

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, MAY 13, 2013

CLERK'S OFFICE
CONTROL CENTER
2013 MAY 13 A 10:56

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

Ex Parte: In the matter of
Adopting a Revision to the Rules
Governing the Virginia Securities Act

CASE NO. SEC-2012-00038

ORDER ADOPTING AMENDED RULES

By order entered on December 21, 2012, all interested persons were ordered to take notice ("Order to Take Notice") that the State Corporation Commission ("Commission") would consider the adoption of revisions to Chapters 10, 20, 30, 40, 80 and 100 of Title 21 of the Virginia Administrative Code entitled Rules Governing the Virginia Securities Act ("Rules"). On January 4, 2013, the Division of Securities and Retail Franchising ("Division") e-mailed the Order to Take Notice of the proposed regulations to all interested parties pursuant to the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia.

The Order to Take Notice described the proposed regulations and afforded interested parties an opportunity to file comments with the Office of the Clerk of the Commission ("Clerk") on or before March 1, 2013. The Financial Services Institute, Inc. ("FSI"), the Securities Industry and Financial Markets Association ("SIFMA"), Barry Emswiler, S. Brian Farmer, and Robert P. Howard filed timely comments. No request for a hearing was filed with the Clerk.

Of the five filed comments, most were generally supportive of the proposed regulations. However, some commenters suggested changes or disagreed with certain of the proposed revisions.

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FSI disagreed with the proposed revisions to 21 VAC 5-80-170, stating that the proposed revisions would add a new annual physical inspection requirement, and the new requirement would be burdensome and non-uniform.

SIFMA filed several comments regarding the proposed regulations, including: (1) its concern regarding the proposed definition of social media, particularly that the definition conflicts with state law governing privacy, and (2) the revision of 21 VAC 5-20-260 F regarding supervision.

Mr. Emswiler commented that the proposed revisions to custody requirements in Rule 21 VAC 5-80-146 no longer provide for an exemption for family trusts as does the current exemption.

Mr. Farmer, on behalf of the Virginia-based law firm of Hirschler Fleischer, filed two comments regarding proposed Rule 21 VAC 5-80-146. These comments concerned: (1) the departure from Rule 206(4)-2 of the Investment Advisers Act of 1940, as amended, and the additional cost imposed by a requirement that private hedge fund advisors engage an independent party under proposed Rule 21 VAC 5-80-146 to review the underlying assets of the fund, and (2) a request to revise the definition of "independent party" in clauses 3 and 4 of proposed Rule 21 VAC 5-80-146 to allow a private fund advisor to engage the same administrator for multiple private funds managed by the private fund advisor.

Mr. Howard, on behalf of the law firm of Murphy & McGonigle, filed comments requesting that the Commission: (1) define the term "annually" in proposed Rules 21 VAC 5-20-260 and 21 VAC 5-80-170; (2) clarify its expectations regarding the types of information that a broker-dealer should consider to ensure that its recommendation of a security

to a customer is suitable under 21 VAC 5-20-280 A 3; (3) define the term "unreasonable"; and (4) provide for an exemption for family trusts in proposed Rule 21 VAC 5-80-146.

The Division filed its Response to the Comments with the Clerk on April 12, 2013.¹ As a result of these comments and its final review of the proposed Rules, the Division recommended that the proposed Rules be further revised as follows:

(1) Remove the definition of and reference to the term "social media" in Rule 21 VAC 5-10-40.

(2) Amend 21 VAC 5-20-30 A to add "or non-renewal under §13.1-505 E."

(3) Amend proposed Rule 21 VAC 5-80-146 to add a family exemption. This provision is found in subdivision C 6 of the Rule.

(4) Amend Rule 21 VAC 5-20-260 F to remove the language "have not violated any" to "are in compliance with," based on the SIFMA comment. Amend Rule 21 VAC 5-80-170 F to conform this supervisory language in the complementary rule governing state-covered investment advisors.

(5) Amend 21 VAC 5-20-280 to: (a) revise subsections A and B as requested by the Virginia Code Commission, and (b) clarify subdivision A 31.

(6) Amend Rule 21 VAC 5-20-330 B to add a reference to a Financial Industry Regulatory Authority rule, as requested by the Virginia Code Commission.

(7) Amend Rule 21 VAC 5-20-330 revising subdivision C 2 and removing references to the term "social media" from subdivision C 4.

(8) Add "amended by SR-FINRA-2008-0026, effective December 15, 2008" to the list of

¹ The Division attached an exhibit to the Response proposing revisions that resulted from the comments and from its final review of the proposed regulations.

