings involving petroleum exploration or production, mining, or other extractive industries; and
 - (D) Offerings involving an investment company as defined and classified under 15 U.S.C. § 80a-3(a).
- (9) Antifraud Provisions. Nothing in this section relieves issuers, broker-dealers and their agents, or investment advisers and their representatives from the antifraud and enforcement provisions of the Act, this regulation, federal securities laws, the securities laws of other states or the rules of any government approved self-regulatory organization.
- (10) Investor Knowledge. An issuer and any agents must reasonably believe that the purchaser, either alone or through a representative, has sufficient knowledge and is capable of evaluating the merits and the risks of the investment.
- (11) Reporting to the Commissioner. Within thirty (30) calendar days after the expiration of an offering, an issuer must file a sales report with the commissioner, indicating the aggregate dollar amount of securities sold and the number of investors. The commissioner may require an issuer to file periodic reports to keep reasonably current the information contained in the notice and to disclose the progress of an offering.
- (e) Use of the Internet or Third Party Portal. The use of the internet or a third party portal to conduct or help facilitate an offering is voluntary. When engaging a third party portal, an issuer must ensure the third party portal is properly registered with the state.
- (1) Third Party Portal Registration. A third party portal must register with the commissioner by filing:
- (A) A certificate of good standing issued by the Vermont Secretary of State within thirty (30) days of the filing indicating the third party portal is an entity formed under the laws of any State or Territory of the United States or the District of Columbia and authorized to transact business within Vermont;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 6 COMMUNICATIONS

V.S.R. § 6-1. Prospectus.

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

(b) Form and Content.

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

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

(A) Part II of Form 1-A;

(B) Part I of Form S-1;

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

(D) Any other form the commissioner allows.

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

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

V.S.R. § 6-2. Internet Communication.

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

- (1) The internet communication indicates that the security is not being offered to residents of Vermont;
- (2) The internet communication indicates that the security is only being offered to residents of states where the offer is registered or exempt from registration, if the communication originates within Vermont;
- (3) The internet communication is limited to the dissemination of general information on an investment opportunity;
- (4) The internet communication does not result in the rendering of personalized investment advice in states where the offer is registered or exempt;
- (5) The internet communication contains a mechanism designed to prevent residents of states where the offer is not registered or exempt from registration from viewing the full offering materials; and
- (6) No sale of the security is made in a state where the securities offering is not registered or exempt from registration as a direct or indirect result of the internet communication. For the purpose of determining whether the security is exempt, each sale made in Vermont as a direct or indirect result of the internet communication is deemed to be made through a general solicitation.

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

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

- (A) The person cannot transact business in this state as a broker-dealer, agent, investment adviser, or investment adviser representative unless the person is properly registered under the Act or exempt from registration; and
 - (B) The person cannot provide individualized communications or responses to prospective customers or clients in this state to effect or attempt to effect transactions in securities, or to render personalized investment advice for compensation, unless the person is properly registered under the Act or exempt from registration;
- (2) The internet communication contains a mechanism to ensure that, before any direct communication with prospective customers or clients, the person is properly registered or exempt from registration under applicable securities laws.
 - (3) The internet communication is limited to the dissemination of general information on products and services and does not involve effecting or attempting to effect transactions in securities or the rendering of personalized investment advice in this state.
 - (4) For an agent or investment adviser representative, the following conditions are met:
 - (A) The affiliation of the agent or investment adviser representative with a broker-dealer or investment adviser is prominently disclosed within the internet communication.
 - (B) The broker-dealer or investment adviser with whom the agent or investment adviser representative is associated retains responsibility for reviewing and approving the content of any internet communication by the agent or investment adviser representative.
 - (C) The broker-dealer or investment adviser with whom the agent or investment adviser representative is associated first authorizes the distribution of information on the particular products and services through the internet communication.
 - (D) In disseminating information through the internet communication, the agent or investment adviser representative acts within the scope of the authority granted by the broker-dealer or investment adviser.
- (c) “Other electronic communication” under 9 V.S.A. § 5610(e), does not include internet communication.

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

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

V.S.R. § 6-3. Advertising.

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

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

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

- (1) A statement that the advertisement does not constitute an offer to sell or the solicitation of an offer to buy a security; and
- (2) The name and address of a person from whom a written prospectus can be obtained.

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

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

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

- (1) The issuer is or will be a business entity organized under the laws of, and with a principal place of business in, a State or Territory of the United States, the District of Columbia or a Province of Canada; and
- (2) The offeror intends to register the security or file pursuant to an exemption in Vermont and conduct its offering pursuant to either 15 U.S.C. § 77c(a)(11), 17 C.F.R. § 230.147, 17 C.F.R. § 230.147A, 17 C.F.R. § 230.251(a)(1), or 17 C.F.R. § 230.504

(b) General Requirements.

- (1) Initial Filing. Twenty-one (21) calendar days prior to the initial solicitation of interest under this rule, the offeror must file with the commissioner:
 - (A) A Solicitation of Interest Form;
 - (B) The script of any broadcast to be made and a copy of any notice to be published; and
 - (C) Any other materials to be used to conduct solicitations of interest.
- (2) Amendments. Seven (7) calendar days prior to usage, the offeror must file with the commissioner any amendments to the foregoing materials or additional materials to be used to conduct solicitations of interest, except for materials provided to a particular offeree pursuant to a request by that offeree.
- (3) Unapproved Materials. An offeror must not distribute or use any materials that the commissioner denied or did not approve for use to solicit indications of interest.
- (4) Sales. During the solicitation of interest period, the offeror must not solicit or accept money, subscription, or commitment to purchase securities.
- (5) Offeree Holding Period. An offeror must not make any sale until at least seven (7) calendar days after delivering a final offering document to any offeree solicited under this rule.
- (6) Waiting Period. Issuers on whose behalf indications of interest are solicited under this rule may not make offers or sales, or communications until thirty (30) calendar days after the last communication with a prospective investor made pursuant to this rule.
- (7) Waiver. The commissioner may waive any condition of this exemption, upon written request by the offeror describing cause and need for the waiver. Unless the commissioner expressly waives any provision of this rule then all provisions apply to each offeror.

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

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

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

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

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

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

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

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

(1) Offerings involving a bad actor;

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

- (3) Offerings involving petroleum exploration or production, mining, or other extractive industries; and
 - (4) A hedge fund, commodity pool, private equity fund, or similar investment vehicle.
- (e) Effect of Non-Compliance. A failure to comply with any condition of subsections (b) or (c) of this section will not result in the loss of this exemption from the requirements of 9 V.S.A. §§ 5301-05 of this Act for any offer to a particular individual or entity if the offeror shows:
- (1) The failure to comply did not pertain to a condition directly intended to protect that particular individual or entity;
 - (2) The failure to comply was insignificant with respect to the offering as a whole; and
 - (3) A good faith and reasonable attempt was made to comply with all applicable conditions of subsections (b) and (c).
- (f) Waiver. The commissioner may waive any condition of this exemption upon written application by an issuer showing cause. Compliance, attempted compliance, a lack of objection or order by the commissioner with respect to any solicitation of interest under this exemption does not constitute a waiver of any condition or confirm the availability of this exemption.
- (g) Enforcement Authority. An exemption from registration established only through reliance upon section (e) above does not render the failure to comply with this rule un-actionable as a violation and is enforceable by the commissioner under 9 V.S.A. §§ 5603-5604 and constitutes grounds for denying or revoking the exemption as to a specific security or transaction under 9 V.S.A. § 5306.

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

- (a) The following terms are defined as follows for purposes of this section:
- (1) “Offering Documents” include, but are not limited to, the registration statement, prospectus, applicable agreements, charter, by-laws, opinion of counsel and other opinions, specimen, indenture, consent to service of process and associated resolution, sales materials, subscription agreement, and applicable exhibits; and
 - (2) “Sales Materials” include only those materials to be used in connection with the solicitation of purchasers of the securities and approved as sales literature or other related materials by the SEC, FINRA, and the state of Vermont, as applicable.

(b) Use of Electronic Offering Documents and Subscription Agreements

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

(A) Each Offering Document:

- (i) Is prepared, updated, and delivered in compliance with state and federal securities laws;
- (ii) Satisfies the formatting requirements applicable to printed documents, such as font size and typeface, and which is identical in content to the printed version (other than electronic instructions and/or procedures as may be displayed and non-substantive updates to daily net asset value which can be updated more efficiently in the electronic version);
- (iii) Is delivered as a single, integrated document or file; when delivering multiple Offering Documents, the documents must be delivered together as a single package or list;
- (iv) Where a hyperlink to documents or content that is external to the offering documents is included, provides notice to investors or prospective investors that the document or content being accessed is provided by an external source;
- (v) Is delivered in an electronic format that intrinsically enables the recipient to store, retrieve, and print the documents; and

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

- (i) Obtains informed consent from the investor or prospective investor to receive Offering Documents electronically;
- (ii) Ensures that the investor or prospective investor receives timely, adequate, and direct notice when an electronic Offering Document has been delivered;
- (iii) Employs safeguards to ensure that delivery of offering documents occurred at or before the time required by law in relation to the time of sale; and

- (iv) Maintains evidence of delivery by keeping records of its electronic delivery of Offering Documents and makes those records available on demand by the Department.
- (2) Subscription Agreements may be provided by an issuer or agent acting on behalf of the issuer electronically for review and completion, provided the subscription process is administered in a manner that is similar to the administration of subscription agreements in paper form, as follows:
- (A) Before completion of any Subscription Agreement, the issuer or agent acting on behalf of the issuer must review with the prospective investor all appropriate documentation related to the prospective investment including documents and instructions on how to complete the Subscription Agreement;
 - (B) Mechanisms are established to ensure a prospective investor reviews all required disclosures and scrolls through the document in its entirety prior to initialing and/or signing; and
 - (C) Unless otherwise allowed by the Department, a single Subscription Agreement is used to subscribe a prospective investor in no more than one offering.
- (3) Delivery requires that the Offering Documents be conveyed to and received by the investor or prospective investor, or that the storage media in which the offering documents are stored be physically delivered to the investor or prospective investor in accordance with subsection (b)(1).
- (4) Each electronic document shall be preceded by or presented concurrently with the following notice: **“Clarity of text in this document may be affected by the size of the screen on which it is displayed.”**
- (5) Informed consent to receive Offering Documents electronically pursuant to (b)(2)(A) in this section may be obtained in connection with each new offering or globally, either by the issuer or by an agent acting on behalf of the issuer. The investor may revoke this consent at any time by informing the party to whom the consent was given, or, if such party is no longer available, the issuer.
- (6) Investment opportunities shall not be conditioned on participation in the electronic Offering Documents and Subscription Agreements initiative.
- (7) Investors or prospective investors who decline to participate in an electronic Offering Documents and Subscription Agreements initiative shall not be subjected to higher costs—other than the actual direct cost of printing, mailing, processing, and storing Offering Documents and subscription agreements—as a result of their lack of

participation in the initiative, and no discount shall be given for participating in an electronic Offering Documents and Subscription Agreements initiative.

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

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

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

(c) Policy Regarding Use of Electronic Signatures

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

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

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

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

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

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

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

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

(2) Entities that participate in an electronic signature initiative shall maintain, and shall require underwriters, dealer-managers, placement agents, broker-dealers, and other

selling agents to maintain, written policies and procedures covering the use of electronic signatures.

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

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

CHAPTER 7 INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

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

(a) General Provisions.

- (1) An applicant must be at least eighteen (18) years of age. If the applicant is not an individual, then the directors, officers, and managing partners of the applicant must all be at least eighteen (18) years of age.
- (2) An applicant must register or qualify to engage in business as an investment adviser or investment adviser representative in the State of the applicant's principal place of business.
- (3) An investment adviser must have at least one (1) investment adviser representative registered in Vermont.

(b) Application Requirements for Investment Advisers.

(1) Initial Application.

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

- (i) A complete Form ADV;
- (ii) The fee required by 9 V.S.A. § 5410(c);
- (iii) Any reasonable fee for filing through the IARD/CRD system;

- (iv) A brochure written in accordance with V.S.R. § 7-7(a), unless the applicant intends to use Part 2A of Form ADV as its brochure; and
- (v) For each investment adviser representative in an investment adviser branch office different than that listed on Form ADV, a Form BR and the branch office registration fee required in 9 V.S.A. § 5410(c).

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

- (i) A copy of the investment adviser's surety bond and Form U-SB, if required under V.S.R. § 7-5(e);
- (ii) The proposed client contract(s) written in accordance with V.S.R. § 73(d)(13);
- (iii) A privacy policy written in accordance with V.S.R. § 7-6(e);
- (iv) Certification of supervisory procedures written in accordance with V.S.R. § 7-6(a)(2);
- (v) Financial statements that demonstrate compliance with the requirements of V.S.R. § 7-5(d);
- (vi) A completed Affidavit of Investment Adviser Activity Form; and
- (vii) Any other document the commissioner requests.

(2) Annual Requirements.

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

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

(3) Periodic Amendments.

(A) Changes to Form ADV. An investment adviser must file any amendments to the investment adviser's Form ADV with the IARD within thirty (30) days of the event that requires the filing of the amendment. Such changes include occurrences listed in the instructions of Form ADV.

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

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

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

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

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

(c) Application Requirements for Investment Adviser Representatives.

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

(A) A completed Form U-4;

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

- (C) The filing fee required by 9 V.S.A. § 5410(d);
- (D) Any reasonable fee for filing through the IARD/CRD system; and
- (E) A Form BR and the investment adviser branch office registration fee required by 9 V.S.A. § 5410(c) if different than the address listed on the investment adviser's Form ADV, unless the investment adviser filed Form BR on the investment adviser representative's behalf.

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

(3) Updates and Amendments.

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

(i) Any amendments to the investment adviser representative's Form U-4 with the IARD/CRD.

(ii) File any amendments to the investment adviser representative's Form BR with the IARD/CRD.

(B) Change in Association. When an investment adviser representative's association with an investment adviser is discontinued or terminated, the investment adviser must file a Form U-5 with the IARD/CRD within thirty (30) calendar days. If the investment adviser representative commences association with another investment adviser, that investment adviser must file an initial application for registration for the investment adviser representative.

(4) Examination Requirements for Investment Adviser Representatives.

(A) General Requirements. An individual applying to be registered as an investment adviser representative, unless covered by an exemption or waiver in subsections (B) or (C) below, must provide the commissioner with evidence of a valid passing score on:

- (i) the NASAA Uniform Investment Adviser Law Examination (Series 65) within two years of the date of application; or
- (ii) (I) the NASAA Uniform Combined State Law Examination (Series 66) and the FINRA General Securities Representative Examination (Series 7) within two years of the date of application, and

(II) the FINRA Securities Industry Essentials Examination (SIE) within four years of the date of application.

(B) Exemptions.

(i) Professional Designation. Compliance with subsection (A) is waived if the applicant has been awarded any of the following designations and at the time of filing an application is current and in good standing: :

(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 of Financial Services;

(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) Certified Investment Management Analyst (CIMA) awarded by the Investment & Wealth Institute; or

(VI) Any other professional designation that the commissioner may recognize by regulation or order as fulfilling this purpose.

(ii) Any individual who has been registered as an investment adviser representative in any state within two years from the date of filing an application for registration shall not be required to retake the examinations in subsection (A) to be eligible for registration.

(iii) An individual whose registration as an investment adviser representative has been terminated for more than two years but less than

five years may maintain the validity of their NASAA Uniform Investment Adviser Law Examination (Series 65) or the investment adviser representative portion of the NASAA Uniform Combined State Law Examination (Series 66), as applicable, without being employed by or associated with an investment adviser or federal covered investment adviser if the individual meets all of the following:

(I) The individual previously took and passed the examination for which they seek to maintain validity under this rule;

(II) The individual was registered as an investment adviser representative for at least one year immediately preceding the termination of the investment adviser representative registration;

(III) The individual was not subject to a statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934 while registered as an investment adviser representative or at any period after termination of the registration;

(IV) The person elects to participate in the Exam Validity Extension Program (“EVEP”) under this paragraph within two years from the effective date of the termination of the investment adviser representative registration;

(V) The individual does not have a deficiency under the investment adviser representative continuing education program at the time the investment adviser representative registration becomes ineffective;

(VI) The person completes annually on or before December 31 of each calendar year in which the person participates in the EVEP:

a. six (6) Credits of IAR CE Ethics and Professional Responsibility Content offered by an Authorized Provider, including at least three (3) hours covering the topic of ethics, and

b. six (6) Credits of IAR CE Products and Practice Content offered by an Authorized Provider;

(VII) An individual who elects to participate in EVEP is required to complete credits required by V.S.R. § 7-1(c)(4)(B)(iii)(VI) for each calendar year that elapses after the individual’s investment adviser representative registration became

ineffective regardless of when the individual elects to participate in EVEP; and

(VIII) An individual who complies with the FINRA Maintaining Qualification Program under FINRA Rule 1240(c) shall be considered in compliance with V.S.R. § 7-1(c)(4)(B)(iii)(VI)(b).

(iv) As used in V.S.R. § 7-1(c), the terms defined in V.S.R. § 7-1(f) have the meaning set forth in that section.

(C) Waivers. The commissioner may waive or modify the examination requirement under extraordinary circumstances.

(D) Lapsed Registration. If an individual has met the examination requirements of subdivision (A) above, but has not been registered as an investment adviser representative in any jurisdiction for the previous two (2) years, the individual must comply with the examination requirements of subdivision (A) above again before applying for registration.

(E) Loss of Professional Designations. An investment adviser representative exempt from examination requirements under subdivision (B)(i) above who subsequently loses or allows the lapse of such professional designation is no longer exempt and their registration will be temporarily suspended. The investment adviser representative must:

(i) Provide written notice to the commissioner immediately upon loss or lapse of designation including:

(I) An explanation of the facts and circumstances of such loss/lapse; and

(II) A plan for taking the examination or reestablishing professional designation; and

(ii) Before registration will be reinstated, renewed or transferred, the individual must:

(I) Fulfill the examination requirements in subdivision (A) above; or

(II) Reestablish one (1) of the professional designations listed under subdivision (B)(i) above.

(d) Effective Date of Registration. An investment adviser and investment adviser representative registration will be effective (45) calendar days after the applicant files a complete application

unless the commissioner approves earlier. If the commissioner gives written notice of deficiencies in the application, the application will not be considered complete until the applicant resolves all deficiencies.

(e) **Abandoned Applications.** An investment adviser or investment adviser representative registration application that has been on file for sixty (60) calendar days without any action taken by the applicant is considered abandoned and withdrawn. An applicant must file a new, complete application, as well as the appropriate filing fee to obtain further consideration of an abandoned application.

(f) **Investment Adviser Representative Continuing Education.**

(1) Every investment adviser representative registered under 9 V.S.A. § 5403 must complete the following IAR continuing education requirements each Reporting Period:

(A) **IAR Ethics and Professional Responsibility Requirement.** An investment adviser representative must complete six (6) Credits of IAR Regulatory and Ethics Content offered by an Authorized Provider, with at least three (3) hours covering the topic of ethics; and

(B) **IAR Products and Practice Requirement.** An investment adviser representative must complete six (6) Credits of IAR Products and Practice Content offered by an Authorized Provider.

(2) **Agent of FINRA-Registered Broker-Dealer Compliance.** An investment adviser representative who is also registered as an agent of a FINRA member broker-dealer and who complies with FINRA's continuing education requirements is considered to be in compliance with the subrule (1)(B) IAR Products and Practice Requirement for each applicable Reporting Period so long as FINRA continuing education content meets all of the following baseline criteria as determined by NASAA:

(A) The continuing education content focuses on compliance, regulatory, ethical, and sales practices standards.

(B) The continuing education content is derived from state and federal investment advisory statutes, rules and regulations, securities industry rules and regulations, and accepted standards and practices in the financial services industry.

(C) The continuing education content requires that its participants demonstrate proficiency in the subject matter of the educational materials.

(3) **Credentialing Organization Continuing Education Compliance.** Credits of continuing education completed by an investment adviser representative who was awarded and currently holds a credential that qualifies for an examination waiver under V.S.R. § 7-1(c)(4)(B)(ii) comply with subrules (1)(A) and (1)(B) of this rule provided all of the following are true:

- (A) The investment adviser representative completes the credits of continuing education as a condition of maintaining the credential for the relevant Reporting Period.
 - (B) The credits of continuing education completed during the relevant Reporting Period by the investment adviser representative are mandatory to maintain the credential.
 - (C) The continuing education content provided by the credentialing organization during the relevant Reporting Period is Approved IAR Continuing Education Content.
- (4) IAR Continuing Education Reporting. Every investment adviser representative is responsible for ensuring that the Authorized Provider reports the investment adviser representative's completion of the applicable IAR continuing education requirements.
 - (5) No Carry-Forward. An investment adviser representative who completes Credits of continuing education in excess of the amount required for the Reporting Period may not carry forward excess credits to a subsequent Reporting Period.
 - (6) Failure to Complete or Report. An investment adviser representative who fails to comply with this rule by the end of a Reporting Period will renew as "CE Inactive" at the close of the calendar year in this state until the investment adviser representative completes and reports all required IAR continuing education Credits for all Reporting Periods as required by this rule. An investment adviser who is CE inactive at the close of the next calendar year is not eligible for investment adviser representative registration or renewal of an investment adviser representative registration.
 - (7) Discretionary Waiver by the Commissioner. The commissioner may, in the commissioner's discretion, waive any requirements of this rule.
 - (8) Home State. An investment adviser representative registered or required to be registered in this state who is registered as an investment adviser representative in the individual's Home State is considered to be in compliance with this rule provided that both of the following are true:
 - (A) The investment adviser representative's Home State has continuing education requirements that are at least as stringent as the NASAA Model Rule on Investment Adviser Representative Education.
 - (B) The investment adviser representative is in compliance with the Home State's investment adviser representative continuing education requirements.
 - (9) Unregistered Periods. An investment adviser representative who was previously registered under the Act and became unregistered must complete IAR continuing education for all reporting periods that occurred between the time that the investment adviser representative became unregistered and when the person became registered

again under the Act unless the investment adviser representative takes and passes the examination or receives an examination waiver as required by Section 7-1(c)(4) in connection with the subsequent application for registration.

(10) Definitions. As used in V.S.R. §§ 7-1(c) and (f), the following terms mean:

- (A) “Approved IAR Continuing Education Content” means the materials, written, oral, or otherwise that have been approved by NASAA or its designee and which make up the educational program provided to an investment adviser representative under this rule.
- (B) “Authorized Provider” means a person that NASAA or its designee has authorized to provide continuing education content required by this rule.
- (C) “Credit” means a unit that has been designated by NASAA or its designee as at least 50 minutes of educational instruction.
- (D) “Home State” means the state in which the investment adviser representative has its principal office and place of business.
- (E) “IAR Ethics and Professional Responsibility Content” means Approved IAR Continuing Education Content that addresses an investment adviser representative’s ethical and regulatory obligations.
- (F) “IAR Products and Practice Content” means Approved IAR Continuing Education Content that addresses an investment adviser representative’s continuing skills and knowledge regarding financial products, investment features, and practices in the investment advisory industry.
- (G) “Reporting Period” means one twelve month (12) period as determined by NASAA. An investment adviser representative’s initial Reporting Period with this state commences the first day of the first full Reporting Period after the individual is registered or required to be registered with this state.

(g) Registration Exemption for Investment Advisers to Private Funds.

- (1) Exemption for Private Fund Advisers. Subject to the additional requirements of V.S.R. § 7-1(g)(2), a private fund adviser is exempt from the registration requirements of 9 V.S.A. § 5403 if:
 - (A) Neither the private fund adviser nor any of its advisory affiliates are subject to an event that would disqualify an issuer under V.S.R. § 1-2(h);
 - (B) The private fund adviser files with the commissioner through the IARD each report and amendment thereto that an exempt reporting private fund adviser is required to file in accordance with instructions in Form ADV; and
 - (C) The private fund adviser pays the fees specified in 9 V.S.A. § 5410(c).

(2) Additional Requirements for Private Fund Advisers to Certain 3(c)(1) Funds. In order to qualify for the exemption described in subsection (1) 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 (1)(A)-(C) above, must comply with the following requirements:

(A) The private fund adviser may only advise those 3(c)(1) funds (other than venture capital funds or 3(c)(7) funds) whose outstanding securities (other than short-term paper) are beneficially owned entirely by persons who meet the definition of a qualified client at the time the securities are purchased from the issuer;

(B) At the time of purchase, the private fund adviser must disclose the following in writing to each beneficial owner of a 3(c)(1) fund that is neither a venture capital fund nor a 3(c)(7) fund:

(i) All services to be provided to individual beneficial owners;

(ii) All duties the investment adviser owes to the beneficial owners; and

(iii) Any other material information affecting the rights or responsibilities of the beneficial owners.

(C) With respect to each such 3(c)(1) fund's fiscal year end, the private fund adviser must obtain annual audited financial statements of each 3(c)(1) fund that is neither a venture capital fund nor a 3(c)(7) fund, and must deliver a copy of such audited financial statements to each beneficial owner of the fund within one hundred eighty (180) days of the fund's fiscal year end or such longer period as the commissioner may permit upon a showing of good cause.

(3) Federal Covered Investment Advisers. A private fund adviser registered with the SEC is not eligible for this exemption and must comply with the state notice filing requirements applicable to federal covered investment advisers in 9 V.S.A. § 5405.

(4) Investment Adviser Representatives. A person is exempt from the registration requirements of 9 V.S.A. § 5404 if they are employed by or associated with an investment adviser that is exempt from registration in Vermont pursuant to this section and does not otherwise act as an investment adviser representative.

(5) Electronic Filing. The report filings described in subdivision (1)(B) above must be made electronically through the IARD. A report is deemed filed when the report and

the fee required by 9 V.S.A. § 5410 are filed and accepted by the IARD on Vermont's behalf.

(6) Transition. An investment adviser who becomes ineligible for the exemption provided by this section must comply with all applicable laws and rules requiring registration or notice filing within ninety (90) calendar days from the date the investment adviser's eligibility for this exemption ceases.

(7) Waiver Authority with Respect to Statutory Disqualification. Subdivision (g)(1) above does not apply upon a showing of good cause and without prejudice to any other action of the Department, if the commissioner determines that it is not necessary under the circumstances that an exemption be denied.

(8) Treatment of Private Fund Advisers with Non-Qualified Clients. A private fund adviser to one (1) or more 3(c)(1) funds that is neither a venture capital fund nor a (3)(c)(7) fund and that has one (1) or more beneficial owners who are not qualified clients may nonetheless qualify for this exemption if: the subject fund(s) existed prior to Nov. 2, 2012; as of Nov. 2, 2012, the fund(s) ceased to accept beneficial owners who are/were not qualified clients, other than beneficial owners of such fund(s) as of Nov. 2, 2012; provided, however, that securities of a fund that are owned by persons or entities who received such securities from a person or entity that was a beneficial owner of such fund as of Nov. 2, 2012 as a gift or bequest, or in a case in which such transfer or assignment was caused by legal separation, divorce, death or other involuntary event or effected for estate planning purposes, is deemed to be owned by a beneficial owner of such fund.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. §§ 5403; 5404)

V.S.R. § 7-2. Recordkeeping Requirements for Investment Advisers.

(a) Every investment adviser registered or required to be registered under the Act shall make and keep true, accurate and current the following books, ledgers and records:

(1) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

(2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

(3) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any

modification or cancellation of any such order or instruction. The memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank, broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated. For purposes of this section, "discretionary power" shall not include discretion regarding the price or the time at which a transaction is to be effected if the client has directed or approved the purchase or sale of a definite amount of a particular security before the order is given by the investment adviser.

- (4) All check books, bank statements, canceled checks and cash reconciliations of the investment adviser.
- (5) All bills or statements (or copies of), paid or unpaid, relating to the investment adviser's business as an investment adviser.
- (6) All trial balances, financial statements prepared in accordance with generally accepted accounting principles, and internal audit working papers relating to the investment adviser's business as an investment adviser. For purposes of this subsection, "financial statements" shall mean a balance sheet, an income statement, and a cash flow statement, each of which is prepared in accordance with GAAP and a net worth computation, if applicable, as required by V.S.R. § 7-5(d).
- (7) Originals of all written communications received and copies of all written communications sent by the investment adviser relating to:
 - (A) any recommendation made or proposed to be made and any advice given or proposed to be given,
 - (B) any receipt, disbursement or delivery of funds or securities, or
 - (C) the placing or execution of any order to purchase or sell any security, provided, however,
 - (i) that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, and
 - (ii) that if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 10 persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that

if the notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular or advertisement a memorandum describing the list and its source.

- (8) A list or other record of all accounts which identifies the accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities, or transactions of any client.
- (9) A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser.
- (10) A copy in writing of each agreement entered into by the investment adviser with any client, and all other written agreements otherwise relating to the investment adviser's business as an investment adviser.
- (11) A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser), and if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.
- (12) (A) A record of every transaction in a security in which the investment adviser or any advisory representative (as defined in subdivision 12(B) herein) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except
 - (i) Transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and
 - (ii) Transactions in securities that are direct obligations of the United States.

The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e. purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A

transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(B) For purposes of this subdivision (12), the term “advisory representative” shall mean any partner, officer or director of the investment adviser; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations:

- (i) Any person in a control relationship to the investment adviser;
- (ii) Any affiliated person of a controlling person; and
- (iii) Any affiliated person of an affiliated person.

(C) An investment adviser shall not be deemed to have violated the provisions of this subdivision (12) because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(13) (A) Notwithstanding the provisions of subdivision (12) above, where the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except:

- (i) Transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and
- (ii) Transactions in securities which are direct obligations of the United States.

The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e. purchase, sale, or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not

be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(B) An investment adviser is “primarily engaged in a business or businesses other than advising investment advisory clients” when, for each of its most recent three fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived, on an unconsolidated basis, more than 50% of

- (i) Its total sales and revenues, and
- (ii) Its income (or loss) before income taxes and extraordinary items, from such other business or businesses.

(C) For purposes of this subdivision (13), the term “advisory representative”, when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, shall mean any partner, officer, director or employee of the investment adviser who participates in any way in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons, who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of such recommendations or of the information concerning the recommendations:

- (i) Any person in a control relationship to the investment adviser;
- (ii) Any affiliated person of a controlling person; and
- (iii) Any affiliated person of an affiliated person.

(D) An investment adviser shall not be deemed to have violated the provisions of this subdivision (13) because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(14) A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of the investment adviser in accordance with the provisions of V.S.R. § 7-7(a), and a record of the dates that each written statement,

and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

- (15) For each client that was obtained by the adviser by means of a solicitor:
- (A) Evidence of a written agreement to which the adviser is a party related to the payment of a cash fee or any other economic benefit;
 - (B) A signed and dated acknowledgment of receipt from the client evidencing the client's receipt of the investment adviser's disclosure statement and a written disclosure statement of the solicitor; and,
 - (C) A copy of the solicitor's written disclosure statement. The written agreement, acknowledgment and solicitor disclosure statement will be considered to be in compliance if such documents are in compliance with Rule 275.206(4)-1 of the Investment Advisers Act of 1940.
- (16) All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including but not limited to electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser); provided, however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this subdivision.
- (17) A file containing a copy of all written communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee, and regarding any written customer or client complaint.
- (18) Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.
- (19) Written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.
- (20) A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self regulatory organization and that pertains to the registrant or its advisory representatives

as that term is defined in subdivision (12)(B) of this subsection, which file must contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

(21) Copies, with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form U-4 and each amendment to Disclosure Reporting Pages (DRPs U-4) must be retained by the investment adviser (filing on behalf of the investment adviser representative) and must be made available for inspection upon regulatory request.

(22) Where the adviser inadvertently held or obtained a client's securities or funds and returned them to the client within three business days of receiving them or has forwarded checks drawn by clients and made payable to third parties within three business days of receipt the adviser shall keep the following records:

A ledger or other listing of all securities or funds held or obtained, including the following information:

- (A) Issuer;
- (B) Type of security and series;
- (C) Date of issue;
- (D) For debt instruments, the denomination, interest rate and maturity date;
- (E) Certificate number, including alphabetical prefix or suffix;
- (F) Name in which registered;
- (G) Date given to the adviser;
- (H) Date sent to client, sender, or third party;
- (I) Form of delivery to client or sender, or third party, or copy of the form of delivery to client, sender, or third party;
- (J) Mail confirmation number, if applicable, or confirmation by client, sender, or third party of the fund's or security's return; and
- (K) Date each check was received by the adviser.

(23) If an investment adviser obtains possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving any public offering that

comply with the exception from custody under V.S.R. § 7-5(b)(2)(B) the adviser shall keep the following records;

(A) A record showing the issuer or current transfer agent's name address, phone number and other applicable contract information pertaining to the party responsible for recording client interests in the securities; and

(B) A copy of any legend, shareholder agreement or other agreement showing that those securities are transferable only with the prior consent of the issuer or holders of the outstanding securities of the issuer.

(24) A copy of any notice required to be delivered by the Security Breach Notice Act, 9 V.S.A. § 2435.

(b) (1) If an investment adviser has custody, as that term is defined in V.S.R. § 7-5(a), the records required to be made and kept under subsection (a) above shall include:

(A) A copy of any and all documents executed by the client (including a limited power of attorney) under which the adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the

adviser's instruction to the custodian.

(B) A journal or other record showing all purchases, sales, receipts, and deliveries of securities (including certificate numbers) for all accounts and all other debits and credits to the accounts.

(C) A separate ledger account for each client showing all purchases, sales, receipts, and deliveries of securities, the date and price of each purchase and sale, and all debits and credits.

(D) Copies of confirmations of all transactions effected by or for the account of any client.

(E) A record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount or interest of each client, and the location of each security.

(F) A copy of each of the client's quarterly account statements, as generated and delivered by the qualified custodian. If the adviser also generates a statement that is delivered to the client, the adviser shall also maintain copies of such statements along with the date such statements were sent to the clients.

(G) If applicable to the adviser's situation, a copy of the special examination report verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination.

(H) A record of any finding by the independent certified public accountant of any material discrepancies found during the examination.

(I) If applicable, evidence of the client's designation of an independent representative.

(2) If an investment adviser has custody because it advises a pooled investment vehicle, as defined in V.S.R. § 7-5(a)(1)(C), the adviser shall also keep the following records:

(A) True, accurate, and current account statements;

(B) Where the adviser complies with V.S.R. § 7-5(b)(2)(C) the records required to be made and kept shall include:

(i) The date(s) of the audit;

(ii) A copy of the audited financial statements; and

(iii) Evidence of the mailing of the audited financial to all limited partners, members, or other beneficial owners within 120 days of the end of its fiscal year.

(C) Where the adviser complies with V.S.R. § 7-5(b)(1)(D)(iii) the records required to be made and kept shall include:

(i) A copy of the written agreement with the independent party reviewing all fees and expenses, indicating the responsibilities of the independent third party.

(ii) Copies of all invoices and receipts showing approval by the independent party for payment through the qualified custodian.

(c) Every investment adviser subject to subsection (a) of this section who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate, and current:

- (1) Records showing separately for each client the securities purchased and sold, and the date, amount, and price of each purchase and sale.
 - (2) For each security in which any client has a current position, information from which the investment adviser can promptly furnish the name of each client, and the current amount or interest of the client.
- (d) Any books or records required by this section may be maintained by the investment adviser in such manner that the identity of any client to whom the investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.
- (e) Every investment adviser subject to subsection (a) of this section shall preserve the following records in the manner prescribed:
- (1) All books and records required to be made under the provisions of subsection (a) to (c)(1), inclusive, of this section (except for books and records required to be made under the provisions of subdivisions (a)(11) and (a)(16) of this section), shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser.
 - (2) Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.
 - (3) Books and records required to be made under the provisions of subdivisions (a)(11) and (a)(16) of this section shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in an appropriate office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated (including by electronic media), directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication.
 - (4) Books and records required to be made under the provisions of subdivisions (a)(17) to (a)(23), inclusive, of this section shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser, or for the time period during which the investment adviser was registered or required to be registered in the state, if less.
 - (5) Notwithstanding other record preservation requirements of this section, the following records or copies shall be required to be maintained at the business location

of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:

- (A) Records required to be preserved under subdivisions (a)(3), (a)(7)-(10), (a)(14)-(15), (a)(17)-(19), (b) and (c) inclusive, of this section; and
 - (B) The records or copies required under the provisions of subdivisions (a)(11) and (a)(16) of this section, which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business location's physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the period described in subsection (e) of this section.
- (f) An investment adviser subject to subsection (a) of this section, before ceasing to conduct or discontinuing business as an investment adviser shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section, and shall notify the commissioner in writing of the exact address where the books and records will be maintained during the period.
- (g) (1) Pursuant to V.S.R. § 7-2(e) the records required to be maintained and preserved may be immediately produced or reproduced, and maintained and preserved for the required time, by an investment adviser on:
- (A) Paper or hard copy form, as those records are kept in their original form; or
 - (B) Micrographic media, including microfilm, microfiche, or any similar medium; or
 - (C) Electronic storage media, including any digital storage medium or system that meets the terms of this section.
- (2) The investment adviser must:
- (A) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;
 - (B) Provide promptly any of the following that the commissioner (by its examiners or other representatives) may request:
 - (i) A legible, true, and complete copy of the record in the medium and format in which it is stored;

(ii) A legible, true, and complete printout of the record; and

(iii) Means to access, view, and print the records; and

(C) Separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section.

(3) In the case of records created or maintained on electronic storage media, the investment adviser must establish and maintain procedures:

(A) To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

(B) To limit access to the records to properly authorized personnel and the commissioner (including its examiners and other representatives); and

(C) To reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

(h) Any book or other record made, kept, maintained, and preserved in compliance with Rules 17a-3 [17 C.F.R. 240.17a-3] and 17a-4 [17 C.F.R. 240.17a-4] under the Securities Exchange Act of 1934, which is substantially the same as the book or other record required to be made, kept, maintained, and preserved under this section, shall be deemed to be made, kept, maintained, and preserved in compliance with this section.

(i) Every investment adviser registered or required to be registered in this state and that has its principal place of business in a state other than this state shall be exempt from the requirements of this section, provided the investment adviser is licensed in such state and is in compliance with such state's recordkeeping requirements.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. § 5411)

V.S.R. § 7-3. Dishonest and Unethical Practices of Investment Advisers, Investment Adviser Representatives, and Federal Covered Investment Advisers.

(a) Unethical Conduct. "Dishonest or unethical practices," as used in 9 V.S.A. § 5412(d)(13) includes but is not limited to the conduct prohibited in this section.

(b) Fraudulent Conduct. "An act, practice, or course of business that operates or would operate as a fraud or deceit," as used in 9 V.S.A. § 5502(a)(3) includes but is not limited to the conduct prohibited in subdivisions (d)(6) and (9)-(11) and subsections (e)-(i).

(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 adviser representatives for similar services in the geographic area in which the client resides; and
 - (iii) The likelihood that the services provided by the investment adviser or investment adviser representative will result in returns in excess of the fee charged;

- (B) An investment adviser must not charge commissions to a client for the sale of securities pursuant to the investment adviser or investment adviser representative's advice unless such fees or charges are credited toward any advisory fee charged by the investment adviser or investment adviser representative;
- (9) Prohibited Conduct. Reverse Churning. An investment adviser and an investment adviser representative must ensure that a fee-based program is appropriate for a particular customer, taking into account the services provided, cost, trade volume, level and type of assets and customer preferences. Specifically, the following activity by an investment adviser or investment adviser representative may trigger suspicion of prohibited reverse churning:
 - (A) Purchase securities in a customer's brokerage account, then move such securities into a fee-based account, when the securities transaction could have been initially made in the fee-based account without paying a brokerage commission;
 - (B) Place or leave customers in a fee-based account when most of the investments in the account consist primarily of cash or cash equivalents; or
 - (C) Place or leave customers in a fee-based account, when very few, if any, trades are made in the account;
- (10) Failure to Disclose Conflicts of Interest. Before rendering any advice to a client, an investment adviser or investment adviser representative must disclose in writing any material conflict of interest relating to the investment adviser, investment adviser representative, or any of the investment adviser's employees that could reasonably be expected to impair unbiased and objective advice, including but not limited to:
 - (A) Compensation arrangements connected with advisory services to the client that are in addition to compensation from the client for the advisory services; and
 - (B) Charging a client an advisory fee for rendering advice without disclosing that a commission for executing transactions pursuant to such advice will be received by the investment adviser or its investment adviser representative and that such commission will be credited toward any advisory fee charged;
- (11) Guaranteeing Performance. An investment adviser or investment adviser representative must not guarantee a client that a specific result will occur with advice rendered;

(12) Deceptive Advertising. An investment adviser or investment adviser representative must not publish, circulate, or distribute any advertisement that does not comply with 17 C.F.R. § 275.206(4)-1, notwithstanding the fact that the investment adviser may be exempt from federal registration pursuant 15 U.S.C. § 80b3(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.

(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 written consent of any other party to the contract.

(B) Containing performance-based fees contrary to the provisions of 15 U.S.C. § 80b-5, except as permitted by 17 C.F.R. § 275.205-3; and

(C) That includes any condition, stipulation, or provision binding a person to waive compliance with any provision of the act or engage in any practice contrary to the provisions of 15 U.S.C. § 80b-15 or any other provision of the Investment Advisers Act of 1940.

(15) Indirect Misconduct. An investment adviser or investment adviser representative must not engage in any conduct or any act, indirectly or through or by another person, that would be unlawful for the person to do directly under the provisions of the Act or these regulations.

(e) Prohibited Conduct. Failure to Disclose Financial Condition and Disciplinary History.

(1) An investment adviser must disclose to any client or prospective client all material facts with respect to:

(A) A failure to meet the minimum financial requirements of V.S.R. § 7-5(d);
or

(B) Any financial condition of the investment adviser or legal or disciplinary event that is material to an evaluation of the investment adviser's integrity or ability to meet contractual commitments to clients, including all information required to be disclosed on Form ADV Parts 2A and 2B.

(2) 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;

(3) Compliance with this subsection does not relieve any investment adviser from any other disclosure requirement of any federal or state law.

(f) Prohibited Conduct. Cash Payment for Client Solicitations. Any person who acts as a solicitor for an investment adviser is deemed to be an investment adviser representative under the Act. An investment adviser or investment adviser representative must not engage a solicitor with respect to solicitation activities unless the solicitation arrangement meets the following requirements:

(1) The cash fee must be paid pursuant to a written agreement to which the investment adviser is a party. The written agreement to be kept as required by V.S.R. § 7-2(a)(15) must:

(A) Describe the solicitation activities to be engaged in by the solicitor on behalf of the investment adviser and the compensation received;

- (B) Contain an undertaking by the solicitor to perform the solicitor's duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of the Act and these regulations; and
 - (C) Require the solicitor to provide the client with a current copy of the investment adviser's written disclosure statement required under the brochure delivery requirements of V.S.R. § 7-7 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 has complied with the written agreement required by subdivision (1) above, and the investment adviser has a reasonable basis for believing that the solicitor has complied 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.

(6) For purposes of V.S.R. § 7-3(f), the term client includes any prospective client.

(g) Prohibited Conduct. Agency Cross Transactions.

(1) An investment adviser must not effect an agency cross transaction for an advisory client unless:

(A) The advisory client executes a written consent prospectively authorizing the investment adviser to effect agency cross transactions for the client;

(B) Before obtaining this written consent from the client, the investment adviser makes full written disclosure to the client that, with respect to agency cross transactions, the investment adviser will act as broker-dealer for both parties to the transaction, receive commissions from both parties, and have a potentially conflicting division of loyalties and responsibilities;

(C) At or before the completion of each agency cross transaction, the investment adviser sends the client a written confirmation. The written confirmation must include all of the following information:

(i) A statement of the nature of the transaction;

(ii) The date the transaction took place;

(iii) An offer to furnish, upon request, the time when the transaction took place; and

(iv) The source and amount of any other remuneration that the investment adviser will receive in connection with the transaction. In the case of a purchase in which the investment adviser was not participating in a distribution or a tender offer, the written confirmation may state whether the investment adviser will receive any other remuneration and that the investment adviser will furnish the source and amount of remuneration to the client upon the client's written request;

(D) At least annually, the investment adviser sends each client a written disclosure statement identifying the total number of agency cross transactions during the period since the date of the last disclosure statement and the total amount of all commissions or other remuneration that the investment adviser will receive in connection with agency cross transactions for the client during the period;

(E) Each written disclosure and confirmation required by this subsection includes a conspicuous statement that the client may revoke the written consent

required under subdivision (A) above at any time by providing written notice to the investment adviser; and

(F) No agency cross transaction is effected in which the same investment adviser recommended the transaction to both any seller and any purchaser.

(2) Nothing in this subsection relieves any person of any fiduciary duty or other obligation to which a person may be subject under any law.

(h) Prohibited Conduct. Failure to pay an arbitration award, attempt to avoid payment of arbitration award, or failure to pay any civil penalty.

(1) An investment adviser must not fail to pay and fully satisfy any final judgment or arbitration award resulting from an investment-related, customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the customer and the investment adviser, in writing, and the investment adviser complies with the terms of the alternative payment arrangement.

(2) An investment adviser must not attempt to avoid payment of any final judgment or arbitration award resulting from an investment-related, customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the customer and the investment adviser, in writing, and the investment adviser complies with the terms of the alternative payment arrangements.