"DOCUMENTS INCORPORATED BY REFERENCE (21VAC5-20)" at the end of the Rules as requested by the Virginia Code Commission.

The Division did not recommend that the Commission make the following requested revisions:

(1) Mr. Farmer's requested revision to Rule 21 VAC 5-80-146 to allow private hedge fund advisors to engage the same independent party to review multiple hedge funds or to add a definition for the term "independent party." The Division stated that the proposed regulation focuses on private hedge funds that would fall under state regulatory authority, and noted that investment advisors regulated by the states are not governed by the Investment Advisers Act of 1940. With regard to adding a definition for the term "independent party," the Division stated that the proposed definition is derived from the definition used by all the states on the uniform registration form for all state investment advisors, and adding the language suggested by Mr. Farmer would cause the proposed Rule not to be uniform with other state regulations.

(2) Mr. Howard's requested revisions to: (a) Rule 21 VAC 5-20-260 and 21 VAC 5-80-170 to add a definition for the term "annually," (b) Rule 21 VAC 5-20-280 A 3 to clarify the broker-dealer information gathering requirements to determine customer suitability, and (c) 21 VAC 5-20-280 A 15 d to add a definition for the term "unreasonable." Regarding Mr. Howard's request to define "annually," the Division stated that defining it in the manner suggested by the commenter would permit a broker-dealer or investment advisor to avoid conducting reviews in the first two years. Further, the Division points out that the same language has been in the regulation for many years and there have been no issues to date with the plain reading of the clause. Regarding Mr. Howard's second suggested revision, the Division states that the state and federal regulatory authorities impose substantially the same requirements on

broker-dealers to determine the suitability of investments for their customers. Finally, regarding Mr. Howard's request to add a definition for the term "unreasonable," the Division pointed out that this term has been in the Commission's regulations for many years, and is not defined specifically because the industry standard changes or is different based on industry practice in a particular area, the type of product offered, and the method for which the product is being offered.

In addition, in response to FSI's comment stating that the proposed revision to 21 VAC 5-80-170 would add a new annual physical inspection requirement, the Division stated that the proposed revisions only shift the requirement from subsection E to subsection F.

NOW THE COMMISSION, upon consideration of the proposed amendments to the Rules, the comments filed, and the Division's response and recommendations, finds that the proposed amendments to the Rules should be adopted, as revised and appended hereto.

Accordingly, IT IS ORDERED THAT:

- (1) The proposed Rules, as attached hereto, and made a part hereof, are hereby ADOPTED effective June 3, 2013.
- (2) This matter is dismissed from the Commission's docket, and the papers herein shall be placed in the file for ended causes.
- (3) AN ATTESTED COPY of this Order shall be sent to each of the following by regular mail by the Division to: Mr. Chris Hayes, Financial Services Institute, Inc., 607 14th Street, N.W., Suite 750, Washington, D.C. 20005; Mr. Barry Emswiler, 12708 Saylers Creek Lane, Herndon, Virginia 20170; Nancy Donohoe Lancia, Managing Director, State Government Affairs, SIFMA, 120 Broadway, 35th Floor, New York, New York 10271; Mr. S. Brian Farmer, Hirschler Fleischer, 2100 East Cary Street, Richmond, Virginia 23223; and Robert P. Howard,

Jr., Murphy & McGonigle, 555 18th Street N.W., Washington, D.C. 20004; the North American Securities Administrators Association, Inc., 750 First Street, N.E., Suite 1140, Washington, D.C. 20002; and a copy shall be delivered to the Commission's Division of Information Resources and Office of General Counsel.

(4) The Commission's Division of Information Resources shall cause a copy of this Order, together with the adopted amendments to Chapters 10, 20, 30 40, 80 and 100 of Title 21, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the *Virginia Register of Regulations*.

(5) The Commission's Division of Information Resources shall make available this Order and the attached adopted amendments on the Commission's website:

<http://www.scc.virginia.gov/case>.

**STATE CORPORATION COMMISSION, DIVISION OF SECURITIES AND RETAIL
FRANCHISING**

Rule Changes_2012_Securities

21VAC5-10-40. Definitions.

As used in this title, the following regulations and forms pertaining to securities, instructions and orders of the commission, the following meanings shall apply:

"Act" means the Securities Act contained in Chapter 5 (§ 13.1-501 et seq.) of Title 13.1 of the Code of Virginia.

"Applicant" means a person on whose behalf an application for registration or a registration statement is filed.

"Application" means all information required by the forms prescribed by the commission as well as any additional information required by the commission and any required fees.