(3) An investment adviser must not fail to pay and fully satisfy any fine, civil penalty, order of restitution, order of disgorgement, or similar monetary payment obligation imposed upon the investment adviser or investment adviser representative by the SEC, the securities or other financial services regulator of any state or province, or any self-regulatory organization.

(i) Prohibited Conduct. The use of a senior specific certification or designation.

(1) An investment adviser or investment adviser representative must not use a senior specific certification or designation in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person. Such use shall be a dishonest and unethical practice in the securities, commodities, investment, franchise, banking, finance, or insurance business within the meaning of the Vermont Uniform Securities Act. The prohibited use of such certifications or professional designation includes, but is not limited to, the following:

(A) Using a certification or professional designation by an investment adviser or investment adviser representative who has not earned or is otherwise ineligible to use that certification or designation;

(B) Using a nonexistent or self-conferred certification or professional designation;

(C) Using a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the investment adviser or investment adviser representative using the certification or professional designation does not have; and

(D) Using a certification or professional designation that was obtained from a designating or certifying organization that:

v Is primarily engaged in the business of instruction in sales or marketing;

vi Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

vii Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

viii Does not have reasonable continuing education requirements for its designees or certificants to maintain the professional designation or certification.

(2) A rebuttable presumption exists that a designating or certifying organization is not disqualified solely for purposes of subdivision (1)(D) above if the organization has been accredited by:

(A) The American National Standards Institute;

(B) The National Commission for Certifying Agencies; or

(C) 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.

(3) 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 an investment adviser or investment adviser representative has special

certification or training in advising or servicing senior citizens or retirees, the factors to be considered must include:

- (A) 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
- (B) The manner in which the words are combined.

(4) For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title: (1) Indicates seniority or standing within the organization; or (2) Specifies an individual’s area of specialization within the organization. For purposes of this subsection, “financial services regulatory agency” includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

(j) Applicability to Federal Covered Investment Advisers. To the extent permitted by federal law, the provisions of this regulation governing investment advisers also apply to federal covered investment advisers.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. §§ 5412(d)(13), 5502 and 8 V.S.A. §§ 15 and 24)

V.S.R. § 7-4. Notice Filing Requirements for Federal Covered Investment Advisers.

(a) Initial Notice Filing. The notice filing for a federal covered investment adviser pursuant to 9 V.S.A. § 5405 must be filed on Form ADV with the IARD. A notice filing of a federal covered investment adviser is deemed filed when the fee required by 9 V.S.A. § 5410(e) and the Form ADV are filed with and accepted by the IARD.

(b) Part 2 of Form ADV. Until the IARD accepts the electronic filing of part 2 of Form ADV, part 2 is deemed to be filed if a federal covered investment adviser provides part 2 within five (5) business days of a request by the commissioner.

(c) Renewal Notice Filing. The annual renewal of the notice filing for a federal covered investment adviser pursuant to 9 V.S.A. § 5405 must be filed with the IARD. The renewal of the notice filing for a federal covered investment adviser is deemed filed when the fee required by 9 V.S.A. § 5410(e) is filed with and accepted by the IARD.

(d) Updates and Amendments. Each federal covered investment adviser must file with the IARD any amendments to the federal covered investment adviser's Form ADV.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. § 5405(c))

V.S.R. § 7-5. Custody of Client Funds or Securities; Financial Reporting; Minimum Net Worth; Bonding.

(a)

(1) Each of the following circumstances shall be deemed to constitute custody for purposes of this section:

(A) Possession of client funds or securities, unless the investment adviser receives them inadvertently and returns them to the sender within three (3) business days of receiving them and the investment adviser maintains the records required under V.S.R. § 7-2(a)(22);

(B) Any arrangement, including a general power of attorney, under which an investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser's instruction to the custodian;

(C) Any arrangement that gives an investment adviser or its supervised person legal ownership of or access to client funds or securities, which may include an arrangement in which the investment adviser or its supervised person is the trustee of a trust, the general partner of a limited partnership, the managing member of a limited liability company, or a comparable position for a pooled investment vehicle; and

(D) Where the investment adviser, or its representative, has obtained possession of the identification number and confidential password to a client's account, and this password access provides the investment adviser, or its representative, with the ability to withdraw funds or securities or transfer them to an account not in the client's name. However, the power to rebalance alone, without any means to withdraw or transfer the assets will not constitute custody.

(2) Receipt of a check drawn by a client and made payable to an unrelated third party does not meet the definition of custody if the investment adviser forwards the check to the third party within three (3) business days of receipt and the investment adviser maintains the records required under V.S.R. § 7-2(a)(22).

(b) Safekeeping of Client Funds and Securities.

(1) Requirements. An investment adviser shall not have custody of client funds or securities unless the investment adviser meets each of the conditions below. An “act, practice, or course of business that operates or would operate as a fraud or deceit,” as used in 9 V.S.A. § 5502 and amendments thereto, shall include any violation of this subsection.

(A) Notice to Commissioner. An investment adviser must promptly notify the commissioner on Form ADV that the investment adviser has or will have custody.

(B) Qualified Custodian. A qualified custodian must maintain each client’s funds and securities in a separate account under each client’s name, or in accounts that contain only funds and securities of the investment adviser’s clients under the name of the investment adviser as agent or trustee for each client.

(C) Notice to Clients. If an investment adviser opens an account with a qualified custodian on behalf of its client, either under the client’s name or under the investment adviser’s name as agent, the investment adviser must promptly notify the client in writing of the qualified custodian’s name, address, and the manner in which the funds or securities are maintained.

(D) Account Statements. The investment adviser must ensure that account statements are sent to each client for whom the investment adviser has custody of funds or securities.

(i) Statements Sent by the Qualified Custodian. If a qualified custodian maintains accounts containing funds or securities, the qualified custodian rather than the investment adviser may send account statements to clients only if the investment adviser has a reasonable basis for believing that the qualified custodian sends such account statement at least quarterly to each of the investment adviser’s clients for whom the custodian maintains funds or securities. The investment adviser must have a reasonable basis for believing that the statement contains all transactions in the account during the period and identifies the amount of funds and amount of each security in the account at the end of the period.

(ii) Statements Sent by the Investment Adviser. If account statements are not sent by the qualified custodian in accordance with subdivision (i) above, the investment adviser must send an account statement at least quarterly to each client for whom it has custody of funds or securities. The account statement must contain all transactions in the account during the period and identify the amount of funds and amount of each security of which it has custody at the end of the period.

(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) 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.

(F) Independent Representatives. A client may designate an independent representative to receive notices and account statements as required in subdivisions (C) and (D) above on the client's behalf.

(G) Direct Fee Deduction. Notwithstanding section (E) above, an investment adviser is not required to obtain a certified public accountant attestation of client funds and securities if the investment adviser has custody of the funds and securities solely as a consequence of its authority to make withdrawals from client accounts to pay its advisory fee. 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.

(H) Pooled Investments. Each investment adviser with custody who does not meet the exception provided under subdivision (2)(C) below must:

(i) Hire an independent party to review all fees, expenses, and capital withdrawals from the pooled accounts.

(ii) Send all invoices or receipts to the independent party, detailing the amount of the fee, expenses, or capital withdrawal and the method of calculation so that the independent party can determine that the payment is in accordance with the agreement governing the pooled investment vehicle and approve invoice payment for the qualified custodian providing a copy to the investment adviser.

(iii) Notify the commissioner on Form ADV that the investment adviser intends to use the safeguards specified in this subsection.

(2) Exceptions.

(A) Shares of Mutual Funds. An investment adviser may use the mutual fund's transfer agent in lieu of a qualified custodian for purposes of complying with subdivision (1) above with respect to shares of a mutual fund that is an open-end company as defined in 15 U.S.C. § 80a-5(a)(1).

(B) Certain Privately Offered Securities. An investment adviser is not required to comply with subdivision (1) above with respect to securities that are:

(i) Acquired from the issuer in a transaction or chain of transactions not involving any public offering;

(ii) Uncertificated, with ownership of the securities recorded only on the books of the issuer or its transfer agent in the name of the client; and

(iii) Transferable only with the prior consent of the issuer or holders of the outstanding securities of the issuer.

(C) Limited Partnerships Subject to Annual Audit. An investment adviser is not required to comply with subdivision (1) above with respect to the account of a limited partnership, limited liability company, or other type of pooled investment vehicle that is subject to audit at least annually and that distributes its audited financial statements prepared in accordance with GAAP to all limited partners, members, or other beneficial owners within one hundred twenty (120) days after the end of its fiscal year. The investment adviser must notify the commissioner on Form ADV that the investment adviser intends to distribute audited financial statements.

(D) Registered Investment Companies. An investment adviser is not required to comply with subdivision (1) above with respect to the account of an investment company registered under 15 U.S.C. § 80a-1 et seq.

(E) Beneficial Trusts. An investment adviser is not required to comply with the safekeeping requirements of subdivision (1) above if the investment adviser has custody solely because the investment adviser or an investment adviser representative is the trustee for a beneficial trust and meets the following conditions for each trust:

(i) The beneficial owner of the trust is a parent, grandparent, spouse, sibling, child, or grandchild of the investment adviser or investment adviser representative, including "step" relationships.

(ii) The investment adviser provides a written statement to each beneficial owner of each account setting forth a description of the requirements of subdivision (1) above and the reasons why the investment adviser will not comply with those requirements.

(iii) The investment adviser obtains from each beneficial owner a signed and dated statement acknowledging the receipt of the written statement.

(iv) The investment adviser maintains a copy of both documents described in subdivisions (ii) and (iii) above until the account is closed or the investment adviser or investment adviser representative is no longer trustee.

(F) Upon written request and for good cause shown, the commissioner may waive the requirement to use a qualified custodian. As a condition of granting a waiver, the commissioner may require the investment adviser to perform the duties of a qualified custodian as specified in subdivision (1) above.

(c) Financial Reporting Requirements for Investment Advisers.

(1) Balance Sheet and Auditor's Report. An investment adviser with custody of client funds or securities and an investment adviser who accepts the payment of advisory fees at least six (6) months in advance and in excess of five hundred dollars (\$ 500) from any client must make and maintain a balance sheet dated the last day of the investment adviser's fiscal year. Each balance sheet must be:

(A) Audited by an independent certified public accountant in accordance with GAAP; and

(B) Accompanied by a report of the independent auditor containing an unqualified opinion that the balance sheet is a fair presentation of the investment adviser's financial position and is made in conformity with GAAP.

(2) Preparation and Filing Deadlines. The balance sheet and report required by subdivision (1) above must be prepared within ninety (90) days following the end of the investment adviser's fiscal year. The investment adviser must file the balance sheet and report with the commissioner within five (5) days after the commissioner requests them. Failure to timely file the balance sheet and report constitutes grounds for suspension of registration by emergency order under 9 V.S.A. § 5412(f).

(3) Exemptions. An investment adviser is exempt from the requirements of this subsection (c) if the investment adviser:

(A) Qualifies for an exception from the minimum adjusted net worth requirements of subdivision (d)(3); or

(B) Has its principal place of business in a state other than Vermont, is properly registered in that state, and satisfies the financial reporting requirements of that state.

(d) Minimum Financial Requirements.

(1) Positive Net Worth Requirement for Investment Advisers. An investment adviser must maintain a positive adjusted net worth at all times.

(2) Requirements for Investment Advisers with Discretionary Authority. Except as provided in subdivision (7), an investment adviser with discretionary authority over client funds or securities must at all times meet the following requirements:

- (A) Minimum Adjusted Net Worth. 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)(A) below.
 - (B) Errors and Omissions Insurance. An investment adviser with discretionary authority over client funds or securities must maintain at all times errors and omissions insurance meeting the requirements of subdivisions (3)(B)(i)-(iii) below.
 - (C) Surety Bond as Substitute. An investment adviser may maintain a surety bond to satisfy the minimum adjusted net worth requirement of subdivision (A) above if the investment adviser is bonded for an amount that is equal to or greater than the required minimum adjusted net worth, provided the adviser meets the positive net worth requirement of subsection (d)(1).
- (3) Requirements for Investment Advisers with Custody. Except as provided in subdivision (7), an investment adviser with custody of client funds or securities must at all times meet the following requirements:
- (A) Minimum Adjusted Net Worth. An investment adviser with custody of client funds or securities must maintain a minimum adjusted net worth of thirty-five thousand dollars (\$35,000) at all times, except investment advisers with custody solely because the investment adviser:
 - (i) Has fees directly deducted from client accounts and the investment adviser complies with the safekeeping requirements in subdivisions (b)(1)(A)-(F) above and the recordkeeping requirements of V.S.R. § 7-2(b);
 - (ii) Has custody solely due to advising pooled investment vehicles and complies with the safekeeping requirements in subdivisions (b)(1)(A), (E) and (G) above and the recordkeeping requirements of V.S.R. § 7-2(b); and
 - (iii) Is trustee for a beneficial trust, if the trust meets the conditions in subdivision (b)(2)(E) above.
 - (B) Errors and Omissions Insurance. An investment adviser with custody of, or discretionary authority over, client funds or securities must file with the Department proof that the applicant procures and maintains appropriate errors and omissions insurance coverage for investment management and advisory services, with minimum of one million dollars (\$1,000,000) in aggregate coverage, with a reasonable deductible in light of the firm's financial resources. Such insurance must meet the following requirements:

- (i) The errors and omissions insurance policy must be issued by an insurer licensed in Vermont or by a surplus lines insurer with which insurance coverage may be placed pursuant to 8 V.S.A. Chapter 138;
- (ii) An errors and omissions policy used to satisfy the requirements of this subsection may not contain exclusions for investment management or investment advisory services performed in Vermont or for persons performing investment management or investment advisory services in Vermont; and
- (iii) The requirements for errors and omissions insurance may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements, but the investment adviser's errors and omissions insurance coverage meeting these requirements must be in continuous effect, and proof thereof shall be submitted to the Department upon request.

(C) Surety Bond as Substitute. An investment adviser may maintain a surety bond to satisfy the minimum adjusted net worth requirement of subsection (A) above if the investment adviser is bonded for an amount that is equal to or greater than the required minimum adjusted net worth, provided the adviser meets the positive net worth requirement of subsection (d)(1).

(4) Notification. An investment adviser must notify the commissioner by the close of business on the next business day if the investment adviser's adjusted net worth is less than the minimum required by this subsection (d) or if the investment adviser does not have in effect errors and omissions insurance coverage that satisfies the requirements of this subsection (d). After filing the notice, the investment adviser must file a report with the commissioner of its financial condition by the close of business on the business day following notice including:

- (A) A trial balance of all ledger accounts;
- (B) A statement of all client funds or securities that are not segregated;
- (C) A computation of the aggregate amount of client ledger debit balances; and
- (D) A statement indicating the number of client accounts.

(5) For purposes of this Rule an investment adviser shall not be deemed to be exercising discretion when it places trade orders with a broker-dealer pursuant to a third-party trading agreement if:

(A) The investment adviser has executed a separate investment adviser contract exclusively with its client which acknowledges that a third-party trading agreement will be executed to allow the investment adviser to effect securities transactions for the client in the client's broker-dealer account; and

(B) The investment adviser contract specifically states that the client does not grant discretionary authority to the investment adviser and the investment adviser in fact does not exercise discretion with respect to the account; and

(C) A third-party trading agreement is executed between the client and a broker-dealer which specifically limits the investment adviser's authority in the client's broker-dealer account to the placement of trade orders and deduction of investment adviser fees.

(6) Appraisals. The commissioner may require an investment adviser to submit a current appraisal to establish the worth of any asset.

(7) Exception for Out-of-State Advisers. Every investment adviser that has its principal place of business in a state other than Vermont shall maintain such minimum net worth and errors and omissions insurance as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is licensed in such state and is in compliance with such state's minimum capital and insurance requirements.

(e) Surety Bond.

(1) Additional Bond Requirement. An investment adviser with discretionary authority or custody who does not meet the minimum adjusted net worth requirement of subdivisions (d)(2) and (3) above must also be bonded for the amount of the net worth deficiency rounded up to the nearest five thousand dollars (\$ 5,000) and file a Form U-SB with the commissioner.

(2) Exemptions. An investment adviser is exempt from the requirements of subdivision (1) above if the investment adviser:

(A) Qualifies for an exception from the minimum adjusted net worth requirements of subdivision (d)(3) above and does not have discretionary authority; or

(B) Has its principal place of business in a state other than Vermont, is properly registered in that state, and satisfies the bonding requirements of that state.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. § 5411)

V.S.R. § 7-6. Operational Requirements for Investment Advisers; Supervisory Procedures.

(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, maintain, and enforce 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 a supervised person as the chief compliance officer responsible for administering the investment adviser's policies and procedures and supervising each investment adviser representative registered with the investment adviser;
- (ii) That the investment adviser will make reasonable efforts to ensure that all supervisory personnel are qualified to carry out their assigned responsibilities;
- (iii) Procedures for conducting, at minimum, an annual review to ensure compliance with the written supervisory policies and procedures;
- (iv) Procedures for internal review and written endorsement by supervisory personnel described in subdivision (ii) above of all transaction and correspondence pertaining to the rendering of investment advice; and
- (v) Procedures for ensuring the good character, business repute, qualifications, and experience of any person applying for registration in association with the investment adviser.

(3) Code of Ethics.

(A) An investment adviser must establish, maintain, and enforce a written code of ethics that, at a minimum, includes:

- (i) A standard (or standards) of business conduct that the investment adviser requires of its supervised persons, which must reflect the investment adviser's fiduciary obligations and those of its supervised persons;
- (ii) Provisions requiring the investment adviser's supervised persons to comply with applicable State and Federal securities laws;
- (iii) Provisions requiring all of the investment adviser's access persons to report, and the investment adviser to review, their personal securities transactions and holdings periodically;
- (iv) Provisions requiring supervised persons to report any violations of the investment adviser's code of ethics promptly to its chief compliance officer or, provided the investment adviser's chief compliance officer also receives reports of all violations, to other persons designated in the investment adviser's code of ethics; and

(v) Provisions requiring the investment adviser to provide each of its supervised persons with a copy of the investment adviser's code of ethics and any amendments, and requiring the investment adviser's supervised persons to provide it with a written acknowledgment of their receipt of the code and any amendments.

(4) Fee-Based Accounts. An investment adviser must implement supervisory procedures for the periodic review of fee-based accounts to determine whether they remain appropriate for customers owning them.

(5) Supervision of Non-Investment Adviser Branch Offices. The procedures established and the reviews conducted must provide sufficient supervision at remote offices to ensure compliance with applicable securities laws and regulations. Based on the factors specified in subdivision (2) above, the commissioner may require more frequent reviews or more stringent supervision for certain non-investment adviser branch offices.

(b) Business Continuity and Succession Planning.

(1) Every investment adviser must establish, implement, maintain, and enforce written procedures relating to a business continuity and succession plan.

(2) 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.

(3) The business continuity and succession plan must provide for at least the following:

i The protection, backup, and recovery of books and records.

ii 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.

iii Office relocation in the event of temporary or permanent loss of a principal place of business.

iv Assignment of duties to qualified responsible persons in the event of the death or unavailability of key personnel.

- v Otherwise minimizing service disruptions and client harm that could result from a sudden significant business interruption.

(c) Information Security Procedures.

(1) A Vermont registered investment adviser must establish, maintain, and enforce written policies and procedures reasonably designed to ensure information security. In determining whether the information security policies and procedures are reasonably designed, the commissioner may consider:

- i The firm's size;
- ii The firm's relationships with third parties;
- iii The firm's policies, procedures, and training of employees with regard to information security practices;
- iv Authentication practices;
- v The firm's use of electronic communications;
- vi The automatic locking of devices used to conduct the firm's electronic security; and
- vii The firm's process for reporting of lost or stolen devices.

(2) A Vermont registered investment adviser must include information security as part of its risk assessment.

(3) The information security policies and procedures must provide for:

- i An annual cybersecurity risk assessment;
- ii The use of secure email, including use of encryption and digital signatures;
- iii Authentication practices for employee access to electronic communications, databases, and media;
- iv Procedures for authenticating client instructions received via electronic communication; and
- v Disclosure to clients of the risks of using electronic communications.

(4) A Vermont registered investment adviser must maintain evidence of adequate insurance for the risk of cybersecurity breach. Insurance will be deemed adequate if the insurance is proportional to:

- 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 firm's 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;

(5) A Vermont registered investment adviser must provide identity restoration services at no cost to consumers in the event of a breach in the cybersecurity of consumer nonpublic personal information.

(d) **Vulnerable Adults.** A Vermont registered investment adviser must establish, maintain, and enforce written policies and procedures reasonably designed to ensure protection of vulnerable adults from financial exploitation and compliance with V.S.R. § 8-3.

(e) **Privacy Policy.**

(1) A Vermont registered investment adviser must establish, maintain and enforce a privacy policy that meets the requirements of V.S.R. Chapter 10 and is reasonably designed to aid in the client's understanding of how the investment adviser collects and shares, to the extent permitted by state and federal law, non-public personal information.

(2) An investment adviser must deliver a copy of its privacy policy to new clients at the time of engagement and provide clients with a copy of its privacy policy on an annual basis thereafter. The investment adviser must promptly update and deliver to each client an amended privacy policy if any of the information in the policy becomes inaccurate.

(f) **Material Non-Public Information.** A Vermont registered investment adviser must establish, maintain, and enforce written policies and procedures reasonably designed to

prevent the misuse of material, non-public information by the investment adviser or any person associated with the investment adviser.

(g) Failure to Supervise. An investment adviser who fails to comply with V.S.R. § 7-6 is deemed to have, per se, “failed to reasonably supervise” its investment adviser representatives under 9 V.S.A. § 5412(d)(9).

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. §§ 5407(d); 5411 and 5412(d)(9))

V.S.R. § 7-7. Investment Adviser Brochure Delivery Requirements.

(a) General Requirements. Unless otherwise provided in this section, 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.

(b) Offer and Delivery Requirements.

(1) 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:

- (A) Regularly communicates investment advice to the client;
- (B) Formulates investment advice for assets of the client;
- (C) Makes discretionary investment decisions for assets of the client; or
- (D) Sells investment advisory services or solicits, offers, or negotiates for the sale of investment advisory services.

(2) An investment adviser must deliver the documents required in subdivision (1) 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.

(3) 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.

(c) **Delivery to Limited Partners, Members, or Beneficial Owners.** If the investment adviser is the general partner of a limited partnership, the manager of a limited liability company, or the trustee of a trust, then for purposes of this subsection the investment adviser must treat each of the partnership's limited partners, the company's members, or the trust's beneficial owners as a client.

(d) **Wrap Fee Program Brochures.**

- (1) An investment adviser who is a sponsor of a wrap fee program must deliver to every client or prospective client the required brochure containing all information required by Form ADV. Any additional information in a wrap fee brochure must be limited to wrap fee programs that the investment adviser sponsors.
- (2) 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.
- (3) A wrap fee program brochure does not take the place of any brochure supplements that the investment adviser is required to deliver under subdivision (b)(1) above.

(e) **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.

(f) **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.

(g) **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))

CHAPTER 8

ADDITIONAL PROVISIONS APPLYING TO BROKER-DEALERS, INVESTMENT ADVISERS, AGENTS, REPRESENTATIVES, QUALIFIED INDIVIDUALS, AND OTHERS.

V.S.R. § 8-1. Sales of Securities at Depository Institutions.

(a) **Applicability.** This section applies to broker-dealers and investment advisers on the premises of a depository institution in Vermont. This regulation does not alter or abrogate a broker-dealer or investment adviser's obligations to comply with other applicable laws or regulations that may govern the operations of broker-dealers and their agents and/or investment advisers and their representatives, including but not limited to, supervisory obligations. This regulation does not apply to broker-dealer or investment advisory services provided at financial institutions not offering retail, depository banking services.

(b) **Broker-dealers and investment advisers may not access a customer's depository institution records unless the customer has given prior written permission.**

(c) **Definitions.** For purposes of this section the terms "securities firm", "securities customer" and "securities service" are intended to include both broker-dealer and investment adviser firms, customers and services.

(d) **Standards for Securities Firms.** No broker-dealer or investment adviser shall conduct broker-dealer or investment advisory services on the premise of a depository institution unless the broker-dealer or investment adviser complies initially and continuously with the following requirements:

(1) Distinguishing Services and Products.

(A) **Setting.** If a broker-dealer or investment adviser occupies or uses physical space in an area on the premises of the depository institution, this area must be sufficiently separated from the retail area of the depository institution. The area must be conspicuously identified as the place of business of the broker-dealer or investment adviser; readily distinguishable from the operations of the depository institution and staffed only by those persons whose affiliation with the broker-dealer or investment adviser is conspicuously identified.

(B) **Product Recommendations.** A broker-dealer or investment adviser must establish policies and procedures to ensure that customers are fully and clearly informed of the nature and risks of non-deposit investment products, and that distinguish products and services the broker-dealer or investment adviser offers from the retail banking products offered by the hosting depository institution.

Recommendations by a broker-dealer or investment adviser concerning nondeposit investment products with a name similar to that of a depository institution must only occur pursuant to policies and procedures reasonably designed to minimize risk of customer confusion.

(C) **Networking & Brokerage Affiliate Arrangements.** Networking and brokerage affiliate arrangements must be governed by a written agreement that sets forth the responsibilities of the parties and the compensation arrangements. Networking and brokerage affiliate arrangements must provide that supervisory personnel of the broker-dealer or investment adviser and representatives of state securities authorities, where authorized by state law, will be permitted access to the depository institution's premises where the broker-dealer or investment adviser conducts broker-dealer and/or investment advisory services in order to inspect the books and records and other relevant information maintained by the broker-dealer or investment adviser with respect to its broker-dealer and/or investment advisory services. Management of a broker-dealer or investment adviser is responsible for ensuring that any networking or brokerage affiliate arrangement clearly outlines the duties and responsibilities of all parties, including those of depository institution personnel.

(2) Communications with the Public

(A) Advertising material and other promotional literature, which may be disseminated jointly, must prominently and clearly disclose that the depository institution is not a registered broker-dealer or investment adviser and that securities customers will be dealing exclusively with the registered broker-dealer or investment adviser with respect to securities services. Advertising must make it clear that the broker-dealer or investment adviser and the bank are separate, distinct, and unaffiliated entities and that investment products sold through the securities firm are not deposits insured by any government agency.

(B) The broker-dealer or investment adviser must assume responsibility for reviewing and either approving or disapproving any advertising matter used or intended for use by the depository institution with respect to securities services and must maintain evidence demonstrating that it has done so.

(C) The following shorter, logo format disclosures may be used by a broker-dealer in advertisements and sales literature, including material published, or designed for use, in radio or television broadcasts, Automated Teller Machine ("ATM") screens, billboards, signs, posters and brochures, to comply with the requirements of this section, provided that such disclosures are displayed in a conspicuous manner:

(i) Not FDIC Insured;

(ii) No Bank Guarantee; and

(iii) May Lose Value.

(3) Customer Disclosure.

(A) At or prior to the time that a customer's securities account is opened on the premises of the depository institution, customers must sign a written disclosure that states:

(i) The securities services are not being provided by the depository institution;

(ii) The broker-dealer or investment adviser is not a division of the depository institution but is a separate company;

(iii) Any insurance coverage which applies to accounts maintained by the depository institution, such as FDIC or NCUSIF, will not extend to dealings with the broker-dealer or investment adviser.

(B) Signage, directories, and other labeling displayed on depository institution premises must not in any way imply or lead customers or the public to conclude that the broker-dealer or investment adviser operation constitutes a division of the depository institution.

(C) Employees who are jointly employed by the depository institution and the broker-dealer or investment adviser and who are registered agents or investment adviser representatives of the broker-dealer or investment adviser must disclose this dual relationship to securities customers.

(D) The broker-dealer or investment adviser's telephone number must be listed and answered in a fashion as to be unambiguously identified as that of the broker-dealer or investment adviser, not the depository institution. For example, "XYZ Securities at ABC Bank" would be inappropriate while "XYZ Securities" would be appropriate. There must be separate letterhead and business cards for the broker-dealer or investment adviser and the depository institution, although the depository institution address may be shown on both. All securities confirmations and account statements must unambiguously identify the broker-dealer or investment adviser only.

(4) Separation of Functions

(A) The broker-dealer or investment adviser must require that all orders be placed by customers directly with the broker-dealer or investment adviser and not accepted through the depository institution.

(B) The broker-dealer or investment adviser must not permit the depository institution and its employees to participate or aid in any way the offer, sale, or purchase of securities through the facilities of the broker-dealer or investment adviser, except as provided in these guidelines. Any questions concerning such transactions must be directed to and handled by the broker-dealer or investment adviser through persons who are registered as agents or representatives in Vermont. In addition, all accounts of Vermont residents must be opened and supervised by persons who are registered as agents or investment adviser representatives.

(C) The broker-dealer or investment adviser must not permit the depository institution and its employees to advise securities customers as to the advisability of investing in, purchasing, or selling securities through the facilities of the broker-dealer or investment adviser. This does not preclude the depository institution from informing customers of the availability of the securities services or from distributing securities service advertising and informational material. Nor is this guideline intended to prohibit depository institutions with trust departments from engaging in normal trust functions.

(D) All securities certificates and transactional correspondence (including, without limitation, confirmations, monthly statements, etc.) must be issued directly by the broker-dealer or investment adviser and not by or through the depository institution.

(E) The broker-dealer or investment adviser must not permit the depository institution to accept securities customers' checks or securities certificates in settlement of securities transaction orders placed directly with the broker-dealer or investment adviser.

(F) The broker-dealer or investment adviser must not permit depository institution employees to receive compensation for securities services, either directly or indirectly, unless these employees are registered as agents or investment adviser representatives of the broker-dealer or investment adviser. However, the depository institution itself may receive commission-related compensation for its participation in the networking arrangement based upon a percentage of the revenues generated by the arrangement. Depository institution employees may receive one-time, nominal fees of a fixed amount for referring depository institution customers to a securities firm if such fees do not depend on whether the referral results in a securities transaction.

(G) The broker-dealer or investment adviser may permit depository institution employees to perform only clerical and ministerial functions in

dealing with securities customers and in connection with securities transactions unless they are qualified as agents/investment adviser representatives of the broker-dealer or investment adviser and are registered as such in Vermont. The referral of questions or complaints and the mere transmittal of order forms or like information to another person registered as an agent/investment adviser representative of a broker-dealer or investment adviser for action by that person will be deemed a clerical or ministerial function. Other clerical or ministerial functions that would not appear to trigger the Act's securities representative registration requirements include informing potential securities customers that the securities firm provides securities services, delivering blank new account forms and written instructions on their preparation to customers, distributing promotional materials, and directing persons to registered agents of the broker-dealer or investment adviser or a toll-free telephone number.

(H) The broker-dealer or investment adviser shall ensure that unregistered depository institution employees do not engage in any solicitation activity. In addition, the broker-dealer or investment adviser must not permit unregistered depository institution employees to engage in the following activities:

- (i) Open customer accounts or assist in the preparation of new account forms by customers;
- (ii) Make suitability determinations, render investment advice, or make investment recommendations in connection with the purchase or sale of securities;
- (iii) Process orders to purchase or sell securities;
- (iv) Engage in the resolution of complaints regarding the purchase or sale of securities;
- (v) Supervise broker-dealer or investment adviser personnel either directly or indirectly;
- (vi) Assume responsibility for the day-to-day operation and supervision of any place of business of the broker-dealer or investment adviser.

(I) Broker-dealer or investment adviser employees and registered agents or representatives, even if jointly employed by the depository institution, may not have access to depository institution records of securities customers unless the customer grants prior written permission.

(J) The broker-dealer or investment adviser may not deal in any securities of the depository institution or any affiliate thereof on the premises of the depository institution except in unsolicited transactions.

(K) The broker-dealer or investment adviser is responsible for supervising joint employees of the depository institution and the securities firm who are registered agents/investment adviser representatives and for ensuring compliance with all applicable federal and state securities laws and FINRA regulatory requirements including branch office registration under the Act, customer suitability and protection, financial responsibility, training and compliance responsibilities, and recordkeeping and reporting requirements.

(5) Books and Records. The books and records of the broker-dealer or investment adviser must be kept separate from those of the depository institution. The commissioner shall have unimpeded access during the depository institution's business hours to all broker-dealer or investment adviser books and records maintained on the depository institution's premises and to joint employees of the depository institution and the securities firm who are registered as agents or representatives and their personnel records.

(6) Notification of Termination. The broker-dealer or investment adviser must promptly notify the depository institution if any agent or representative of the broker-dealer or investment adviser who is employed by the depository institution is terminated for cause.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. § 5412)

V.S.R. § 8-2. Electronic Filing for Investment Advisers, Investment Adviser Representatives, Broker-Dealers, and Broker-Dealer Agents.

(a) Designated Entity. The IARD and CRD are authorized to receive and store filings and collect related fees from investment advisers, investment adviser representatives, broker-dealers, and broker-dealer agents on behalf of the commissioner.

(b) Electronic Filing. Unless otherwise required by these regulations, all applications, amendments, reports, notices, related filings, and fees that are required to be filed by investment advisers, investment adviser representatives, broker-dealers, and broker-dealer agents pursuant to the Act and these regulations must be electronically submitted and transmitted to the IARD and the CRD.

(c) Electronic Signatures. When a signature is required on any filing made through the IARD or CRD, the applicant or a duly authorized officer of the applicant must affix an electronic signature to the filing by typing the individual's name in the appropriate field and submitting the

filing to the IARD or CRD. Submission of a filing in this manner constitutes a legal signature by any individual whose name is typed on the filing.

(d) **Exception to Electronic Filing.** Any documents or fees required to be filed with the commissioner that are not permitted to be filed with or cannot be accepted by the IARD or CRD must be filed directly with the commissioner.

(e) **Hardship Exemptions.** An investment adviser may apply for an exemption from filing through the IARD or CRD system.

(1) **Temporary Hardship Exemption.**

(A) **Criterion for Exemption.** Investment advisers who experience unanticipated technical difficulties that prevent submission of an electronic filing to IARD or CRD may request a temporary hardship exemption from electronic filing requirements.

(B) **Application for Exemption.** To apply for a temporary hardship exemption, the investment adviser must file a written request with the securities administrator in the state where the investment adviser's principal place of business is located. The request must be submitted in a form approved by that securities administrator, and the request must be filed no later than one (1) business day after the due date for the filing that is the subject of request. The investment adviser must also submit the filing that is the subject of the request in electronic format to IARD or CRD no later than seven (7) business days after the filing was due.

(C) **Effective Date.** If the request is in proper form, the temporary hardship exemption is deemed effective upon receipt by the securities administrator. Multiple temporary hardship exemption requests within the same calendar year may be disallowed by the securities administrator.

(2) **Continuing Hardship Exemption.**

(A) **Criterion for Exemption.** A continuing hardship exemption will not be granted unless the investment adviser is able to demonstrate that the electronic filing requirements of this regulation are prohibitively burdensome.

(B) **Application for Exemption.** To apply for a continuing hardship exemption, the investment adviser must file a written request with the securities administrator in the state where the investment adviser's principal place of business is located. The request must be submitted in a form approved by the securities administrator, and the request must be filed no later than twenty (20) business days before the due date for the filing that is the subject of the request. If the investment adviser's

principal place of business is located in Vermont and the request is filed with the commissioner in a form approved by the commissioner, the request will be either granted or denied by the commissioner within ten (10) business days after the filing of the request.

(C) **Effective Date.** The exemption is effective upon approval by the securities administrator in the state where the investment adviser's principal place of business is located. The time period of the exemption will be no longer than one (1) year after the date on which the request is filed. If that securities administrator approves the request, the investment adviser must submit filings to the IARD or CRD in paper form, along with the appropriate processing fees, for the period of time for which the exemption is granted no later than five (5) business days after the exemption approval date.

(3) **Recognition of Exemption.** The decision to grant or deny a request for a hardship exemption is made by the securities administrator in the state where the investment adviser's principal place of business is located, and the commissioner will adhere to that decision.

(Authorized by 9 V.S.A. § 5605(a); implementing 9 V.S.A. §§ 5105 and 5608(c))

V.S.R. § 8-3. Protection of Vulnerable Adults from Financial Exploitation.

- (a) **Governmental Disclosures.** If a qualified individual reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, the qualified individual must promptly notify the commissioner and Adult Protective Services in the Vermont Department of Disabilities, Aging & Independent Living (collectively "the agencies").
- (b) **Immunity for Governmental Disclosures.** A qualified individual who in good faith and exercising reasonable care makes a disclosure of information pursuant to subsection (a) above is immune from administrative or civil enforcement by the Department that might otherwise arise from such disclosure or from any failure to notify the customer of the disclosure.
- (c) **Third-Party Disclosures.** If a qualified individual reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, the qualified individual may notify any third party previously designated by the eligible adult and any third party reasonably associated with the eligible adult. Disclosure may not be made to any designated third party or any third party reasonably associated with the eligible adult who is suspected of financial exploitation or other abuse or exploitation of the eligible adult.

(d) Immunity for Third-Party Disclosures. A qualified individual who, in good faith and exercising reasonable care, complies with subsection (c) above is immune from any administrative or civil enforcement by the Department that might otherwise arise from such disclosure.

(e) Delaying Transactions and Disbursements.

(1) A broker-dealer or investment adviser may delay a disbursement from or a transaction in 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 or transaction may result in financial exploitation of the eligible adult; and

(B) The broker-dealer or investment adviser:

(i) Immediately, and in no event more than two business days after the requested disbursement or transaction, provides written notification of the delay and the reason for the delay to all parties authorized to transact business on the account, unless any such party is reasonably believed to have engaged in suspected or attempted financial exploitation of the eligible adult;

(ii) Immediately, and in no event more than two business days after the requested disbursement or transaction, 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 or transaction.

(2) Any delay of a disbursement or transaction as authorized by this section may continue only until the sooner of:

(A) A determination by the broker-dealer or investment adviser that the disbursement or transaction 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 or the transaction, unless either of the agencies requests that the broker-dealer or investment adviser extend the delay, in which case the delay may be extended an

additional forty (40) business days 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 transaction or disbursement of funds or may order other protective relief based on the petition of the commissioner, Adult Protective Services, the broker-dealer or investment adviser who initiated the delay under this subsection, or other interested party.

(f) Immunity for Delaying Transactions or Disbursements. A broker-dealer or investment adviser who, in good faith and exercising reasonable care, complies with subsection (e) above is immune from any administrative or civil enforcement by the Department that might otherwise arise from such delay in a transaction or disbursement in accordance with this section.

(g) Records. A broker-dealer or investment adviser must provide access to or copies of records that are relevant to the suspected or attempted financial exploitation of an eligible adult to agencies charged with administering state adult protective services laws and to law enforcement, either as part of a referral to the agency or to law enforcement, or upon request of the agency or law enforcement pursuant to an investigation. The records may include historical records as well as records relating to the most recent transaction or transactions that may involve financial exploitation of an eligible adult or the financial impairment of an adult. All records made available to the agencies under this section are not considered a public record as defined in 1 V.S.A. § 315 et seq. Nothing in this provision limits or otherwise impedes the authority of the commissioner to access or examine the books and records of broker-dealers and investment advisers as otherwise provided by law.

(Authorized by 9 V.S.A. § 5605(a); implementing 8 V.S.A. § 24)

CHAPTER 9

RESTITUTION FOR VICTIMS OF SECURITIES VIOLATIONS.

V.S.R. § 9-1. Restitution Assistance.

(a) General Provisions.

(1) The source of funds for restitution assistance awards is limited to restitution assistance-designated monies in the Department's Special Fund established pursuant to 9 V.S.A. § 5616.

(2) The capitalized terms used in this Chapter shall have the same meaning as in 9 V.S.A. § 5616.

(3) Securities restitution assistance is only available for Securities Violations occurring on or after July 1, 2019, the effective date of 9 V.S.A. § 5616.

(b) Application Form and Accompanying Documentation.

- (1) Claimants shall submit a written application on a form prescribed by the commissioner with all required supporting documentation prescribed in the form.
 - (2) The following information provided in or with an application for restitution assistance is confidential:
 - (A) the claimant and victim's name, date of birth, physical address, mailing address, e-mail address, and phone number;
 - (B) each of the items listed in 9 V.S.A. § 2430(10)(A)(i)-(vii) pertaining to the claimant or victim; and
 - (C) any other information provided in or with an application for restitution assistance that alone, or in combination with the other information provided in or with the application, would allow a person to identify the claimant or victim with reasonable certainty.
 - (3) The application and accompanying documentation must be filed in the office of the Department in person, by first class or certified mail, or through the Department's website.
- (c) Review of Applications; Additional Information; Denial.
- (1) The commissioner shall review all applications for completeness and eligibility for restitution assistance.
 - (A) If an application is not complete, the application shall be returned to the claimant with a statement of the additional information or documentation required.
 - (B) The claimant shall have thirty (30) days after the date on which the commissioner returns the application to supply all additional required information or documentation.
 - (2) The commissioner shall deny an application if:
 - (A) Monies are not available in the Special Fund for restitution assistance;
 - (B) the application is not complete;
 - (C) the commissioner determines that the application does not meet the eligibility requirements for restitution assistance established in 9 V.S.A. § 5616 or restitution assistance is otherwise prohibited by in 9 V.S.A. § 5616; or
 - (D) other good cause exists for denial, such as the existence of dishonesty, forgery, fraud, or deceit in connection with an application.
 - (3) The decision of the commissioner on an application for restitution assistance shall be provided in writing to the claimant and is final.
- (d) Amount of Restitution Assistance Awards.

- (1) The amount of a restitution assistance award depends on the solvency of the Special Fund, and an application's eligibility for restitution does not mean that the maximum award referenced in 9 V.S.A. § 5616 will be awarded.
 - (2) When computing the amount of restitution assistance to be paid, the commissioner shall exclude any award of interest contained in the Final Order.
- (e) No Windfall to Claimants. If:
- (1) a restitution assistance award is made to a claimant or victim; and
 - (2) that claimant or victim subsequently receives a partial or full payment from the party ordered to pay restitution in the Final Order that covers all or some of the amount provided by the Department in the restitution assistance award;

the claimant shall refund to the Department the equivalent portion of the restitution assistance award.

- (f) Forfeiture of Award.
- (1) A person shall not engage in dishonesty, forgery, fraud, or deceit in connection with an application for restitution assistance.
 - (2) A person found by the Commissioner or a court to have engaged in dishonesty, forgery, fraud, or deceit in connection with an application for restitution assistance shall forfeit to the Department any amount paid in a restitution assistance award and may be subject to penalties and other remedies available pursuant to 9 V.S.A. §§ 5508, 5603, and 5604 or other law.

(Authorized by 9 V.S.A. § 5616(e), (j))

CHAPTER 10 PRIVACY OF CONSUMER FINANCIAL INFORMATION.

V.S.R. § 10-1. Purpose, Scope and Compliance

(a) Purpose. This regulation governs the treatment of nonpublic personal information about individuals by broker-dealers and investment advisers that are registered or required to be registered with the Department. This regulation:

- (1) Requires a broker-dealer and/or investment adviser to provide notice to individuals about its privacy policies and practices;
- (2) Describes the conditions under which a broker-dealer and/or investment adviser may disclose nonpublic personal information about individuals to nonaffiliated third parties; and

(3) Requires broker-dealers and investment advisers to obtain consumer consent prior to disclosing that information, subject to the exceptions in V.S.R. §§ 10-13, 10-14, 10-15 and 10-16 and subject to the federal Fair Credit Reporting Act and Vermont Fair Credit Reporting Act.

(b) Scope. This regulation applies to (1) nonpublic personal information about individuals who obtain financial products or services primarily for personal, family, or household purposes from the broker-dealer and/or investment advisers listed below and (2) all nonpublic personal health information. This regulation does not apply to information about companies or about individuals who obtain financial products or services for business, commercial, or agricultural purposes. This regulation applies to broker-dealers and investment advisers that are registered or required to be registered with the Department. These entities are referred to in this chapter as "you."

(c) Health Information. This regulation applies to all nonpublic personal health information.

(d) Compliance. A broker-dealer and/or investment adviser subject to this regulation regardless of its jurisdiction of domicile shall comply with this regulation for all transactions with Vermont consumers.

V.S.R. § 10-2. Rule of Construction.

The examples in this regulation and the sample clauses in V.S.R. § 10-25 are not exclusive. The examples in this regulation and the sample clauses in V.S.R. § 10-25 provide guidance concerning the regulation's application in ordinary circumstances. The facts and circumstances of each individual situation, however, will determine whether compliance with an example or use of a sample clause, to the extent applicable, constitutes compliance with this regulation.

V.S.R. § 10-3. Definitions.

As used in this Chapter 10, unless the context requires otherwise:

(a) "Affiliate" of a broker-dealer or an investment adviser means any company that controls, is controlled by, or is under common control with the broker-dealer or investment adviser registered with the commissioner broker-dealer and/or investment adviser. In addition, a broker-dealer or investment adviser registered with the commissioner will be deemed an affiliate of a company for the purposes of this regulation if:

(1) that company is regulated under Title V of the Gramm-Leach-Bliley Act (Pub. L. No. 106-102, 133 Stat. 1338(1999)) by the Federal Trade Commission or by a federal functional regulator; and

(2) rules adopted by the Federal Trade Commission or another federal functional regulator under Title V of the Gramm-Leach-Bliley Act (Pub. L. No. 106-102, 133 Stat. 1338(1999)) treat the broker-dealer or investment adviser as an affiliate of that company.