"Bank Holding Company Act of 1956" (12 USC § 1841 et seq.) means the federal statute of that name as now or hereafter amended.

"Boiler room tactics" mean operations or high pressure tactics utilized in connection with the promotion of speculative offerings by means of an intensive telephone campaign or unsolicited calls to persons not known by or having an account with the salesman or broker-dealer represented by him, whereby the prospective purchaser is encouraged to make a hasty decision to invest, irrespective of his investment needs and objectives.

"Breakpoint" means the dollar level of investment necessary to qualify a purchaser for a discounted sales charge on a quantity purchase of open-end management company shares.

"Commission" means State Corporation Commission.

"CRD" means the Central Registration Depository operated by FINRA as the central licensing and registration system for the United States securities industry and its regulators.

"Division" means Division of Securities and Retail Franchising of the Virginia State Corporation Commission.

"Federal covered advisor" means any person who is registered or required to be registered under § 203 of the Investment Advisers Act of 1940 as an "investment adviser."

"FINRA" means the Financial Industry Regulatory Authority, Inc. or any of its predecessors.

"IARD" means the Investment Advisor Registration Depository operated by FINRA as the central licensing and registration system for the United States securities industry and its regulators.

"Investment Advisers Act of 1940" (15 USC § 80b-1 et seq.) means the federal statute of that name as now or hereafter amended.

Notwithstanding the definition in § 13.1-501 of the Act, "investment advisor representative" as applied to a federal covered advisor only includes an individual who has a "place of business" (as that term is defined in rules or regulations promulgated by the SEC) in this Commonwealth and who either:

1. Is an "investment advisor representative" as that term is defined in rules or regulations promulgated by the SEC; or
2. a. Is not a "supervised person" as that term is defined in the Investment Advisers Act of 1940; and
 - b. Solicits, offers or negotiates for the sale of or sells investment advisory services on behalf of a federal covered advisor.

"Investment Company Act of 1940" (15 USC § 80a-1 et seq.) means the federal statute of that name as now or hereafter amended.

"NASAA" means the North American Securities Administrators Association, Inc.

~~"NASD" means the National Association of Securities Dealers, Inc., or its successor, the Financial Industry Regulatory Authority, Inc. (FINRA).~~

"Notice" or "notice filing" means, with respect to a federal covered advisor or federal covered security, all information required by the regulations and forms prescribed by the commission and any required fee.

"Qualified investment advisor representative" means a person who possesses the requisite skill, knowledge, and experience to be designated to supervise other investment advisor representatives. A qualified investment advisor representative shall comply with the examination or qualification requirements pursuant to 21VAC5-80-130.

"Registrant" means an applicant for whom a registration or registration statement has been granted or declared effective by the commission.

"SEC" means the United States Securities and Exchange Commission.

"Securities Act of 1933" (15 USC § 77a et seq.) means the federal statute of that name as now or hereafter amended.

"Securities Exchange Act of 1934" (15 USC § 78a et seq.) means the federal statute of that name as now or hereafter amended.

~~["Social media" means various online technologies that integrate social interaction and content creation using highly accessible and scalable communication techniques including, but not limited to, blogs, message boards, podcasts, texts, tweets, wikis, and vlogs. Examples of~~

~~social media include, but are not limited to, Facebook, LinkedIn, Wikipedia, MySpace, Gather.com, YouTube, and Second Life.]~~

"Solicitation" means an offer to one or more persons by any of the following means or as a result of contact initiated through any of these means:

1. Television, radio, [~~social media,~~] 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 or personal relationship with each of the offerees;
5. Seminar or group meeting, unless the offeror has a substantial preexisting business relationship or close family or personal 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 or personal relationship with each of the offerees.

FORMS (21VAC5-10)

Broker-Dealer and Agent Forms

~~Form BD - Uniform Application for Broker-Dealer Registration (2/98).~~

Form BD - Uniform Application for Broker-Dealer Registration (rev. 1/08).

Form S.A.11 - Broker-Dealer's Surety Bond (rev. 7/99).

Form S.A.2 - Application for Renewal of a Broker-Dealer's Registration (rev. 7/99).

Form S.D.4 - Application for Renewal of Registration as an Agent of an Issuer (1997).

Form S.D.4.A - Non-NASD Broker-Dealer or Issuer Agents to be Renewed Exhibit (1974).

Form S.D.4.B - Non-NASD Broker-Dealer or Issuer Agents to be Canceled with no disciplinary history (1974).

Form S.D.4.C - Non-NASD Broker-Dealer or Issuer Agents to be Canceled with disciplinary history (1974).