(b) (1) “Clear and conspicuous” means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

(2) Examples.

(A) Reasonably understandable. You make your notice reasonably understandable if you:

- (i) Present the information in the notice in clear, concise sentences, paragraphs, and sections;
- (ii) Use short explanatory sentences or bullet lists whenever possible;
- (iii) Use definite, concrete, everyday words and active voice whenever possible;
- (iv) Avoid multiple negatives;
- (v) Avoid legal and highly technical business terminology whenever possible;
- (vi) Avoid explanations that are imprecise and readily subject to different interpretations; and
- (vii) Avoid contradictory, confusing or misleading language.

(B) Designed to call attention. You design your notice to call attention to the nature and significance of the information in it if you:

- (i) Use a plain-language heading to call attention to the notice;
- (ii) Use a typeface and type size that are easy to read;
- (iii) Provide wide margins and ample line spacing;
- (iv) Use boldface or italics for key words; and
- (v) Use distinctive type size, style, and graphic devices, such as shading or sidebars when you combine your notice with other information.

(C) Notices on web sites. If you provide a notice on a web page, you design your notice to call attention to the nature and significance of the information in it if you use text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the web site (such as text, graphics, hyperlinks, or sound) do not distract attention from the notice, and you either:

- (i) Place the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or
- (ii) Place a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the

notice and is labeled appropriately to convey the importance, nature, and relevance of the notice.

(c) "Collect" means to obtain information that you organize or can retrieve by the name of an individual or by identifying number, symbol, or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(d) "Company" means any corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship or similar organization.

(e) (1) "Consumer" means an individual who seeks to obtain, obtains or has obtained a financial product or service from you that is to be used primarily for personal, family, or household purposes, or that individual's legal representative.

(2) Examples. (A) An individual is your consumer if he or she provides nonpublic personal information to you in connection with obtaining or seeking to obtain brokerage services or investment advisory services, whether or not you provide brokerage services to the individual or establish a continuing relationship with the individual.

(B) An individual is not your consumer if he or she provides you only with his or her name, address, and general areas of investment interest in connection with a request for a prospectus, an investment adviser brochure, or other information about financial products or services.

(C) An individual is not your consumer if he or she has an account with another broker-dealer (the introducing broker-dealer) that carries securities for the individual in a special omnibus account with you (the clearing broker-dealer) in the name of the introducing broker-dealer, and when you receive only the account numbers and transaction information of the introducing broker-dealer's consumers in order to clear transactions.

(D) An individual who is a consumer of another broker-dealer and/or investment adviser is not your consumer solely because you act as agent for, or provide processing or other services to, that broker-dealer and/or investment adviser.

(E) An individual is not your consumer solely because he or she has designated you as trustee for a trust.

(F) An individual is not your consumer solely because he or she is a beneficiary of a trust for which you are a trustee.

(G) An individual is not your consumer solely because he or she is a participant or a beneficiary of an employee benefit plan that you sponsor or for which you act as a trustee or fiduciary.

(f) "Consumer reporting agency" has the same meaning as in section 603(f) of the federal Fair Credit Reporting Act (15 U.S.C. § 1681a(f)) and shall include any "credit reporting agency" within the meaning of 9 V.S.A. § 2480a(3).

(g) "Control" of a company means the power to exercise a controlling influence over the management or policies of a company whether through ownership of securities, by contract, or otherwise. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of any company is presumed to control the company. Any person who does not own more than 25 percent of the voting securities of any company will be presumed not to control the company. Any presumption regarding control may be rebutted by evidence.

(h) "Customer" means a consumer who has a customer relationship with you.

(i) (1) "Customer relationship" means a continuing relationship between a consumer and you under which you provide one or more financial products or services to the consumer that are to be used primarily for personal, family, or household purposes.

(2) Examples. (A) Continuing relationship. A consumer has a continuing relationship with you if:

- (i) The consumer has a brokerage account with you, or if a consumer's account is transferred to you from another broker-dealer;
- (ii) The consumer has an investment advisory contract with you (whether written or oral);
- (iii) The consumer holds an investment product through you, such as when you act as a custodian for securities or for assets in an Individual Retirement Arrangement;
- (iv) The consumer purchases a variable insurance product from you;
- (v) The consumer has an account with an introducing broker-dealer that clears transactions with and for its customers through you on a fully disclosed basis;
- (vi) You hold securities or other assets as collateral for a loan made to the consumer, even if you did not make the loan or do not effect any transactions on behalf of the consumer; or
- (vii) You regularly effect or engage in securities transactions with or for a consumer even if you do not hold any assets of the consumer.

(B) No continuing relationship. A consumer does not, however, have a continuing relationship with you if you open an account for the consumer solely for the purpose of liquidating or purchasing securities as an accommodation, *i.e.*, on a one-time basis, without the expectation of engaging in other transactions.

(j) "Federal functional regulator" means:

- (1) The Board of Governors of the Federal Reserve System;
- (2) The Office of the Comptroller of the Currency;
- (3) The Board of Directors of the Federal Deposit Insurance Corporation;
- (4) The Director of the Office of Thrift Supervision;
- (5) The National Credit Union Administration Board
- (6) The Securities and Exchange Commission; and
- (7) The Commodity Futures Trading Commission.

(k) (1) "Financial institution" means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. § 1843(k)).

(2) "Financial institution" does not include:

(A) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*);

(B) The Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 (12 U.S.C. § 2001 *et seq.*); or

(C) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights), or similar transactions related to a transaction of a consumer, as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(l) (1) "Financial product or service" means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. § 1843(k)).

(2) "Financial service" includes your evaluation or brokerage of information that you collect in connection with a request or an application from a consumer for a financial product or service.

(m) "Health Care" means:

(1) Preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, services, procedures, tests or counseling that:

(A) Relates to the physical, mental or behavioral condition of an individual; or

(B) Affects the structure or function of the human body or any part of the human body, including the banking of blood, sperm, organs or any other tissue; or

(2) Prescribing, dispensing or furnishing to an individual drugs or biologicals, or medical devices or health care equipment and supplies.

(n) "Health Care Provider" means a physician or other health care practitioner licensed, accredited or certified to perform specified health services consistent with state law, or a health care facility.

(o) "Health Information" means any information or data except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or the consumer that relates to:

- (1) The past, present or future physical, mental or behavioral health or condition of an individual;
- (2) The provision of health care to an individual; or
- (3) Payment for the provision of health care to an individual.

(p) "Investment adviser" has the same meaning as in 9 V.S.A. § 5102(15); "federal covered investment adviser" has the same meaning as in 9 V.S.A. § 5102(6). For purposes of this regulation, the term "investment adviser" shall include a federal covered investment adviser.

(q) (1) "Nonaffiliated third party" means any person except:

(A) Your affiliate; or

(B) A person employed jointly by you and any company that is not your affiliate (but "nonaffiliated third party" includes the other company that jointly employs the person).

(2) Nonaffiliated third party includes any company that is an affiliate solely by virtue of your or your affiliate's direct or indirect ownership or control of the company in conducting merchant banking or investment banking activities of the type described in section 4(k)(4)(H) or insurance company investment activities of the type described in section 4(k)(4)(I) of the Bank Holding Company Act (12 U.S.C. § 1843(k)(4)(H) and(I)) and also includes Vermont merchant banks as described in 8 V.S.A. § 12603.

(r) "Nonpublic personal information" means nonpublic personal financial information and nonpublic personal health information.

(s) (1) "Nonpublic personal financial information" means:

(A) Personally identifiable financial information; and

(B) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available information.

(2) "Nonpublic personal financial information" does not include:

(A) Health information;

(B) Publicly available information, except as included on a list described in subdivision (1)(ii) of this subsection (u); or

(C) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information that is not publicly available information.

(3) Examples of lists. (A) Nonpublic personal financial information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available information, such as account numbers.

(B) Nonpublic personal financial information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available information, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a broker-dealer and/or investment adviser.

(t) "Nonpublic personal health information" means health information:

(1) That identifies an individual who is the subject of the information; or

(2) With respect to which there is a reasonable basis to believe that the information could be used to identify an individual.

(u) (1) "Personally identifiable financial information" means any information:

(A) A consumer provides to you to obtain a financial product or service from you;

(B) About a consumer resulting from any transaction involving a financial product or service between you and a consumer; or

(C) You otherwise obtain about a consumer in connection with providing a financial product or service to that consumer.

(2) Examples.

(A) Information included. Personally identifiable financial information includes:

(i) Information a consumer provides to you on an application to obtain a loan, credit card, or other financial product or service;

(ii) Account balance information, payment history, overdraft history, and credit or debit card purchase information;

(iii) The fact that an individual is or has been one of your customers or has obtained a financial product or service from you;

(iv) Any information about your consumer if it is disclosed in a manner that indicates that the individual is or has been your consumer;

(v) Any information that a consumer provides to you or that you or your agent otherwise obtain in connection with collecting on a loan or servicing a loan;

(vi) Any information you collect through an Internet "cookie" (an information collecting device from a web server); and

(v) Information from a consumer report.

(B) Information not included. Personally identifiable financial information does not include:

(i) Health information;

(ii) A list of names and addresses of customers of an entity that is not a broker-dealer and/or investment adviser; and

(iii) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

(v) (1) "Publicly available information" means any information that you reasonably believe is lawfully made available to the general public from:

(A) Federal, State, or local government records;

(B) Widely distributed media; or

(C) Disclosures to the general public that are required to be made by federal, State, or local law.

(2) Examples.

(A) Reasonable belief

(i) You have a reasonable belief that information about your consumer is lawfully made available to the general public if you have confirmed, or your consumer has represented to you, that the information is publicly available from a source described in paragraphs (v)(1)(A) - (C) of this section;

(ii) You have a reasonable belief that information about your consumer is made available to the general public if you have taken steps to submit the information, in accordance with your internal procedures and policies and with applicable law, to a keeper of federal, State, or local government records that is required by law to make the information publicly available.

(iii) You have a reasonable belief that an individual's telephone number is lawfully made available to the general public if you have located the telephone number in the telephone book or the consumer has informed you that the telephone number is not unlisted.

(iv) You do not have a reasonable belief that information about a consumer is publicly available solely because that information would normally be recorded with a keeper of federal, State, or local government records that is required by law to make the information publicly available, if the consumer has the ability in accordance with applicable law to keep that information nonpublic, such as where a consumer may record a deed in the name of a blind trust.

(B) Government records. Publicly available information in government records includes information in government real estate records and security interest filings.

(C) Widely distributed media. Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper, or a web site that is available to the general public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

(w) "You" means:

(1) Any broker-dealer registered or required to be registered with the Department; and

(2) Any investment adviser registered or required to be registered with the Department including a federal covered investment adviser who makes the notice filing, or is required to make the notice filing, provided for in 9 V.S.A. § 5405.

V.S.R. § 10-4. Initial Privacy Notice to Consumers Required.

(a) Initial notice requirement. You must provide a clear and conspicuous notice that accurately reflects your privacy policies and practices with respect to nonpublic personal information to:

(1) Customer. An individual who becomes your customer, not later than when you establish a customer relationship, except as provided in paragraph (e) of this section; and

(2) Consumer. A consumer, before you disclose any nonpublic personal information about the consumer to any nonaffiliated third party, if you make such a disclosure other than as authorized by V.S.R. §§ 10-14, 10-15 and 10-16.

(b) When initial notice to a consumer is not required. You are not required to provide an initial notice to a consumer under paragraph (a)(2) of this section if:

- (1) You do not disclose any nonpublic personal information about the consumer to any nonaffiliated third party, other than as authorized by V.S.R. §§ 10-14, 10-15 and 10-16 and you do not have a customer relationship with the consumer; or
- (2) A notice has been provided by an affiliate, as long as the notice clearly identifies all affiliates to whom the notice applies and is accurate with respect to you and your other affiliates.

(c) When you establish a customer relationship.

- (1) General rule. You establish a customer relationship when you and the consumer enter into a continuing relationship.
- (2) Special Rule for Loans. You do not have a customer relationship with a consumer if you buy a loan made to the consumer but do not have the servicing rights for that loan.
- (3) Examples of establishing customer relationship. You establish a customer relationship when the consumer:
 - (A) Effects a securities transaction with you or opens a brokerage account with you under your procedures;
 - (B) Opens a brokerage account with an introducing broker-dealer that clears transactions with and for its customers through you on a fully disclosed basis; or
 - (C) Enters into an advisory contract with you (whether in writing or orally).

(d) Existing customers. When an existing customer obtains a new financial product or service from you that is to be used primarily for personal, family, or household purposes, you satisfy the initial notice requirements of paragraph (a) of this section as follows:

- (1) You may provide a revised privacy notice, under V.S.R. § 10-8, that covers the customer's new financial product or service; or
- (2) If the initial, revised, or annual notice that you most recently provided to that customer was accurate with respect to the new financial product or service, you do not need to provide a new privacy notice under paragraph (a) of this section.

(e) Exceptions to allow subsequent delivery of notice.

- (1) You may provide the initial notice required by paragraph (a)(1) of this section within a reasonable time after you establish a customer relationship if:
 - (A) Establishing the customer relationship is not at the customer's election;
 - (B) Providing notice not later than when you establish a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time; or

(C) A nonaffiliated broker-dealer or investment adviser establishes a customer relationship between you and a consumer without your prior knowledge.

(2) Examples of exceptions.

(A) Not at customer's election. Establishing a customer relationship is not at the customer's election if the customer's account is transferred to you by a trustee selected by the Securities Investor Protection Corporation ("SIPC") and appointed by a United States Court.

(B) Substantial delay of customer's transaction. Providing notice not later than when you establish a customer relationship would substantially delay the customer's transaction when you and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the financial product or service.

(C) No substantial delay of customer's transaction. Providing notice not later than when you establish a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at your office or through other means by which the customer may view the notice, such as on a web site.

(f) Delivery. When you are required to deliver an initial privacy notice by this section, you must deliver it according to V.S.R. § 10-9. If you use a short-form initial notice for non-customers according to V.S.R. § 10-6(d), you may deliver your privacy notice according to Section V.S.R. § 10-6(d)(3).

V.S.R. § 10-5. Annual privacy notice to customers required.

(a) (1) General rule. You must provide a clear and conspicuous notice to customers that accurately reflects your privacy policies and practices with respect to nonpublic personal information not less than annually during the continuation of the customer relationship.

“Annually” means at least once in any period of 12 consecutive months during which that relationship exists. You may define the 12-consecutive-month period, but you must apply it to the customer on a consistent basis.

(2) Example. You provide a notice annually if you define the 12-consecutive-month period as a calendar year and provide the annual notice to the customer once in each calendar year following the calendar year in which you provided the initial notice. For example, if a customer opens an account on any day of year 1, you must provide an annual notice to that customer by December 31 of year 2.

(b) (1) Termination of customer relationship. You are not required to provide an annual notice to a former customer. A former customer is an individual with whom you no longer have a continuing relationship.

(2) Examples. You no longer have a continuing relationship with a customer if:

- (A) The individual's brokerage account is closed;
- (B) The individual's investment advisory contract is terminated; or
- (C) You no longer have a continuing relationship with an individual if the individual's last known address according to your records is deemed invalid. An address of record is deemed invalid if mail sent to that address by you has been returned by the postal authorities as undeliverable and if subsequent attempts by you to obtain a current valid address for the individual have been unsuccessful.

(c) Special Rule for Loans. If you do not have a customer relationship with a consumer under the special provision for loans in V.S.R. § 10-4(c)(2), then you need not provide an annual notice to that consumer under this section.

(d) Delivery. When you are required to deliver an annual privacy notice by this section, you must deliver it according to V.S.R. § 10-9.

(e) Exception to annual privacy notice requirement.

(1) When exception available. You are not required to deliver an annual privacy notice if:

- (A) You provide nonpublic personal information to nonaffiliated third parties only in accordance with the provisions of V.S.R. §§ 10-13, 10-14 and 10-15;
- (B) You do not disclose information to or among its affiliates in a manner that would require an opt-in under the Vermont Fair Credit Reporting Act, 9 V.S.A. §2480e;
- (C) Any disclosures you are required to make under Section 624 of the federal Fair Credit Reporting Act (15 U.S.C. § 1681s-3) and the federal implementing regulations as modified by 15 U.S.C. § 1681t(b)(2) and the Vermont Fair Credit Reporting Act, if applicable, have been satisfied previously or the annual privacy notice is not the only notice provided to satisfy the requirement in this subsection (C);
- (D) You have not changed your policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed to the customer in the most recent privacy notice (whether initial, annual, or revised) provided pursuant to this regulation; and
- (E) You post your current privacy notice continuously and in a clear and conspicuous manner on a page of your web site on which the only content is the privacy notice, without requiring the customer to provide any information such as a login name or password or agree to any conditions to access the page.

(2) Delivery of annual privacy notice after you no longer meet requirements for exception. If you have been excepted from delivering an annual privacy notice pursuant to subsection (e)(1) of this section and change your policies or practices in such a way

that you no longer meet the requirements for the exception, you must provide a new privacy notice to customers at least 60 days prior to the effective date of the change in your policies or practices. The new privacy notice will be treated as an initial privacy notice for purposes of this regulation and your obligation to provide an annual privacy notice thereafter shall be determined in accordance with the requirements and exceptions of this section.

V.S.R. § 10-6. Information to be Included in Privacy Notices.

(a) General rule. The initial, annual, and revised privacy notices that you provide under V.S.R. §§ 10-4, 10-5, and 10-8 must include each of the following items of information that applies to you or to the consumers to whom you send your privacy notice, in addition to any other information you wish to provide:

- (1) The categories of nonpublic personal information that you collect;
- (2) The categories of nonpublic personal information that you disclose;
- (3) The categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information, other than those parties to whom you disclose information under V.S.R. §§ 10-14, 10-15 and 10-16;
- (4) The categories of nonpublic personal information about your former customers that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information about your former customers, other than those parties to whom you disclose information under V.S.R. §§ 10-14, 10-15 and 10-16;
- (5) If you disclose nonpublic personal financial information to a third party under V.S.R. § 10-13 (and no other exception in V.S.R. §§ 10-14 or 10-15 applies to that disclosure), a separate statement of the categories of information, as limited by V.S.R. § 10-13, you disclose and the categories of nonaffiliated third parties with whom you have contracted;
- (6) An explanation of the consumer's right to opt in under V.S.R. § 10-10(a) prior to the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right at any time;
- (7) Any disclosures that you make under Section 603(d)(2)(A)(iii) of the federal Fair Credit Reporting Act (15 U.S.C. § 1681a(d)(2)(A)(iii)) and the federal implementing regulations as modified by 15 U.S.C. § 1681t(b)(2) and the Vermont Fair Credit Reporting Act, 9 V.S.A. § 2480e;
- (8) Your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and
- (9) Any disclosure that you make under paragraph (b) of this section.

(b) Description of parties subject to exceptions. If you disclose nonpublic personal information to third parties as authorized under V.S.R. §§ 10-14, 10-15 and 10-16, you are not required to list those exceptions in the initial or annual privacy notices required by V.S.R. §§ 10-4 and 10-5. When describing the categories with respect to those parties, you are required to state only

that you make disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.

(c) Examples. (1) Categories of nonpublic personal financial information that you collect. You satisfy the requirement to categorize the nonpublic personal financial information that you collect if you categorize the information according to the source of the information, as applicable:

- (A) Information from the consumer;
- (B) Information about the consumer's transactions with you or your affiliates;
- (C) Information about the consumer's transactions with nonaffiliated third parties; and
- (D) Information from a consumer-reporting agency.

(2) Categories of nonpublic personal financial information you disclose.

(A) You satisfy the requirement to categorize the nonpublic personal financial information that you disclose if you list the categories described in paragraph (c)(1) of this section, as applicable, and a few examples to illustrate the types of information in each category. These might include:

- (i) Information from the consumer, including application information, such as assets and income and identifying information, such as name, address and social security number;
- (ii) Transaction information, such as information about balances, payment history and parties to the transaction; and
- (iii) Information from consumer reports, such as a consumer's creditworthiness and credit history.

(B) If you reserve the right to disclose all of the nonpublic personal financial information about consumers that you collect, you may simply state that fact without describing the categories or examples of the nonpublic personal financial information you disclose.

(C) You do not adequately categorize the information you disclose if you use only general terms, such as transaction information about the consumer.

(3) Categories of affiliates and nonaffiliated third parties to whom you disclose.

(A) You satisfy the requirement to categorize the affiliates and nonaffiliated third parties to whom you disclose nonpublic personal financial information if you identify the types of businesses in which they engage.

(B) Types of businesses may be described by general terms only if you use a few illustrative examples of significant lines of business. For example, you may use the term financial products or services if it includes appropriate examples of

significant lines of businesses, such as life insurer, consumer banking or securities brokerage.

(C) You may categorize the affiliates and nonaffiliated third parties to which you disclose nonpublic personal financial information about consumers using more detailed categories.

(4) Disclosures under exception for service providers and joint marketers. If you disclose nonpublic personal financial information under the exception in V.S.R. § 10-13 to a nonaffiliated third party to market products or services that you offer alone or jointly with another broker-dealer and/or investment adviser, you satisfy the disclosure requirement of paragraph (a)(5) of this section if you:

(A) Subject to the limitation in V.S.R. § 10-13, list the categories of nonpublic personal financial information you disclose, using the same categories and examples you used to meet the requirements of paragraph (a)(2) of this section, as applicable; and

(B) State whether the third party is:

(i) A service provider that performs marketing services on your behalf or on behalf of you and another broker-dealer and/or investment adviser; or

(ii) A broker-dealer and/or investment adviser with which you have a joint marketing agreement.

(5) Simplified notices. If you do not disclose, and do not wish to reserve the right to disclose, nonpublic personal information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under V.S.R. §§ 10-14, 10-15 and 10-16, you may simply state that fact, in addition to the information you must provide under paragraphs (a)(1), (a)(8), (a)(9), and (b) of this section.

(6) Confidentiality and security. You describe your policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information if you do both of the following:

(A) Describe in general terms who is authorized to have access to the information; and

(B) State whether you have security practices and procedures in place to ensure the confidentiality of the information in accordance with your policy. You are not required to describe technical information about the safeguards you use.

(d) Short-form initial notice with opt-in notice for non-customers.

(1) You may satisfy the initial notice requirements in V.S.R. §§ 10-4(a)(2) and 10-7(d) for a consumer who is not a customer by providing a short-form initial notice at the same time as you deliver an opt-in notice as required in V.S.R. §10-7.

(2) A short-form initial notice must:

(A) Be clear and conspicuous;

(B) State that your privacy notice is available upon request; and

(C) Explain a reasonable means by which the consumer may obtain the privacy notice.