~~Form BDW - Uniform Notice of Termination or Withdrawal of Registration as a Broker-Dealer (rev. 4/89).~~

Form BDW - Uniform Notice of Termination or Withdrawal of Registration as a Broker-Dealer (rev. 4/07).

~~Rev. Form U - Uniform Application for Securities Industry Registration or Transfer (11/97).~~

~~Rev. Form U - Uniform Termination Notice for Securities Industry Registration (11/97).~~

Rev. Form U4 - Uniform Application for Securities Industry Registration or Transfer (rev. 5/09).

Rev. Form U5 - Uniform Termination Notice for Securities Industry Registration (rev. 5/09).

Investment Advisor and Investment Advisor Representative Forms

~~Form ADV - Uniform Application for Registration of Investment Advisors (rev. 1/01).~~

~~Form ADV W - Notice of Withdrawal from Registration as an Investment Advisor (rev. 1/01).~~

Form ADV, Uniform Application for Registration of Investment Advisors (rev. 10/12).

Part IA.

Part IB.

Part 2.

Form ADV-W - Notice of Withdrawal from Registration as an Investment Advisor (rev. 11/10).

Surety Bond Form (rev. 7/99).

~~Rev. Form U - Uniform Application for Securities Industry Registration or Transfer (11/97).~~

~~Rev. Form U - Uniform Termination Notice for Securities Industry Registration (11/97).~~

Rev. Form U - Uniform U4 - Uniform Application for Securities Industry Registration or Transfer (rev. 5/09).

Rev. Form U - Uniform U5 - Uniform Termination Notice for Securities Industry Registration (rev. 5/09).

Form S.A.3 - Affidavit for Waiver of Examination (rev. 7/99).

Form S.A.15 - Investment Advisor Representative Multiple Employment Agreement (eff. 7/07).

Form S.A.16 - Agent Multiple Employment Agreement (eff. 7/07).

~~Form IA XRF - Cross Reference Between ADV Part II, ADV Part 1A/1B, Schedule F, Contract and Brochure (eff. 7/10).~~

Securities Registration and Notice Filing Forms

~~Form U - Uniform Application to Register Securities (7/81).~~

~~Form U - Uniform Consent to Service of Process (7/81).~~

~~Form U-a - Uniform Form of Corporate Resolution (rev. 7/99).~~

Form U-1 - Uniform Application to Register Securities (7/81).

Form U-2 - Uniform Consent to Service of Process (7/81).

Form U-2-a - Uniform Form of Corporate Resolution (rev. 7/99).

Form S.A.4 - Registration by Notification - Original Issue (rev. 11/96).

Form S.A.5 - Registration by Notification - Non-Issuer Distribution (rev. 11/96).

Form S.A.6 - Registration by Notification - Pursuant to 21VAC5-30-50 Non-Issuer Distribution "Secondary Trading" (1989).

Form S.A.8 - Registration by Qualification (7/91).

~~Form S.A.10 - Request for Refund Affidavit (Unit Investment Trust) (rev. 7/99).~~

Form S.A.12 - Escrow Agreement (1971).

Form S.A.13 - Impounding Agreement (rev. 7/99).

Form VA - Parts 1 and 2 - Notice of Limited Offering of Securities (rev. 11/96).

Form NF - Uniform Investment Company Notice Filing (4/97).

Part I

Broker-Dealers

21VAC5-20-10. Application for registration as a broker-dealer.

A. Application for registration as a broker-dealer by a ~~NASD~~ FINRA member shall be filed in compliance with all requirements of the ~~NASAA/NASD Central Registration Depository system~~ CRD and in full compliance with forms and regulations prescribed by the commission and shall include all information required by such forms.

B. An application shall be deemed incomplete for ~~purposes of applying for~~ registration as a broker-dealer by a ~~NASD~~ FINRA member unless the applicant submits the following executed forms, fee, and information ~~are submitted~~:

1. Form BD.

2. Statutory fee payable to ~~the NASD~~ FINRA in the amount of \$200 pursuant to § 13.1-505 F of the Act.

3. ~~Any other information the commission may require~~ Evidence of approved FINRA membership.

4. Evidence of at least one qualified agent registration pending on CRD.

5. Any other information the commission may require.

C. Application for registration as for any other non-FINRA member broker-dealer shall be filed with the commission at its Division of Securities and Retail Franchising or such other entity designated by the commission on and in full compliance with forms prescribed by the commission and shall include all information required by such forms.

D. An application shall be deemed incomplete for ~~purposes of applying for~~ registration as a non-FINRA member broker-dealer unless the applicant submits the following executed forms, fee, and information ~~are submitted~~ to the commission:

1. Form BD.

2. Statutory fee payable to the Treasurer of Virginia in the amount of \$200 pursuant to § 13.1-505 F of the Act.

3. Financial statements required by 21VAC5-20-80.

4. Evidence of exam requirements for principals required by 21VAC5-20-70.

5. ~~Any other information the commission may require~~ Evidence of at least one qualified individual with an agent registration pending with the division on behalf of the broker-dealer.

6. Any other information the commission may require.

E. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

21VAC5-20-30. Renewals.

A. To renew its registration, a ~~NASD~~ FINRA member broker-dealer will be billed by ~~the NASAA/NASD Central Registration Depository CRD~~ the statutory fee of \$200 prior to the annual expiration date. A ~~renewal of registration~~ renewal shall be granted as a matter of course upon payment of the proper fee unless the registration was, or the renewal would be, subject to revocation under § 13.1-506 [or non-renewal under §13.1-505 E] .

B. Any ~~other~~ non-FINRA broker-dealer shall file with the commission at its Division of Securities and Retail Franchising the following items at least 30 days prior to the expiration of registration:

1. Application for Renewal of a Broker-Dealer's Registration (Form S.A.2) accompanied by the statutory fee of \$200.

2. Financial Statements:

- a. The most recent certified financial statements prepared by an independent accountant in accordance with generally accepted accounting principles, as promulgated by the American Institute of Certified Public Accountants. "Certified Financial Statements," "Financial Statements" and "Independent Accountant" shall have the same definition as those terms are defined under subsection B of 21VAC5-20-80.

b. If the most recent certified financial statements precede the date of renewal by more than 120 days, the registrant must submit: ~~(1) The~~ the certified financial statements required by subdivision 2 a of this subsection within 60 days after the date of the financial statements; ~~and,~~

~~(2) A copy of the most recent Part II or Part II-A filing of Form X-17A-5 prepared in accordance with Securities Exchange Act Rule 17a-5 (17 CFR 240.17a-5).~~

c. Whenever the commission so requires, an interim financial report shall be filed as of the date and within the period specified in the commission's request.

21VAC5-20-40. Updates and amendments.

A. A NASD FINRA member broker-dealer shall update its Form BD as required by Form BD instructions and shall file all such amendments on and in compliance with all requirements of ~~the NASAA/NASD Central Registration Depository system~~ CRD and in full compliance with the regulations prescribed by the commission.

B. Any ~~other~~ non-FINRA member broker-dealer shall update its Form BD as required by Form BD instructions and shall file all such amendments with the commission at its Division of Securities and Retail Franchising.

C. All broker-dealers must have at least one agent registered in Virginia as long as the firm maintains its registration.

21VAC5-20-50. Termination of registration.

A. When a NASD FINRA member broker-dealer desires to terminate its registration, it shall file Form BDW in compliance with all requirements of ~~the NASAA/NASD Central Registration Depository system~~ CRD and in full compliance with the regulations prescribed by the ~~Commission~~ commission.

B. Any other non-FINRA member broker-dealer shall file a Form BDW with the Commission commission at its Division of Securities and Retail Franchising.

21VAC5-20-80. Financial statements and reports.

A. All financial statements required for registration of broker-dealers shall be prepared in accordance with generally accepted accounting principles, as promulgated by the American Institute of Certified Public Accountants.

B. Definitions:

"Certified financial statements" ~~shall be defined as~~ means those financial statements examined and reported upon with an opinion expressed by an independent accountant and shall include at least the following information:

1. Date of report, manual signature, city and state where issued, and identification without detailed enumeration of the financial statements and schedules covered by the report;
2. Representations as to whether the audit was made in accordance with generally accepted auditing standards and designation of any auditing procedures deemed necessary by the accountant under the circumstances of the particular case which may have been omitted, and the reason for their omission; nothing in this section however shall be construed to imply authority for the omission of any procedure which independent accountants would ordinarily employ in the course of an audit for the purpose of expressing the opinions required under this section;
3. Statement of the opinion of the accountant in respect to the financial statements and schedules covered by the report and the accounting principles and practices reflected therein, and as the consistency of the application of the accounting principles, or as to

any changes in such principles which would have a material effect on the financial statements;

4. Any matters to which the accountant takes exception shall be clearly identified, the exemption thereto specifically and clearly stated, and, to the extent practicable, the effect of each such exception on the related financial statements given.