(3) You must deliver your short-form initial notice according to V.S.R. § 10-9. You are not required to deliver your privacy notice with your short-form initial notice. You instead may simply provide the consumer a reasonable means to obtain your privacy notice. If a consumer who receives your short-form notice requests your privacy notice, you must deliver your privacy notice according to V.S.R. § 10-9.

(4) Examples of obtaining privacy notice. You provide a reasonable means by which a consumer may obtain a copy of your privacy notice if you:

(A) Provide a toll-free telephone number that the consumer may call to request the notice; or

(B) For a consumer who conducts business in person at your office, maintain copies of the notice on hand that you provide to the consumer immediately upon request.

(e) Future disclosures. Your notice may include:

(1) Categories of nonpublic personal financial information that you reserve the right to disclose in the future, but do not currently disclose; and

(2) Categories of affiliates or nonaffiliated third parties to whom you reserve the right in the future to disclose, but to whom you do not currently disclose, nonpublic personal financial information.

(f) Sample clauses. Sample clauses illustrating some of the notice content required by this section are included in Appendix A of this regulation.

(g) Federal Model Privacy Form.

(1) Vermont statutes and regulations relating to consumer privacy contain privacy notice content requirements with significant differences from federal content requirements. Among other differences, Vermont is an “opt-in” state.

- (2) Federal regulation S-P (Privacy of Consumer Financial Information), 17 C.F.R. Part 248, contains a model privacy form at Appendix A to Subpart A – Model Privacy Form (“Federal Model Privacy Form”).
- (3) A broker-dealer and/or investment adviser that uses the Federal Model Privacy Form consistent with the instructions in Appendix A to Subpart A, as supplemented by the requirements of this subsection, is in compliance with the content notice requirements of this regulation. Use of the Federal Model Privacy Form is not required. You may use other types of privacy notices so long as the notices comply with this regulation.
- (4) Vermont laws and regulations require broker-dealer and/or investment advisers to obtain an “opt-in” consent from a consumer prior to sharing nonpublic personal information with an affiliate or with a nonaffiliated third party, except as otherwise specifically permitted by this regulation. A broker-dealer and/or investment adviser may use the Federal Model Privacy Form to comply with this regulation in either of the following ways:

Option 1. A broker-dealer and/or investment adviser may provide a generalized notice to its Vermont consumers that answers “no” to each of the questions about whether it shares information: (i) “For our affiliates’ everyday business purposes – information about your creditworthiness;” **and** (ii) “for nonaffiliates to market to you;” **OR**

Option 2. A broker-dealer and/or investment adviser can provide a generalized notice to consumers across a number of states, including Vermont, and answer “yes” to the questions in Option 1 above, provided it includes a discussion on the application of Vermont law in the “Other Important Information” box on page 2 of the Federal Model Privacy Form and complies with the requirements in subsection 5 below.

- (5) A broker-dealer and/or investment adviser that chooses to use the Federal Model Privacy Form as provided in Option 2 above shall provide the following information:

(A) The “Other Important Information” box on the Federal Model Privacy Form contains statements that convey the following information:

Other Important Information

For Vermont Members/Customers.

- We will not disclose information about your creditworthiness to our affiliates and will not disclose your personal information, financial information, credit report, or health information to nonaffiliated third parties to market to you, other than as permitted by Vermont law, unless you authorize us to make those disclosures.
- Additional information concerning our privacy policies can be found at [*website link*] or call [*telephone number*].

AND

(B) The additional information provided on the broker-dealer and/or investment adviser's website contains the information required by this regulation; to the extent such information is not already included in the broker-dealer and/or investment adviser's privacy notice.

V.S.R. § 10-7. Form of Opt-In Notice to Consumers; Opt-In Methods.

(a) (1) Form of opt-in notice. If you are required to provide an opt-in notice under V.S.R. § 10-10(a) then you may not disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party unless you:

- (A) Provide to the consumer a clear and conspicuous notice, in writing or electronic form, of the categories of nonpublic personal financial information that may be disclosed and the categories of nonaffiliated third parties to whom you disclose nonpublic personal financial information;
- (B) Identify the financial product or services that the consumer obtains from the broker-dealer and/or investment adviser, either singly or jointly, to which the opt-in direction would apply;
- (C) Identify the methods by which the consumer may subsequently revoke the opt-in direction;
- (D) Clearly and conspicuously request in writing or in electronic form that the consumer affirmatively authorize such disclosure; and
- (E) Obtain from the consumer such affirmative consent and such consent has not been withdrawn.

(2) Unreasonable revocation of opt-in direction means. You *do not* provide a reasonable means of revoking an opt-in direction if:

(A) The only means of revoking an opt-in direction is for the consumer to write his or her own letter to effect a revocation; or

(B) The only means revoking an opt-in direction as described in any notice subsequent to the initial notice is to use a check-off box that you provided with the initial notice but did not include with the subsequent notice.

(3) Duration and withdrawal of consent. A consumer's direction to opt in under this subsection is effective until the consumer revokes it in writing or, if the consumer agrees, electronically; further provided however, any withdrawal or revocation of consent is subject to your rights if you acted reasonably in reliance on the consent prior to knowledge of its withdrawal or revocation. When a customer relationship terminates, the customer's opt-in direction continues to apply to the nonpublic personal financial information collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with you, the opt-in direction that applied to the former relationship does not apply to the new relationship.

(4) Joint relationships. If two or more consumers jointly obtain a financial product or service from you, you may only disclose nonpublic personal financial information of a consumer to a nonaffiliated third party after obtaining an affirmative consent notice from that consumer. Joint information may only be disclosed after obtaining the affirmative consent notice from all joint consumers of the product or service.

(5) Aggregate Lists. You may not disclose any aggregate list of consumers containing or derived from nonpublic personal financial information to a nonaffiliated third party unless you have satisfied, for each consumer on the list, the requirements of subdivisions (A), (B), (C), (D) and (E) of (a)(1) of this section.

(6) Exceptions. This section shall not restrict you from disclosing nonpublic personal financial information as authorized in V.S.R. §§ 10-13, 10-14, 10-15 and 10-16.

(7) Record Retention. You must retain the opt-in authorization or a copy thereof in the record of the consumer who is the subject of disclosure of nonpublic personal financial information.

(b) Delivery. When you are required to deliver an opt-in notice by this section, you must deliver it according to V.S.R. § 10-9.

(c) Same form as initial notice permitted. You may provide the opt-in notice together with or on the same written or electronic form as the initial notice you provide in accordance with V.S.R. § 10-4.

(d) Initial notice required when opt-in notice delivered subsequent to initial notice. If you provide the opt-in notice after the initial notice in accordance with V.S.R. § 10-4, you must also

include a copy of the initial notice with the opt-in notice in writing or, if the consumer agrees, electronically.

V.S.R. § 10-8. Revised Privacy Notices.

(a) General rule. Except as otherwise authorized in this regulation, you must not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party other than as described in the initial notice that you provided to that consumer under V.S.R. § 10-4, unless:

- (1) You have provided to the consumer a clear and conspicuous revised notice that accurately describes your policies and practices;
- (2) You have provided to the consumer a new opt-in notice; and
- (3) The consumer provides an affirmative consent to the disclosures described in the notice.

(b) Examples.

(1) Except as otherwise permitted by V.S.R. §§ 10-13, 10-14 and 10-15, you must provide a revised notice before you:

(A) Disclose a new category of nonpublic personal financial information to any nonaffiliated third party;

(B) Disclose nonpublic personal financial information to a new category of nonaffiliated third party; or

(C) Disclose nonpublic personal financial information about a former customer to a nonaffiliated third party, if that former customer has not given affirmative consent regarding that disclosure.

(2) A revised notice is not required if you disclose nonpublic personal financial information to a new nonaffiliated third party that you adequately described in your prior notice.

(c) Delivery. When you are required to deliver a revised privacy notice by this section, you must deliver it according to V.S.R. § 10-9.

(d) Fair Credit Reporting Acts. Nothing in this regulation shall relieve you of any requirement under the federal or Vermont Fair Credit Reporting Acts or regulations promulgated thereunder with respect to notice and consumer consent for disclosures to affiliates.

V.S.R. § 10-9. Delivering Privacy and Opt-In Notices.

(a) How to provide notices. You must provide any notice that this regulation requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(b) (1) Examples of reasonable expectation of actual notice. You may reasonably expect that a consumer will receive actual notice if you:

- (A) Hand-deliver a printed copy of the notice to the consumer;
- (B) Mail a printed copy of the notice to the last known address of the consumer;
- (C) For the consumer who conducts transactions electronically, post the notice on the electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial product or service; or
- (D) For an isolated transaction with the consumer, such as an ATM transaction, post the notice on the ATM screen and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular financial product or service.

(2) Examples of unreasonable expectation of actual notice. You may *not*, however, reasonably expect that a consumer will receive actual notice of your privacy policies and practices if you:

- (A) Only post a sign in your branch or office or generally publish advertisements of your privacy policies and practices; or
- (B) Send the notice via electronic mail to a consumer who does not obtain a financial product or service from you electronically.

(c) Annual notices only. You may reasonably expect that a customer will receive actual notice of your annual privacy notice if:

- (A) The customer uses your web site to access financial products and services electronically and agrees to receive notices at the web site and you post your current privacy notice continuously in a clear and conspicuous manner on the web site; or
- (B) The customer has requested that you refrain from sending any information regarding the customer relationship, and your current privacy notice remains available to the customer upon request.

(d) Oral description of notice insufficient. You may not provide any notice required by this regulation solely by orally explaining the notice, either in person or over the telephone.

(e) Retention or accessibility of notices for customers.

- (1) For customers only, you must provide the initial notice required by V.S.R. § 10-4(a)(1), the annual notice required by V.S.R. § 10-5(a), and the revised notice required by V.S.R. § 10-8, so that the customer can retain them or obtain them later in writing or, if the customer agrees to electronic receipt, transmit them in a form that the customer can download and print.

(2) Examples of retention or accessibility. You provide a privacy notice to the customer so that the customer can retain it or obtain it later if you:

(A) Hand-deliver a printed copy of the notice to the customer;

(B) Mail a printed copy of the notice to the last known address of the customer;
or

(C) Make your current privacy notice available on a web site (or a link to another web site) for the customer who obtains a financial product or service electronically and agrees to receive the notice at the web site. Electronic receipt must include the ability to download and print the notice.

(f) Joint notice with other broker-dealer and/or investment advisers. You may provide a joint notice from you and one or more of your affiliates or other broker-dealer and/or investment advisers, as identified in the notice, as long as the notice is accurate with respect to you and the other institutions. You may also provide a notice on behalf of another broker-dealer and/or investment adviser.

(g) Joint relationships. If two (2) or more consumers jointly obtain a financial product or service from you, you may satisfy the initial, annual, and revised notice requirements of V.S.R. §§ 10-4(a), 10-5(a) and (9)(a) respectively by providing one notice to those consumers jointly.

V.S.R. § 10-10. Limits on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties.

(a) Conditions for disclosure. Except as otherwise authorized in this regulation, you may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party unless:

(1) You have provided to the consumer an initial notice as required under V.S.R. § 10-4;

(2) You have provided to the consumer an opt-in notice under V.S.R. § 10-7 of this regulation; and

(3) The consumer has authorized the disclosure in writing or, if the consumer agrees, electronically.

(b) Opt in definition. "Opt in" means the written, or if the consumer agrees, electronic authorization by the consumer allowing you to disclose nonpublic personal financial information about that consumer to a nonaffiliated third party, other than as permitted by V.S.R. §§ 10-13, 10-14 and 10-15.

(c) Application of Opt-in to all consumers and all nonpublic personal financial information.

(1) You must comply with this section, regardless of whether you and the consumer have established a customer relationship.

- (2) Unless you comply with this section, you may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer that you have collected, regardless of whether you collected it before or after providing the opt-in notice.

(d) Partial Opt in. You may allow a consumer to select certain nonpublic personal financial information or certain nonaffiliated third parties with respect to which the consumer wishes to opt in.

V.S.R. § 10-11. Limits on Redisclosure and Reuse of Nonpublic Personal Financial Information.

(a) (1) Information you receive under an exception. If you receive nonpublic personal financial information from a nonaffiliated broker-dealer and/or investment adviser under an exception in V.S.R. §§ 10-14 or 10-15, your disclosure and use of that information is limited as follows:

(A) You may disclose the information to the affiliates of the broker-dealer and/or investment adviser from which you received the information;

(B) You may disclose the information to your affiliates, but your affiliates may, in turn, disclose and use the information only to the extent that you may disclose and use the information; and

(C) You may disclose and use the information pursuant to an exception in V.S.R. §§ 10-14 or 10-15 in the ordinary course of business to carry out the activity covered by the exception under which you received the information.

- (2) Example. If you receive a customer list from a nonaffiliated broker-dealer and/or investment adviser in order to provide account-processing services under the exception in V.S.R. § 10-14(a), you may disclose that information under any exception in V.S.R. §§ 10-14 or 10-15 in the ordinary course of business in order to provide those services. You could also disclose that information in response to a properly authorized subpoena or in the ordinary course of business to your attorneys, accountants, and auditors. You could not disclose that information to a third party for marketing purposes or use that information for your own marketing purposes.

(b) (1) Information you receive outside of an exception. If you receive nonpublic personal financial information from a nonaffiliated broker-dealer and/or investment adviser other than under an exception in V.S.R. §§ 10-14 or 10-15, you may disclose the information only:

(A) To the affiliates of the broker-dealer and/or investment adviser from which you received the information;

(B) To your affiliates, but your affiliates may, in turn, disclose the information only to the extent that you can disclose the information; and

(C) To any other person, if the disclosure would be lawful if made directly to that person by the broker-dealer and/or investment adviser from which you received the information.

(2) Example. If you obtain a customer list from a nonaffiliated broker-dealer and/or investment adviser outside of the exceptions in V.S.R. §§ 10-14 or 10-15:

(A) You may use that list for your own purposes; and

(B) You may disclose that list to another nonaffiliated third party only if the broker-dealer and/or investment adviser from which you purchased the list could have lawfully disclosed the list to that third party. That is, you may disclose the list in accordance with the privacy policy of the broker-dealer and/or investment adviser from which you received the list, as limited by the absence or limitation of the opt-in direction of each consumer whose nonpublic personal financial information you intend to disclose, and you may disclose the list in accordance with an exception in V.S.R. §§ 10-14 or 10-15, such as in the ordinary course of business to your attorneys, accountants, or auditors.

(c) Information you disclose under an exception. If you disclose nonpublic personal financial information to a nonaffiliated third party under an exception in V.S.R. §§ 10-14 or 10-15, the third party may disclose and use that information only as follows:

- (1) The third party may disclose the information to your affiliates;
- (2) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and
- (3) The third party may disclose and use the information pursuant to an exception in Sections 15 or 16 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(d) Information you disclose outside of an exception. If you disclose nonpublic personal financial information to a nonaffiliated third party other than under an exception in V.S.R. §§ 10-14 or 10-15, the third party may disclose the information only:

- (1) To your affiliates;
- (2) To its affiliates, but its affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and
- (3) To any other person, if the disclosure would be lawful if you made it directly to that person.

(e) Fair Credit Reporting Acts. Nothing in this regulation shall authorize you to make any disclosures to an affiliate not otherwise in compliance with the requirement of the federal Fair Credit Reporting Act or regulations promulgated thereunder or the Vermont Fair Credit

Reporting Act or regulations promulgated thereunder, including, but not limited to, notice and consumer consent.

V.S.R. § 10-12. Limits on Sharing Account Number Information for Marketing Purposes.

(a) General prohibition on disclosure of account numbers. You must not, directly or through an affiliate, disclose, other than to a consumer reporting agency, an account number or similar form of access number or access code for a consumer's credit card account, deposit account, or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer. You shall not provide an account number or similar form of access number or access code, in an encrypted form.

(b) Exceptions. Paragraph (a) of this section does not apply if you disclose an account number or similar form of access number or access code:

- (1) To your agent or service provider solely in order to perform marketing for your own products or services, as long as the agent or service provider is not authorized to directly initiate charges to the account; or
- (2) To a participant in an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

(c) Example-Account number.

- (1) An account number, or similar form of access number or access code, includes a number or code in an encrypted form.

V.S.R. § 10-13. Exception to Opt-In Requirements for Disclosure of Nonpublic Personal Information for Service Providers and Joint Marketing.

(a) General rule.

- (1) The opt-in requirements in V.S.R. §§ 10-7 and 10-10 do not apply when you provide nonpublic personal information to a nonaffiliated third party to perform services for you or functions on your behalf, if you:
 - (A) Provide the initial notice in accordance with V.S.R. § 10-4;
 - (B) Enter into a contractual agreement with the third party that prohibits the nonaffiliated third party from disclosing or using the information other than to carry out the purposes for which you disclosed the information, including use under an exception in V.S.R. §§ 10-14 or 10-15 in the ordinary course of business to carry out those purposes; and
 - (C) For joint marketing agreements,
 - (i) you provide only the consumer's name, contact information and own transaction and experience information within the meaning of the federal

Fair Credit Reporting Act, 15 U.S.C. § 1681a(d)(2)(A)(i) and the Vermont Fair Credit Reporting Act, 9 V.S.A. § 2480a(2)(A); and,

(ii) in the event health information is provided as own transaction or experience information as defined in (A) of this subdivision (iii), complies with V.S.R. §§ 10-19.

(2) Examples.

(A) If you disclose nonpublic personal information under this section to a broker-dealer and/or investment adviser with which you perform joint marketing, your contractual agreement with that institution meets the requirements of paragraph (a)(1)(B) of this section if it prohibits the institution from disclosing or using the nonpublic personal information except as necessary to carry out the joint marketing or under an exception in V.S.R. §§ 10-14 or 10-15 in the ordinary course of business to carry out that joint marketing.

(B) If you comply with the provisions of (a)(1)(A) and (B) of this section, you may provide nonpublic personal information to a service provider that is a nonaffiliated third-party agent of yours to enable the agent to offer, renew or service products on your behalf. Such disclosure shall not be subject to the limitations of paragraph (a)(1)(C) of this section.

(b) Service may include joint marketing. The services a nonaffiliated third party performs for you under paragraph (a) of this section may include marketing of your own products or services or marketing of financial products or services offered pursuant to joint agreements between you and one or more broker-dealer and/or investment advisers.

(c) Joint agreement. Definition. For purposes of this section, "joint agreement" means a written contract pursuant to which you and one or more broker-dealer and/or investment advisers jointly offer, endorse, or sponsor a financial product or service.

V.S.R. § 10-14. Exceptions to Notice and Opt-In Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions.

(a) Exceptions for processing and servicing transactions at consumer's request. The requirements for initial notice in V.S.R. § 10-4(a)(2), for the opt-in requirements in V.S.R. §§ 10-7 and 10-10, and for service providers and joint marketing in V.S.R. § 10-13, do not apply if you disclose nonpublic personal financial information as necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes, or in connection with:

- (1) Processing or servicing a financial product or service that a consumer requests or authorizes;
- (2) Maintaining or servicing the consumer's account with you, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or

(3) A proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer.

(b) Necessary to effect, administer, or enforce a transaction means that the disclosure is:

(1) Required, or is one of the lawful or appropriate methods, to enforce your rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

(2) Required, or is a usual, appropriate, or acceptable method:

(A) To carry out the transaction or the product or service business of which the transaction is a part, and record, service, or maintain the consumer's account in the ordinary course of providing the financial service or financial product;

(B) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;

(C) To provide a confirmation, statement, or other record of the transaction, or information on the status or value of the financial service or financial product to the consumer or the consumer's agent or broker;

(D) To accrue or recognize incentives or bonuses associated with the transaction that are provided by you or any other party;

(E) To the extent permitted under applicable law, underwrite insurance at the consumer's request or for reinsurance purposes, or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating, or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects, or as otherwise required or specifically permitted by federal or State law; or

(F) In connection with:

(i) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited, or otherwise paid using a debit, credit, or other payment card, check, or account number, or by other payment means;

(ii) The transfer of receivables, accounts, or interests therein; or

(iii) The audit of debit, credit, or other payment information.

V.S.R. § 10-15. Other Exceptions to Notice and Opt-In Requirements for Disclosure of Nonpublic Personal Financial Information.

(a) Exceptions to opt-in requirements. The requirements for initial notice in V.S.R. § 10-4 (a)(2) and for the opt-in requirements in V.S.R. §§ 10-7, 10-10 and service providers and joint marketing under V.S.R. § 10-13 do not apply when you disclose nonpublic personal financial information:

- (1) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;
- (2)
 - (A) To protect the confidentiality or security of your records pertaining to the consumer, service, product, or transaction;
 - (B) To protect against or prevent actual or potential fraud or unauthorized transactions, claims or other liabilities;
 - (C) For required institutional risk control or for resolving consumer disputes or inquiries;
 - (D) To persons holding a legal or beneficial interest relating to the consumer; or
 - (E) To persons acting in a fiduciary or representative capacity on behalf of the consumer.
- (3) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating you, persons that are assessing your compliance with industry standards, and your attorneys, accountants, and auditors;
- (4) To the extent specifically permitted or required under other provisions of law and in accordance with the federal Right to Financial Privacy Act of 1978 (12 U.S.C. § 3401 *et seq.*), to law enforcement agencies (including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, the Securities and Exchange Commission, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping and the Federal Trade Commission) to state and federal civil and administrative authorities (including, but not limited to, a state insurance authority, a state banking authority and a state securities authority), self-regulatory organizations or for an investigation on a matter related to public safety;
- (5)
 - (A) To a consumer reporting agency in accordance with the federal Fair Credit Reporting Act (15 U.S.C. § 1681 *et seq.*), or
 - (B) From a consumer report reported by a consumer reporting agency;
- (6) In connection with a proposed or actual affiliation, reorganization, sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the

disclosure of nonpublic personal financial information concerns solely consumers of such business or unit;

(7) (A) To comply with federal, state, or local laws, rules and other applicable legal requirements;

(B) To comply with a properly authorized civil, criminal, or regulatory investigation, or subpoena or summons by federal, state, or local authorities;

(C) To respond to judicial process or government regulatory authorities having jurisdiction over you for examination, compliance, or other purposes as authorized by law; or

(8) In the administration of an order or proceeding under Chapter 150 of Title 9.

(b) Examples of revocation of consent. A consumer may revoke consent by subsequently exercising the right to prevent future disclosures of nonpublic personal financial information as permitted under V.S.R. § 10-7(a).

V.S.R. § 10-16. When Authorization Is Required for Disclosure of Nonpublic Personal Health Information.

(a) General rule. You shall not disclose nonpublic personal health information about a consumer or customer unless an authorization is obtained from the consumer or customer whose nonpublic personal health information is the subject of a requested disclosure.

(b) Exceptions. Nothing in this section shall prohibit, restrict or require an authorization for the disclosure of nonpublic personal health information by a broker-dealer and/or investment adviser for the following:

(1) Any activity that would permit disclosure without opt in by the consumer or customer pursuant to V.S.R. §§ 10-14 or 10-15 of this rule if the information were nonpublic personal financial information;

(2) In connection with the conduct by the broker-dealer and/or investment adviser directly of the business of insurance, any activity that would permit disclosure without authorization pursuant to section 17.B or 17.C of Insurance regulation IH-2001-01 (Privacy of Consumer Financial and Health Information regulation);

(3) Any activity that permits disclosure without authorization pursuant to the federal Health Insurance Portability and Accountability Act privacy rules promulgated by the U.S. Department of Health and Human Services, *except* as provided in section 20 of this regulation; and

(4) Any activity required pursuant to governmental reporting authority or to comply with legal process.

(c) Additional Functions. Additional categories of disclosures may be added with the approval of the commissioner to the extent they are necessary for appropriate performance of activities that are financial in nature or incidental to such financial activities as described in the section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. § 1843(k)) and are fair and reasonable to the interest of consumers.

V.S.R. § 10-17. Authorizations.

(a) Authorization requirement. A valid authorization to disclose nonpublic personal health information pursuant to V.S.R. § 10-17 shall be in written or electronic form and shall contain all of the following:

- (1) The identity of the consumer or customer who is the subject of the nonpublic personal health information;
- (2) A general description of the types of nonpublic personal health information to be disclosed;
- (3) General descriptions of the parties to whom you disclose nonpublic personal health information, the purpose of the disclosure and how the information will be used;
- (4) The signature of the consumer or customer who is the subject of the nonpublic personal health information or the individual who is legally empowered to grant authority and the date signed; and
- (5) Notice of the length of time for which the authorization is valid and that the consumer or customer may revoke the authorization at any time and the procedure for making a revocation.

(b) Time Limits. An authorization for the purposes of V.S.R. § 10-17 shall specify a length of time for which the authorization shall remain valid, which in no event shall be for more than twenty-four (24) months.

(c) Revocation of authorization. A consumer or customer who is the subject of nonpublic personal health information may revoke an authorization provided pursuant to V.S.R. § 10-17 at any time, subject to your rights if you acted in reliance on the authorization prior to notice of the revocation.

(d) Record retention. You shall retain the authorization or a copy thereof in the record of the individual who is the subject of nonpublic personal health information.

V.S.R. § 10-18. Authorization Request Delivery.

A request for authorization and an authorization form may be delivered to a consumer or a customer as part of an opt-in notice pursuant to V.S.R. § 10-9, provided that the request and the

authorization form are clear and conspicuous. An authorization form is not required to be delivered to the consumer or customer unless you intend to disclose protected health information pursuant to V.S.R. § 10-16(a).

V.S.R. § 10-19. Relationship to Federal Rules.

Nothing in this regulation modifies, limits, or supersedes the standards and provisions of 45 C.F.R. Parts 160 and 164 governing individually identifiable health information promulgated by the Secretary of Health and Human Services under the authority of sections 262 and 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. §§1320d - 1320d-8); provided, however, you shall be prohibited from making disclosures under the provisions of 45 C.F.R. § 164.514(e)(2) without the consumer's prior written consent. Nothing in this regulation shall be deemed to make applicable any provision of the federal Health Insurance Portability and Accountability Act of 1996 or the regulations promulgated thereunder to any broker-dealer or investment adviser not otherwise subject thereto.

V.S.R. § 10-20. Relationship to State Laws.

Nothing in this article shall preempt or supersede existing state law related to medical records, health or insurance information privacy.

V.S.R. § 10-21. Protection of Fair Credit Reporting Acts.

(a) Transaction and experience information. No inference shall be drawn on the basis of the provisions of this regulation regarding whether information is transaction or experience information under Section 603 of federal Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.).

(b) Vermont Fair Credit Reporting Act. Nothing in this regulation shall be construed to modify, limit or supersede the operation of the Vermont Fair Credit Reporting Act (9 V.S.A. §§ 2480a-2480g). No inference shall be drawn on the basis of the provisions of this regulation regarding whether information is transaction or experience information under section 2480a(2) of the Vermont Fair Credit Reporting Act. This regulation shall not be construed to extend the application of the Vermont Fair Credit Reporting Act to persons who are not residents of Vermont.

V.S.R. § 10-22. Nondiscrimination.

(a) No opt-in discrimination. You shall not unfairly discriminate against a consumer or customer because that consumer or customer has not granted authorization for the disclosure of his or her nonpublic personal financial information pursuant to the provisions of this regulation.

(b) No health opt-in discrimination. You shall not unfairly discriminate against a consumer or customer because that consumer or customer has not granted authorization for the disclosure of his or her nonpublic personal health information pursuant to the provisions of this regulation.

V.S.R. § 10-23. Violations.

In addition to any other sanctions available to the commissioner under Vermont law for violations of this regulation, any violation of this regulation shall be deemed an unfair method of competition or an unfair or deceptive act or practice in the conduct of a broker-dealer or investment adviser for the purposes of Chapter 150 of Title 9 V.S.A.

V.S.R. § 10-24. Severability.

If any section or portion of a section of this regulation or its applicability to any person or circumstance is held invalid by a court, the remainder of the regulation or the applicability of the provision to other persons or circumstances shall not be affected.

V.S.R. § 10-25. Procedures to Safeguard Customer Records and Information.

Every broker-dealer and every investment adviser registered with the commissioner must adopt policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information. These policies and procedures must be reasonably designed to:

- (a) Ensure the security and confidentiality of customer records and information;
- (b) Protect against any anticipated threats or hazards to the security or integrity of customer records and information; and
- (c) Protect against unauthorized access to or use of customer records or information that could result in substantial harm or inconvenience to any customer.

V.S.R. § 10-26. Sample Clauses

You, including if you are a group of financial holding company affiliates that use a common privacy notice, may use the following sample clauses, if the clause is accurate for each institution that uses the notice. (Note that disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act, such as a requirement to permit a consumer to opt-in to disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.)

A-1. Categories of information you collect (all institutions)

You may use this clause, as applicable, to meet the requirement of V.S.R. § 10-6(a)(1) to describe the categories of nonpublic personal financial information you collect.

Sample Clause A-1:

We collect nonpublic personal financial information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information about your transactions with us, our affiliates, or others; and
- Information we receive from a consumer reporting agency.

A-2. Categories of information you disclose (institutions that disclose outside of the exceptions)

You may use one of these clauses, as applicable, to meet the requirement of V.S.R. § 10-6(a)(2) to describe the categories of nonpublic personal financial information you disclose. You may use these clauses if you disclose nonpublic personal financial information other than as permitted by the exceptions in V.S.R. §§ 10-13, 10-14 and 10-15.

Sample Clause A-2, Alternative 1:

We may disclose the following kinds of nonpublic personal financial information about you:

- Information we receive from you on applications or other forms, such as *[provide illustrative examples, such as "your name, address, social security number, assets, and income"]*;
- Information about your transactions with us, our affiliates, or others, such as *[provide illustrative examples, such as "your account balance, payment history, parties to transactions, and credit card usage"]*; and
- Information we receive from a consumer reporting agency, such as *[provide illustrative examples, such as "your creditworthiness and credit history"]*.

Sample Clause A-2, Alternative 2:

We may disclose all of the information that we collect, as described *[describe location in the notice, such as "above" or "below"]*.

A-3. Categories of information you disclose and parties to whom you disclose (institutions that do not disclose outside of the exceptions)

You may use this clause, as applicable, to meet the requirements of V.S.R. § 10-6(a)(2), (3), and (4) to describe the categories of nonpublic personal financial information about customers and former customers that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose. You may use this clause if you do not disclose nonpublic personal financial information to any party, other than as permitted by the exceptions in V.S.R. §§ 10-14 and 10-15.

Sample Clause A-3:

We do not disclose any nonpublic personal financial information about our customers or former customers to anyone, except as permitted by law.

A-4. Categories of parties to whom you disclose (institutions that disclose outside of the exceptions)

You may use this clause, as applicable, to meet the requirement of V.S.R. § 10-6(a)(3) to describe the categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal financial information. You may use this clause if you disclose nonpublic personal financial information other than as permitted by the exceptions in V.S.R. §§ 10-13, 10-14 and 10-15, as well as when permitted by the exceptions in V.S.R. §§ 10-14 and 10-15.

Sample Clause A-4:

We may disclose nonpublic personal financial information about you to the following types of third parties:

- Financial service providers, such as *[provide illustrative examples, such as "mortgage bankers, securities broker-dealers, and insurance agents"]*;
- Non-financial companies, such as *[provide illustrative examples, such as "retailers, direct marketers, airlines, and publishers"]*; and
- Others, such as *[provide illustrative examples, such as "non-profit organizations"]*

We may also disclose nonpublic personal financial information about you to nonaffiliated third parties as permitted by law.

A-5. Service provider/joint marketing exception

You may use one of these clauses, as applicable, to meet the requirements of V.S.R. § 10-6(a)(5) related to the exception for service providers and joint marketers in V.S.R. § 10-13. If you disclose nonpublic personal information under this exception, you must describe the categories of nonpublic personal financial information you disclose and the categories of third parties with whom you have contracted.

Sample Clause A-5, Alternative 1:

We may disclose the following information to companies that perform marketing services on our behalf or to other broker-dealer and/or investment advisers with which we have joint marketing agreements.

Information we receive from you on applications or other forms, such as *[provide illustrative examples, such as "your name, address, social security number, assets, and income"]*1;

- Information about your transactions with us, our affiliates, or others, such as *[provide illustrative examples, such as "your account balance, payment history, parties to transactions, and credit card usage"]*1; and

- Information we receive from a consumer reporting agency, such as *[provide illustrative examples, such as "your creditworthiness and credit history"]*.

Sample Clause A-5, Alternative 2:

We may disclose all of the information we collect, as described *[describe location in the notice, such as "above" or "below"]* to companies that perform marketing services on our behalf or to other broker-dealer and/or investment advisers with whom we have joint marketing agreements.

Sample Clause A-5, Alternative 3:

We may disclose the following information to other broker-dealer and/or investment advisers with which we have joint marketing agreements:

- The following information we receive from you: "your name and contact information";
- Information about your transactions with us or our affiliates, such as *[provide illustrative examples of own transaction and experience information, such as "your account balance, payment history, parties to transactions, and credit card usage"]*.

A-6. Explanation of opt-in right (institutions that disclose to nonaffiliates outside of the exceptions)

You may use this clause, as applicable, to meet the requirement of V.S.R. § 10-6(a)(6) to provide an explanation of the consumer's right to opt in to the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right. You may use this clause if you disclose nonpublic personal financial information to nonaffiliated third parties other than as permitted by the exceptions in V.S.R. §§ 10-13, 10-14 and 10-15.

Sample Clause A-6-b:

We will not disclose nonpublic personal financial information about you to nonaffiliated third parties (other than disclosures permitted by law), unless you authorize us to make those disclosures. Your authorization must be in writing or, if you agree, in electronic form. If you wish to authorize us to disclose your nonpublic personal financial information to nonaffiliated third parties, you may *[describe a reasonable means of opting in, such as "sign the attached, postage prepaid card and mail it to us"]*.

A-7. Confidentiality and security (all institutions)

You may use this clause, as applicable, to meet the requirement of V.S.R. § 10-6(a)(8) to describe your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

Sample Clause A-7:

We restrict access to nonpublic personal information about you to *[provide an appropriate description, such as "those employees who need to know that information to provide products or services to you"]*. We maintain physical, electronic, and procedural safeguards that comply with federal standards to guard your nonpublic personal information. (Authorized by 8 V.S.A. §§ 10 and 15, and 9 V.S.A. § 5605)

CHAPTER 11
EFFECTIVE DATE.

V.S.R. § 11-1. Effective Date

(a) The effective date of this rule shall be _____.

(b) Prior versions of this rule were effective on December 16, 2021; August 12, 2019; May 15, 2017; July 1, 2016.

The Vermont Statutes Online

The Statutes below include the actions of the 2025 session of the General Assembly.

NOTE: The Vermont Statutes Online is an unofficial copy of the Vermont Statutes Annotated that is provided as a convenience.

Title 1 : General Provisions

Chapter 005 : Common Law; General Rights

Subchapter 003 : ACCESS TO PUBLIC RECORDS

(Cite as: 1 V.S.A. § 317)

§ 317. Definitions; public agency; public records and documents; exemptions

(a) As used in this subchapter:

(1) “Business day” means a day that a public agency is open to provide services.

(2) “Public agency” or “agency” means any agency, board, department, commission, committee, branch, instrumentality, or authority of the State or any agency, board, committee, department, branch, instrumentality, commission, or authority of any political subdivision of the State.

(b) As used in this subchapter, “public record” or “public document” means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired in the course of public agency business. Individual salaries and benefits of and salary schedules relating to elected or appointed officials and employees of public agencies shall not be exempt from public inspection and copying.

(c) The following public records are exempt from public inspection and copying:

(1) Records that by law are designated confidential or by a similar term.

(2) Records that by law may only be disclosed to specifically designated persons.

(3) Records that, if made public pursuant to this subchapter, would cause the custodian to violate duly adopted standards of ethics or conduct for any profession regulated by the State.

(4) Records that, if made public pursuant to this subchapter, would cause the custodian to violate any statutory or common law privilege other than the common law deliberative process privilege as it applies to the General Assembly and the Executive Branch agencies of the State of Vermont.

(5)(A) Records dealing with the detection and investigation of crime, but only to the extent that the production of such records:

(i) could reasonably be expected to interfere with enforcement proceedings;

(ii) would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution that furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecution if such disclosure could reasonably be expected to risk circumvention of the law;

(vi) could reasonably be expected to endanger the life or physical safety of any individual.

(B) Notwithstanding subdivision (A) of this subdivision (5), records relating to management and direction of a law enforcement agency; records reflecting the initial arrest of a person, including any ticket, citation, or complaint issued for a traffic violation, as that term is defined in 23 V.S.A. § 2302; and records reflecting the charge of a person shall be public.

(C) It is the intent of the General Assembly that in construing subdivision (A) of this subdivision (5), the courts of this State will be guided by the construction of similar terms contained in 5 U.S.C. § 552(b)(7) (Freedom of Information Act) by the courts of the United States.

(D) It is the intent of the General Assembly that, consistent with the manner in which courts have interpreted subdivision (A) of this subdivision (5), a public agency shall not reveal information that could be used to facilitate the commission of a crime or the identity of a private individual who is a witness to or victim of a crime, unless withholding the identity or information would conceal government wrongdoing. A record shall not be withheld in its entirety because it contains identities or information that have been redacted pursuant to this subdivision (D).

(6) A tax return and related documents, correspondence, and certain types of substantiating forms that include the same type of information as in the tax return itself filed with or maintained by the Vermont Department of Taxes or submitted by a person

to any public agency in connection with agency business.

(7) Personal documents relating to an individual, including information in any files maintained to hire, evaluate, promote, or discipline any employee of a public agency; information in any files relating to personal finances; medical or psychological facts concerning any individual or corporation; provided, however, that all information in personnel files of an individual employee of any public agency shall be made available to that individual employee or his or her designated representative.

(8) Test questions, scoring keys, and other examination instruments or data used to administer a license, employment, or academic examination.

(9) Trade secrets, meaning confidential business records or information, including any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information that is not patented, which a commercial concern makes efforts that are reasonable under the circumstances to keep secret, and that gives its user or owner an opportunity to obtain business advantage over competitors who do not know it or use it, except that the disclosures required by 18 V.S.A. § 4632 are not exempt under this subdivision.

(10) Lists of names compiled or obtained by a public agency when disclosure would violate a person's right to privacy or produce public or private gain; provided, however, that this section does not apply to lists that are by law made available to the public, or to lists of professional or occupational licensees.

(11) Student records, including records of a home study student; provided, however, that such records shall be made available upon request under the provisions of the Federal Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, as may be amended.

(12) Records concerning formulation of policy where such would constitute a clearly unwarranted invasion of personal privacy if disclosed.

(13) Information pertaining to the location of real or personal property for public agency purposes prior to public announcement of the project and information pertaining to appraisals or purchase price of real or personal property for public purposes prior to the formal award of contracts thereof.

(14) Records that are relevant to litigation to which the public agency is a party of record, provided all such matters shall be available to the public after ruled discoverable by the court before which the litigation is pending, but in any event upon final termination of the litigation.

(15) Records relating specifically to negotiation of contracts, including collective bargaining agreements with public employees.

(16) Any voluntary information provided by an individual, corporation, organization,

partnership, association, trustee, estate, or any other entity in the State of Vermont, which has been gathered prior to the enactment of this subchapter, shall not be considered a public document.

(17) Records of interdepartmental and intradepartmental communications in any county, city, town, village, town school district, incorporated school district, union school district, consolidated water district, fire district, or any other political subdivision of the State to the extent that they cover other than primarily factual materials and are preliminary to any determination of policy or action or precede the presentation of the budget at a meeting held in accordance with section 312 of this title.

(18) Records of the Office of Internal Investigation of the Department of Public Safety, except as provided in 20 V.S.A. § 1923.

(19) Records relating to the identity of library patrons or the identity of library patrons in regard to library patron registration records and patron transaction records in accordance with 22 V.S.A. chapter 4.

(20) Information that would reveal the location of archaeological sites and underwater historic properties, except as provided in 22 V.S.A. § 761.

(21) [Repealed.]

(22) [Repealed.]

(23) Any data, records, or information produced or acquired by or on behalf of faculty, staff, employees, or students of the University of Vermont or the Vermont State Colleges in the conduct of study, research, or creative efforts on medical, scientific, technical, scholarly, or artistic matters, whether such activities are sponsored alone by the institution or in conjunction with a governmental body or private entity, until such data, records, or information are published, disclosed in an issued patent, or publicly released by the institution or its authorized agents. This subdivision applies to, but is not limited to, research notes and laboratory notebooks, lecture notes, manuscripts, creative works, correspondence, research proposals and agreements, methodologies, protocols, and the identities of or any personally identifiable information about participants in research. This subdivision shall not exempt records, other than research protocols, produced or acquired by an institutional animal care and use committee regarding the committee's compliance with State law or federal law regarding or regulating animal care.

(24) Records of, or internal materials prepared for, the deliberations of any public agency acting in a judicial or quasi-judicial capacity.

(25) Passwords, access codes, user identifications, security procedures, and similar information, the disclosure of which would threaten the safety of persons or the security of public property.

(26) Information and records provided to the Department of Financial Regulation by a person for the purposes of having the Department assist that person in resolving a dispute with any person regulated by the Department, and any information or records provided by a person in connection with the dispute.

(27) Information and records provided to the Department of Public Service or the Public Utility Commission by an individual for the purposes of having the Department or Commission assist that individual in resolving a dispute with a utility regulated by the Department or Commission, or by the utility or any other person in connection with the individual's dispute.

(28) Records of, and internal materials prepared for, independent external reviews of health care service decisions pursuant to 8 V.S.A. § 4063 and of mental health care service decisions pursuant to 8 V.S.A. § 4064.

(29) The records in the custody of the Secretary of State of a participant in the Address Confidentiality Program described in 15 V.S.A. chapter 21, subchapter 3, except as provided in that subchapter.

(30) All State-controlled database structures and application code, including the vermontvacation.com website and Travel Planner application, which are known only to certain State departments engaging in marketing activities and that give the State an opportunity to obtain a marketing advantage over any other state, regional, or local governmental or nonprofit quasi-governmental entity, or private sector entity, unless any such State department engaging in marketing activities determines that the license or other voluntary disclosure of such materials is in the State's best interests.

(31) Records of a registered voter's month and day of birth, driver's license or nondriver identification number, telephone number, email address, and the last four digits of his or her Social Security number contained in a voter registration application or the statewide voter checklist established under 17 V.S.A. § 2154 or the failure to register to vote under 17 V.S.A. § 2145a.

(32) With respect to publicly owned, managed, or leased structures, and only to the extent that release of information contained in the record would present a substantial likelihood of jeopardizing the safety of persons or the security of public property, final building plans, and as-built plans, including drafts of security systems within a facility, that depict the internal layout and structural elements of buildings, facilities, infrastructures, systems, or other structures owned, operated, or leased by an agency before, on, or after the effective date of this provision; emergency evacuation, escape, or other emergency response plans that have not been published for public use; and vulnerability assessments, operation, and security manuals, plans, and security codes. For purposes of this subdivision, "system" shall include electrical, heating, ventilation, air conditioning, telecommunication, elevator, and security systems. Information made exempt by this subdivision may be disclosed to another governmental entity if disclosure

is necessary for the receiving entity to perform its duties and responsibilities; to a licensed architect, engineer, or contractor who is bidding on or performing work on or related to buildings, facilities, infrastructures, systems, or other structures owned, operated, or leased by the State. The entities or persons receiving such information shall maintain the exempt status of the information. Such information may also be disclosed by order of a court of competent jurisdiction, which may impose protective conditions on the release of such information as it deems appropriate. Nothing in this subdivision shall preclude or limit the right of the General Assembly or its committees to examine such information in carrying out its responsibilities or to subpoena such information. In exercising the exemption set forth in this subdivision and denying access to information requested, the custodian of the information shall articulate the grounds for the denial.

(33) The account numbers for bank, debit, charge, and credit cards held by an agency or its employees on behalf of the agency.

(34) Affidavits of income and assets as provided in 15 V.S.A. § 662 and Rule 4 of the Vermont Rules for Family Proceedings.

(35) [Repealed.]

(36) Anti-fraud plans and summaries submitted for the purposes of complying with 8 V.S.A. § 4750.

(37) Records provided to the Department of Health pursuant to the Patient Safety Surveillance and Improvement System established by 18 V.S.A. chapter 43a.

(38) Records that include prescription information containing data that could be used to identify a prescriber, except that the records shall be made available upon request for medical research, consistent with and for purposes expressed in 18 V.S.A. § 4622 or 9410, 18 V.S.A. chapter 84 or 84A, and for other law enforcement activities.

(39) Records held by the Agency of Human Services or the Department of Financial Regulation, which include prescription information containing patient-identifiable data, that could be used to identify a patient.

(40) Records of genealogy provided in an application or in support of an application for tribal recognition pursuant to chapter 23 of this title.

(41) Documents reviewed by the Victims Compensation Board for purposes of approving an application for compensation pursuant to 13 V.S.A. chapter 167, except as provided by 13 V.S.A. §§ 5358a(b) and 7043(c).

(42) Except as otherwise provided by law, information that could be used to identify a complainant who alleges that a public agency, a public employee or official, or a person providing goods or services to a public agency under contract has engaged in a violation of law, or in waste, fraud, or abuse of authority, or in an act creating a threat to health or safety, unless the complainant consents to disclosure of his or her identity.

(43) Records relating to a regulated utility's cybersecurity program, assessments, and plans, including all reports, summaries, compilations, analyses, notes, or other cybersecurity information.