"Financial statements" ~~shall be defined as~~ means those reports, schedules and statements, prepared in accordance with generally accepted accounting principles and which contain at least the following information unless the context otherwise dictates:

1. Statement of Financial Condition or Balance Sheet;
2. Statement of Income;
3. Statement of ~~Changes in Financial Position~~ Cash Flows;
4. Statement of Changes in Stockholder's/Partner's/Proprietor's/Member's Equity;
5. Statement of Changes in Liabilities Subordinated to Claims of General Creditors;
6. Schedule of the Computation of Net Capital Under Rule 15c3-1 of the Securities Exchange Act of 1934 (17 CFR 240.15c3-1);
7. Schedule of the Computation for Determination of the Reserve Requirements under Exhibit A of Rule 15c3-3 and Information Relating to the Possession and Control Requirements under Rule 15c3-3 of the Securities Exchange Act of 1934 (17 CFR 240.15c3-3).

"Independent accountant" ~~shall be defined as~~ means any certified public accountant in good standing and entitled to practice as such under the laws of the accountant's principal place of business or residence, and who is, in fact, not controlled by, or under common control with, the entity or person being audited; ~~for~~.

1. For purposes of this definition, an accountant will be considered not independent with respect to any person or any of its parents, its subsidiaries, or other affiliates in which, during the period of the accountant's professional engagements to examine the financial statements being reported on ~~or~~ at the date of the report, the accountant or the firm or a member thereof had, or was committed to acquire, any direct financial interest or any material indirect financial interest; or in which, during the period of the accountant's professional ~~engagement~~ engagements to examine the financial statements being reported on, at the date of the report or during the period covered by the financial statements, the accountant or the firm or a member thereof was connected as a promoter, underwriter, voting trustee, director, officer, or employee, ~~except that a.~~

2. A firm will not be deemed not independent in regard to a particular person if a former officer or employee of such person is employed by the firm and such individual has completely disassociated himself from the person and its affiliates covering any period of employment by the person.

3. For partners in the firm participating in the audit or located in an office of the firm participating in a significant portion of the audit; and in determining whether an accountant may in fact be not independent with respect to a particular person, the commission will give appropriate consideration to all relevant circumstances, including evidence bearing on all relationships between the accountant and that person or any affiliate thereof, and will not confine itself to the relationships existing in connection with the filing of reports with the commission.

"Review of financial statements" ~~shall be defined as~~ means those financial statements ~~prepared~~ reviewed by an independent accountant, and shall include at least the following:

1. Date of report, manual signature, city and state where issued, and identification without detailed enumeration of the financial statements and schedules covered by the report;
2. Representations that the review was performed in accordance with standards established by the American Institute of Certified Public Accountants;
3. Representations that the accountant is not aware of any material modification that should be made to the financial statements in order for them to be in conformity with generally accepted accounting principles, other than those modifications, if any, indicated in the accountant's report.

"Unaudited financial statements" ~~shall be defined as~~ means those financial statements prepared in a format acceptable to the commission not accompanied by the statements and representations as set forth in the definitions of "certified financial statements" or "review of financial statements" of this subsection, and shall include an oath or affirmation that such statement or report is true and correct to the best knowledge, information, and belief of the person making such oath or affirmation; ~~such~~ The oath or affirmation shall be made before a person authorized to administer ~~such~~ the oath or affirmation, and shall be made by an officer of the entity for whom the financial statements were prepared.

C. Requirements for broker-dealers:

1. Every broker-dealer applicant ~~that is~~ subject to the Securities Exchange Act of 1934 shall file with the commission at its Division of Securities and Retail Franchising upon its request any financial information ~~that is~~ required to be provided to the SEC, or its designee, under the Securities Exchange Act of 1934.
2. All other broker-dealer applicants not subject to subdivision 1 of this subsection, unless exempted under subdivision 3 of this subsection, shall file financial statements as

of a date within 90 days prior to the date of filing its application for registration, ~~which~~.
The statements need not be audited provided that the applicant shall also file audited financial statements as of the end of the most recent fiscal year end.

3. Those broker-dealer applicants ~~which have been~~ in operation for a period of time less than 12 months, and for which audited financial statements have not been prepared or are not available, and ~~which~~ are not registered with the SEC, a national securities association or a national securities exchange, shall be permitted to file ~~a review of~~ financial statements ~~prepared~~ reviewed by an independent accountant provided the following conditions are met:

- a. ~~Such~~ The financial statements shall be as of a date within 30 days prior to the date of filing an application for registration; and
- b. ~~Such~~ The financial statements shall be ~~prepared~~ reviewed by an independent accountant as defined under subsection B of this section and in accordance with the definitions of "financial statements" and "review of financial statements" in subsection B and in accordance with subdivision 3 of this subsection.

Part II

Broker-Dealer Agents

21VAC5-20-90. Application for registration as a broker-dealer agent.

A. Application for registration as an agent of a ~~NASD~~ FINRA member shall be filed on and in compliance with all requirements of ~~the NASAA/NASD Central Registration Depository system~~ CRD and in full compliance with the forms and regulations prescribed by the commission. The application shall include all information required by such forms.

An application shall be deemed incomplete for ~~purposes of applying for~~ registration as a broker-dealer agent unless the applicant submits the following executed forms, fee, and information ~~are submitted~~:

1. Form ~~U-4~~ U4.
2. The statutory fee made payable to FINRA in the amount of \$30. ~~The check must be made payable to the NASD.~~
3. Evidence in the form of a ~~NASD~~ FINRA exam report of passing within the two-year period immediately preceding the date of the application: (i) the Uniform Securities Agent State Law Examination, Series 63; (ii) the Uniform Combined State Law Examination, Series 66; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.
4. Any other information the commission may require.

B. Application for registration for ~~all other~~ non-FINRA member broker-dealer agents shall be filed on and in compliance with all requirements and forms prescribed by the commission.

An application shall be deemed incomplete for ~~purposes of applying for~~ registration as a broker-dealer agent unless the applicant submits the following executed forms, fee, and information ~~are submitted~~:

1. Form ~~U-4~~ U4.
2. The statutory fee in the amount of \$30. The check must be made payable to the Treasurer of Virginia.
3. Evidence in the form of a ~~NASD~~ FINRA exam report of passing within the two-year period immediately preceding the date of the application: (i) the Uniform Securities Agent

State Law Examination, Series 63; (ii) the Uniform Combined State Law Examination, Series 66; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.

4. Any other information the commission may require.

C. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

21VAC5-20-95. Employment of an agent by more than one broker-dealer.

A. In accordance with § 13.1-504 B of the Act, an agent may be employed by more than one broker-dealer if all of the following conditions are satisfied:

1. Each employing broker-dealer is under common ownership and control as defined in subsection B of this section or as provided in subdivision C 2 c under 21VAC5-20-330.
2. Each employing broker-dealer is registered in accordance with 21VAC5-20-10.
3. Each employing broker-dealer consents in writing to the employment of the agent by each of the other employing broker-dealers.
4. Each employing broker-dealer agrees to be responsible for the employment activity of the agent.
5. The agent is registered in accordance with 21VAC5-20-90 by and on behalf of each employing broker-dealer.

6. Each employing broker-dealer executes an Agent Multiple Employment Agreement (Form S.A.16), and the executed agreement is filed with the commission at its Division of Securities and Retail Franchising prior to the agent transacting business in Virginia on behalf of such broker-dealer.

7. A new Agent Multiple Employment Agreement is executed and filed with the commission at its Division of Securities and Retail Franchising within 15 days after any information in a current agreement on file with the commission becomes materially deficient, incomplete or inaccurate.

B. The term "common ownership and control" as used in this section means ~~possession of the same individual or individuals possess~~ at least a 50% ownership interest in each employing broker-dealer ~~by the same individual or individuals.~~

21VAC5-20-110. Renewals.

A. To renew the ~~registration(s)~~ registration or registrations of its broker-dealer ~~agent(s)~~ agent or agents, a ~~NASD~~ FINRA member broker-dealer will be billed by the ~~NASAA/NASD Central Registration Depository system~~ CRD the statutory fee of \$30 per broker-dealer agent. A renewal of ~~registration(s)~~ registration or registrations shall be granted as a matter of course upon payment of the proper ~~fee(s)~~ fee or fees unless the registration was, or the renewal would be, subject to revocation under § 13.1-506 of the Code of Virginia.

B. ~~Any other~~ A non-FINRA member broker-dealer shall file with the commission at its Division of Securities and Retail Franchising the following items at least 30 days prior to the expiration of registration.

1. Agents to be Renewed (Form S.D.4.A) accompanied by the statutory fee of \$30 for each agent whose registration is to be renewed. The check must be made payable to the Treasurer of Virginia.

2. If applicable, Agents to be Canceled with clear records (Form S.D.4.B).

3. If applicable, Agents to be Canceled without clear records (Form S.D.4.C).

21VAC5-20-120. Updates and amendments.

A broker-dealer agent shall amend or update Form ~~U-4~~ U4 as required by the "Amendment Filings" provisions set forth under "How to Use Form ~~U-4~~ U4." All filings shall be made ~~with the NASAA/NASD Central Registration Depository system~~ on CRD for agents of ~~NASD~~ FINRA member firms or with the commission at its Division of Securities and Retail Franchising for all other broker-dealer agents.

21VAC5-20-130. Termination of registration.

A. When a broker-dealer agent terminates ~~a connection~~ his registration with a broker-dealer, or a broker-dealer terminates ~~connection with an agent~~ agent's registration, the broker-dealer shall file notice of such termination on Form ~~U-5~~ U5 within 30 calendar days of the date of termination. All filings shall be made ~~with the NASAA/NASD Central Registration Depository system~~ on CRD for agents of ~~NASD~~ FINRA member firms or with the commission at its Division of Securities and Retail Franchising for all other broker-dealer agents.

B. If an agent learns that the broker-dealer has not filed the appropriate notice, the agent may file notice with the commission at its Division of Securities and Retail Franchising. The commission may terminate the agent's registration if the commission determines that a broker-dealer (i) is no longer in existence, (ii) has ceased conducting securities business, or (iii) cannot reasonably be located.

21VAC5-20-150. Examination/qualification.

A. An individual applying for registration as a broker-dealer agent shall be required to show evidence of passing within the two-year period immediately preceding the date of the application: (i) the Uniform Securities Agent State Law Examination, Series 63; (ii) the Uniform

Combined State Law Examination, Series 66; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.

B. Any individual who ~~has met~~ meets the qualifications set forth in subsection A of this section and ~~has been~~ is registered in any state jurisdiction requiring registration within the two-year period immediately preceding the date of the filing of an application shall not be required to comply with the examination requirement set forth in subsection A of this section, except that the commission may require additional examinations for any individual found to have violated any federal or state securities laws.

C. Any registered agent or agent in the process of applying for registration renewal shall further demonstrate his business knowledge by complying with the applicable continuing education requirements set forth in any of the following:

1. Rule 1250 of the FINRA By Laws, as such provisions existed on October 17, 2011;

2. Rule 345 A of the NYSE Rules, as such provisions existed on July 1, 1995;

3. Rule G-3(h) of the Municipal Securities Rulemaking Board, as such provisions existed on July 1, 1995;

4. Rule 341 A of the NYSE Market Rules, as such provisions existed on May 14, 2012;

5. Rule 9.3A of the Chicago Board of Options Exchange, Inc., as such provisions existed on July 1, 1995; or

6. Article VI, Rule 11 of the Chicago Stock Exchange, Inc., as such provisions existed on July 1, 1995.

Part III

Agents of the Issuer

21VAC5-20-160. Application for registration as an agent of the issuer.

A. Application for registration as an agent of the issuer shall be filed on and in compliance with all requirements and forms prescribed by the commission.

B. An application shall be deemed incomplete ~~for purposes of applying~~ for registration as an agent of the issuer unless the following executed forms, fee and information are submitted:

1. Form ~~U-4~~ U4.

2. The statutory fee in the amount of \$30. The check must be made payable to the Treasurer of Virginia.

3. Evidence in the form of a ~~NASD~~ FINRA exam report of passing within the two-year period immediately preceding the date of the application: (i) the Uniform Securities Agent State Law Examination, Series 63; (ii) the Uniform Combined State Law Examination, Series 66, ~~and the General Securities Representative Examination, Series 7~~; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.

4. Any individual who meets the qualifications set forth in subdivision B 3 of this section and has been registered in any state jurisdiction as an agent requiring registration within the two-year period immediately preceding the date of the filing of an application shall not be required to comply with the examination ~~requirements~~ requirement set forth in subdivision B 3 of this section, except that the Director of Securities and Retail Franchising may require additional examinations for any individual found to have violated any federal or state securities laws.

5. Any other information the commission may require.

C. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

21VAC5-20-180. Renewals.

An issuer, on behalf of its ~~agent(s)~~ agent or agents, shall file with the ~~Commission~~ commission at its Division of Securities and Retail Franchising at least 30 days prior to the expiration of registration ~~an Agents to be Renewed Form~~ a registration renewal form (Form S.D.4) accompanied by the statutory fee of \$30 for each agent whose registration is to be renewed. The check must be made payable to the Treasurer of Virginia.

21VAC5-20-190. Updates and amendments.

An agent of the issuer shall amend or update ~~his/her~~ his Form ~~U-4~~ U4 as required by the "Amendment Filings" provisions set forth under "How to Use