(44) Records held by the Office of Professional Regulation, Board of Medical Practice, or another public agency that issues one or more licenses, certificates, or registrations to engage in a State-regulated profession or occupation if the records contain the telephone number, email address, physical address, or mailing address, or a combination of these, of an individual who has applied for or has been granted a license, certificate, or registration to practice a profession or occupation in this State, except that the public agency shall disclose any address that the individual has designated as a public address in the record.

(d)(1) On or before December 1, 2015, the Office of Legislative Counsel shall compile lists of all Public Records Act exemptions found in the Vermont Statutes Annotated, one of which shall be arranged by subject area, and the other in order by title and section number.

(2) On or before December 1, 2019, the Office of Legislative Counsel shall compile a list arranged in order by title and section number of all Public Records Act exemptions found in the Vermont Statutes Annotated that are repealed or are narrowed in scope on or after January 1, 2019. The list shall indicate:

(A) the effective date of the repeal or narrowing in scope of the exemption; and

(B) whether or not records produced or acquired during the period of applicability of the repealed or narrowed exemption are to remain exempt following the repeal or narrowing in scope.

(3) The Office of Legislative Counsel shall update the lists required under subdivisions (1) and (2) of this subsection no less often than every two years. In compiling and updating these lists, the Office of Legislative Counsel shall consult with the Office of Attorney General. The lists and any updates thereto shall be posted in a prominent location on the websites of the General Assembly, the Secretary of State's Office, the Attorney General's Office, and the State Library and shall be sent to the Vermont League of Cities and Towns.

(e)(1) For any exemption to the Public Records Act enacted or substantively amended in legislation introduced in the General Assembly in 2019 or later, in the fifth year after the effective date of the enactment, reenactment, or substantive amendment of the exemption, the exemption shall be repealed on July 1 of that fifth year except if the General Assembly reenacts the exemption prior to July 1 of the fifth year or if the law otherwise requires.

(2) Legislation that enacts, reenacts, or substantively amends an exemption to the Public Records Act shall explicitly provide for its repeal on July 1 of the fifth year after the

effective date of the exemption unless the legislation specifically provides otherwise.

(f) Unless otherwise provided by law, a record produced or acquired during the period of applicability of an exemption that is subsequently repealed or narrowed in scope shall, if exempt during that period, remain exempt following the repeal or narrowing in scope of the exemption. (Added 1975, No. 231 (Adj. Sess.), § 1; amended 1977, No. 202 (Adj. Sess.); 1979, No. 156 (Adj. Sess.), § 6; 1981, No. 227 (Adj. Sess.), § 4; 1989, No. 28, § 2; 1989, No. 136 (Adj. Sess.), § 1; 1995, No. 46, §§ 23, 58; 1995, No. 159 (Adj. Sess.), § 2; 1995, No. 167 (Adj. Sess.), § 29; 1995, No. 180 (Adj. Sess.), § 38; 1995, No. 182 (Adj. Sess.), § 21, eff. May 22, 1996; 1995, No. 190 (Adj. Sess.), § 1(a); 1997, No. 159 (Adj. Sess.), § 12, eff. April 29, 1998; 1999, No. 134 (Adj. Sess.), § 3, eff. Jan. 1, 2001; 2001, No. 28, § 9, eff. May 21, 2001; 2001, No. 76 (Adj. Sess.), § 3, eff. Feb. 19, 2002; 2001, No. 78 (Adj. Sess.), § 1, eff. Apr. 3, 2002; 2003, No. 59, § 1, eff. Jan. 1, 2006; 2003, No. 63, § 29, eff. June 11, 2003; 2003, No. 107 (Adj. Sess.), § 14; 2003, No. 146 (Adj. Sess.), § 6, eff. Jan. 1, 2005; 2003, No. 158 (Adj. Sess.), § 2; 2003, No. 159 (Adj. Sess.), § 12; 2005, No. 132 (Adj. Sess.), § 1; 2005, No. 179 (Adj. Sess.), § 3; 2005, No. 215 (Adj. Sess.), § 326; 2007, No. 80, § 18; 2007, No. 110 (Adj. Sess.), § 3; 2007, No. 129 (Adj. Sess.), § 2; 2009, No. 59, § 5; 2009, No. 107 (Adj. Sess.), § 5, eff. May 14, 2010; 2011, No. 59, § 3; 2011, No. 78 (Adj. Sess.), § 2, eff. April 2, 2012; 2011, No. 145 (Adj. Sess.), § 8, eff. May 15, 2012; 2013, No. 70, § 1; 2013, No. 129 (Adj. Sess.), § 1; 2013, No. 194 (Adj. Sess.), § 1, eff. June 17, 2014; 2015, No. 23, § 2; 2015, No. 29, §§ 2, 3, 6, 23; 2015, No. 30, § 3, eff. May 26, 2015; 2015, No. 80 (Adj. Sess.), § 6, eff. July 1, 2017; 2017, No. 50, § 5; 2017, No. 128 (Adj. Sess.), § 2, eff. May 16, 2018; 2017, No. 166 (Adj. Sess.), § 3, eff. Jan. 1, 2019; 2019, No. 31, § 16; 2021, No. 54, § 2; 2023, No. 3, § 59, eff. March 20, 2023; 2025, No. 11, § 3, eff. September 1, 2025; 2025, No. 20, § 2, eff. May 13, 2025.)

The Vermont Statutes Online

The Statutes below include the actions of the 2025 session of the General Assembly.

NOTE: The Vermont Statutes Online is an unofficial copy of the Vermont Statutes Annotated that is provided as a convenience.

Title 9 : Commerce and Trade

Chapter 150 : Securities Act

Subchapter 006 : ADMINISTRATION AND JUDICIAL REVIEW

(Cite as: **9 V.S.A. § 5605**)

§ 5605. Rules, forms, orders, interpretative opinions, and hearings

(a) The Commissioner may:

(1) issue forms and orders and, after notice and comment and in accordance with the provisions of 3 V.S.A. chapter 25 (Administrative Procedure Act), may adopt and amend rules necessary or appropriate to carry out this chapter and may repeal rules, including rules and forms governing registration statements, applications, notice filings, reports, and other records;

(2) by rule, define terms, whether or not used in this chapter, but those definitions may not be inconsistent with this chapter; and

(3) by rule, classify securities, persons, and transactions and adopt different requirements for different classes.

(b) Under this chapter, a rule or form may not be adopted or amended, or an order issued or amended, unless the Commissioner finds that the rule, form, order, or amendment is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes intended by this chapter. In adopting, amending, and repealing rules and forms, section 5608 of this chapter applies in order to achieve uniformity among the states and coordination with federal laws in the form and content of registration statements, applications, reports, and other records, including the adoption of uniform rules, forms, and procedures.

(c) Subject to 15 U.S.C. § 80b-15(h) and 15 U.S.C. § 80b-222, the Commissioner may require that a financial statement filed under this chapter be prepared in accordance with generally accepted accounting principles in the United States and comply with other requirements specified by rule adopted or order issued under this chapter. A rule

adopted or order issued under this chapter may establish:

(1) subject to 15 U.S.C. § 80b-15(h), the form and content of financial statements required under this chapter;

(2) whether unconsolidated financial statements must be filed; and

(3) whether required financial statements must be audited by an independent certified public accountant.

(d) The Commissioner may in the Commissioner's sole discretion provide interpretative opinions or issue determinations that the Commissioner will not institute a proceeding or an action under this chapter against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this chapter. A rule adopted or order issued under this chapter may establish a reasonable charge for interpretative opinions or determinations that the Commissioner will not institute an action or a proceeding under this chapter.

(e) A penalty under this chapter may not be imposed for and liability does not arise from conduct that is engaged in or omitted in good faith believing it conforms to a rule, form, or order of the Commissioner under this chapter.

(f) A hearing in an administrative proceeding under this chapter must be conducted in public unless the Commissioner for good cause consistent with this chapter determines that the hearing will not be so conducted. (Added 2005, No. 11, § 1, eff. July 1, 2006.)

The Vermont Statutes Online

The Statutes below include the actions of the 2025 session of the General Assembly.

NOTE: The Vermont Statutes Online is an unofficial copy of the Vermont Statutes Annotated that is provided as a convenience.

Title 9 : Commerce and Trade

Chapter 150 : Securities Act

Subchapter 006 : ADMINISTRATION AND JUDICIAL REVIEW

(Cite as: 9 V.S.A. § 5616)

§ 5616. Vermont Financial Services Education and Victim Restitution Special Fund

(a) Purpose. The purpose of this section is to provide:

(1) funds for the purposes specified in subsection 5601(d) of this title;

(2) restitution assistance to victims of securities violations who:

(A) were awarded restitution in a final order issued by the Commissioner or were awarded restitution in the final order in a legal action initiated by the Commissioner;

(B) have not received the full amount of restitution ordered before the application for restitution assistance is due; and

(C) demonstrate to the Commissioner's satisfaction that there is no reasonable likelihood that they will receive the full amount of restitution in the future; and

(3) funds for the purposes specified in section 5617 of this title.

(b) Definitions. As used in this section:

(1) "Claimant" means a person who files an application for restitution assistance under this section on behalf of a victim. The claimant and the victim may be the same but do not have to be the same. The term includes the named party in a restitution award in a final order, the executor of a named party in a restitution award in a final order, and the heirs and assigns of a named party in a restitution award in a final order.

(2) "Final order" means a final order issued by the Commissioner or a final order in a legal action initiated by the Commissioner.

(3) "Fund" means the Vermont Financial Services Education and Victim Restitution Special Fund created by this section.

(4) "Securities violation" means a violation of this chapter and any related administrative rules.

(5) "Victim" means a person who was awarded restitution in a final order.

(6) "Vulnerable person" means:

(A) a person who meets the definition of vulnerable person under 33 V.S.A. § 6902(14); or

(B) a person who is at least 60 years of age.

(c) Eligibility.

(1) A natural person who was a resident of Vermont at the time of the alleged fraud is eligible for restitution assistance.

(2) The Commissioner shall not award securities restitution assistance under this section:

(A) to more than one claimant per victim;

(B) unless the person ordered to pay restitution has not paid the full amount of restitution owed to the victim before the application for restitution assistance from the fund is due;

(C) if there was no award of restitution in the final order; or

(D) to a claimant who has not exhausted his or her appeal rights.

(d) Denial of assistance. The Commissioner shall not award restitution assistance if the victim:

(1) sustained the monetary injury as a result of:

(A) participating or assisting in the securities violation; or

(B) attempting to commit or committing the securities violation; or

(2) profited or would have profited from the securities violation.

(e) Application for restitution assistance and maximum amount of restitution assistance award.

(1) The Commissioner may adopt procedures and forms for application for restitution assistance under this section.

(2) An application must be received by the Commissioner within two years after the deadline for payment of restitution established in the final order.

(3) Except as provided in subdivision (4) of this subsection, the maximum award from the Fund for each claimant shall be the lesser of \$25,000.00 or 25 percent of the amount of unpaid restitution awarded in a final order.

(4) If the claimant is a vulnerable person, the maximum award from the Fund shall be the lesser of \$50,000.00 or 50 percent of the amount of unpaid restitution awarded in the final order.

(f) Vermont Financial Services Education and Victim Restitution Special Fund. The Vermont Financial Services Education and Victim Restitution Special Fund, pursuant to 32 V.S.A. chapter 7, subchapter 5, is created to provide funds for the purposes specified in this section, in subsection 5601(d) of this title, and in section 5617 of this title. All monies received by the State for use in financial services education initiatives pursuant to subsection 5601(d) of this title, in providing uncompensated victims restitution pursuant to this section, or in providing whistleblower awards pursuant to section 5617 of this title shall be deposited into the Fund. The Commissioner may direct a party to deposit a sum not to exceed 15 percent of the total settlement amount into the Fund in conjunction with settling an enforcement matter within the Department's jurisdiction, as described in 8 V.S.A. § 11(a). Interest earned on the Fund shall be retained in the Fund.

(g) Award not subject to execution, attachment, or garnishment. An award made by the Commissioner under this section is not subject to execution, attachment, garnishment, or other process.

(h) State's liability for award. The Commissioner shall have the discretion to suspend applications and awards based on the solvency of the Fund. The State shall not be liable for any determination made under this section.

(i) Subrogation of rights of State.

(1) The State is subrogated to the rights of the person awarded restitution under this chapter to the extent of the award.

(2) The subrogation rights are against the person who committed the securities violation or a person liable for the pecuniary loss.

(j) Rulemaking authority. The Commissioner may adopt rules to implement this section. (Added 2019, No. 57, § 17a; amended 2021, No. 139 (Adj. Sess.), § 21, eff. May 27, 2022; 2023, No. 110 (Adj. Sess.), § 20, eff. July 1, 2024.)

The Vermont Statutes Online

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Title 8 : Banking and Insurance

Chapter 001 : Policy and Administration

(Cite as: **8 V.S.A. § 15**)

§ 15. Rules, orders, and administrative interpretations

(a) In addition to other powers conferred by this title and 18 V.S.A. chapter 221, the Commissioner may adopt rules and issue orders as shall be authorized by or necessary to the administration of this title and of 18 V.S.A. chapter 221, and to carry out the purposes of such titles.

(b) The Commissioner may, whether or not requested by any person, issue written advisory interpretations, advisory opinions, non-objection letters, and no action letters under this title and regulations issued under it, including interpretations of the applicability of any provision of this title and regulations issued under it. Such interpretations shall be presumed to be correct unless found to be clearly erroneous by a court of competent jurisdiction. The Commissioner may make public all or a portion of an advisory interpretation.

(c) The Commissioner may waive the requirements of 15 V.S.A. § 795(b) as the Commissioner deems necessary to permit the Department to participate in any national licensing or registration systems with respect to any person or entity subject to the jurisdiction of the Commissioner under this title, Title 9, or 18 V.S.A. chapter 221.

(d) Upon written request by the Office of Child Support and after notice and opportunity for hearing to the licensee as required under any applicable provision of law, the Commissioner may revoke or suspend any license or other authority to conduct a trade or business (including a license to practice a profession) issued to any person under this title, 9 V.S.A. chapter 150, and 18 V.S.A. chapter 221, if the Commissioner finds that the applicant or licensee is subject to a child support order and is not in good standing with respect to that order or is not in full compliance with a plan to pay any and all child support payable under a support order as of the date the application is filed or as of the date of the commencement of revocation proceedings, as applicable. For

purposes of such findings, the written representation to that effect by the Office of Child Support to the Commissioner shall constitute prima facie evidence. The Office of Child Support shall have the right to intervene in any hearing conducted with respect to such license revocation or suspension. Any findings made by the Commissioner based solely upon the written representation with respect to that license revocation or suspension shall be made only for the purposes of that proceeding and shall not be relevant to or introduced in any other proceeding at law, except for any appeal from that license revocation or suspension. Any license or certificate of authority suspended or revoked under this section shall not be reissued or renewed until the Department receives a certificate issued by the Office of Child Support that the licensee is in good standing with respect to a child support order or is in full compliance with a plan to pay any and all child support payable under a support order. (Added 1999, No. 153 (Adj. Sess.), § 1, eff. Jan. 1, 2001; amended 2009, No. 42, § 33a; 2013, No. 73, § 58, eff. June 5, 2013; 2015, No. 63, § 3, eff. June 17, 2015; 2019, No. 20, § 106.)



Proposed Rules Postings

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Deadline For Public Comment

Deadline: Jan 08, 2026

The deadline for public comment has expired. Contact the agency or primary contact person listed below for assistance.

Rule Details

Rule Number:	25P038
Title:	Vermont Securities Regulations
Type:	Standard
Status:	Proposed
Agency:	Department of Financial Regulation
Legal Authority:	9 V.S.A. § 5605(a); 9 V.S.A. § 5616(j); 8 V.S.A. §15(a)
Summary:	<p>The Vermont Securities Regulations set out requirements for issuing securities in Vermont and regulating those who provide investment advice and offer and sell securities to the public. The primary changes include: for investment companies offering federally covered securities in Vermont, the revised Rule mandates electronic filings through a system to be designated by the Commissioner (allowed but not required under the current Rule); adding a requirement that Vermont domiciled investment advisers controlling client funds carry errors and omissions insurance; clarifying provisions for administering restitution assistance for victims of securities violations, including the application process; adding into regulation a current Department policy governing the privacy of client financial information held by broker-dealers and investment advisers; updating certain provisions to match national model rules from North American Securities Administrators Association; and drafting changes for clarity.</p>
Persons Affected:	<p>The Rule affects: investment advisers and broker-dealers registered in Vermont; representatives and agents of those investment advisers and broker-dealers; issuers and offerors of securities in Vermont; victims of securities violations that are eligible for restitution assistance; Vermonters who are customers of investment advisers and broker-dealers; Vermonters who otherwise invest in securities; and the Department.</p>
Economic Impact:	<p>The Department expects the economic impact of the revisions to the Rule to be a net positive. The revisions change certain compliance and operating requirements for broker-dealers and investment advisers, including requiring certain investment advisers to incur the expense of purchasing additional</p>

insurance. Many revisions to the Rule make the legal requirements more clear, and conform certain provisions to model rules adopted by the North American Securities Administrators Association, which should create cost savings for regulated entities. The change to require investment companies to file electronic notice filings for federally covered securities will create additional expense for some investment companies, but the Department believes the requirement is beneficial to ensure orderly submission and record keeping for notice filings. The Department concludes that the benefits of additional protection for Vermont investors outweigh any additional compliance costs.

Posting date: Oct 29,2025

Hearing Information

Information for Hearing # 1

Hearing date: 12-01-2025 1:00 PM [ADD TO YOUR CALENDAR](#)
Location: Virtually via MS Teams
Address: https://teams.microsoft.com/l/meetupjoin/193ameeting_MDAwMjk1YTItMDJiZC00ODU5LWE0OTgtMjhkZTk5NDc1NGRj40thread.v2/0?context=7b22Tid223a2220b4933b-baad-433c-9c02-70edcc7559c6222c22Oid223a228e6e8bee-36f6-4255-a55d-f61857ec6e87227d
City: n/a
State: VT
Zip: n/a
Hearing Notes: https://teams.microsoft.com/l/meetupjoin/193ameeting_MDAwMjk1YTItMDJiZC00ODU5LWE0OTgtMjhkZTk5NDc1NGRj40thread.v2/0?context=7b22Tid223a2220b4933b-baad-433c-9c02-70edcc7559c6222c22Oid223a228e6e8bee-36f6-4255-a55d-f61857ec6e87227d

Information for Hearing # 2

Hearing date: 12-29-2025 11:00 AM [ADD TO YOUR CALENDAR](#)
Location: Virtually via MS Teams
Address: https://teams.microsoft.com/l/meetupjoin/193ameeting_YWFmYjczY2QtODE1YS00ZmU4LWI3MjktNmYwMGQ5MTg4ZDk140thread.v2/0?context=7b22Tid223a2220b4933b-baad-433c-9c02-70edcc7559c6222c22Oid223a228e6e8bee-36f6-4255-a55d-f61857ec6e87227d
City: n/a
State: VT
Zip: n/a
Hearing Notes: https://teams.microsoft.com/l/meetupjoin/193ameeting_YWFmYjczY2QtODE1YS00ZmU4LWI3MjktNmYwMGQ5MTg4ZDk140thread.v2/0?context=7b22Tid223a2220b4933b-baad-433c-9c02-70edcc7559c6222c22Oid223a228e6e8bee-36f6-4255-a55d-f61857ec6e87227d

Contact Information

Information for Primary Contact

PRIMARY CONTACT PERSON - A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE.

Level: Primary
Name: Russ McCracken
Agency: Department of Financial Regulation
Address: 89 Main Street
City: Montpelier
State: VT
Zip: 05620
Telephone: 802-828-3301
Fax:

Email: russ.mccracken@vermont.gov

[SEND A COMMENT](#)

Website Address: <https://dfr.vermont.gov/about-us/legal-general-counsel/proposed-rules-and-public-comment>

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Information for Secondary Contact

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.

Level: Secondary
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Keyword Information

Keywords:

Vermont Securities Regulation
Vermont Uniform Securities Act
broker dealer
investment advisor
victim restitution assistance

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FROM: APA Coordinator, VSARA

Date of Fax: February 24, 2026

RE: The "Proposed State Rules " ad copy to run on

November 6, 2025

PAGES INCLUDING THIS COVER MEMO:

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***NOTE* 8-pt font in body. 12-pt font max. for headings - single space body. Please include dashed lines where they appear in ad copy. Otherwise minimize the use of white space. Exceptions require written approval.**

If you have questions, or if the printing schedule of your paper is disrupted by holiday etc. please contact VSARA at 802-828-3700, or E-Mail sos.statutoryfilings@vermont.gov, Thanks.

PROPOSED STATE RULES

By law, public notice of proposed rules must be given by publication in newspapers of record. The purpose of these notices is to give the public a chance to respond to the proposals. The public notices for administrative rules are now also available online at <https://secure.vermont.gov/SOS/rules/>. The law requires an agency to hold a public hearing on a proposed rule, if requested to do so in writing by 25 persons or an association having at least 25 members.

To make special arrangements for individuals with disabilities or special needs please call or write the contact person listed below as soon as possible.

To obtain further information concerning any scheduled hearing(s), obtain copies of proposed rule(s) or submit comments regarding proposed rule(s), please call or write the contact person listed below. You may also submit comments in writing to the Legislative Committee on Administrative Rules, State House, Montpelier, Vermont 05602 (802-828-2231).

Vermont Securities Regulations

Vermont Proposed Rule: 25P038

AGENCY: Department of Financial Regulation

CONCISE SUMMARY: The Vermont Securities Regulations set out requirements for issuing securities in Vermont and regulating those who provide investment advice and offer and sell securities to the public. The primary changes include: for investment companies offering federally covered securities in Vermont, the revised Rule mandates electronic filings through a system to be designated by the Commissioner (allowed but not required under the current Rule); adding a requirement that Vermont domiciled investment advisers controlling client funds carry errors and omissions insurance; clarifying provisions for administering restitution assistance for victims of securities violations, including the application process; adding into regulation a current Department policy governing the privacy of client financial information held by broker-dealers and investment advisers; updating certain provisions to match national model rules from North American Securities Administrators Association; and drafting changes for clarity.

FOR FURTHER INFORMATION, CONTACT: Russ McCracken, Assistant General Counsel, Department of Financial Regulation, 89 Main Street, Montpelier, VT 05620 Tel: 802-828-3301 E-mail: russ.mccracken@vermont.gov
URL: <https://dfr.vermont.gov/about-us/legal-general-counsel/proposed-rules-and-public-comment>.

FOR COPIES: Amanda Smith, Deputy Commissioner, Department of Financial Regulation, 89 Main Street, Montpelier, VT 05620 Tel: 802-828-3420 E-mail: amanda.smith@vermont.gov
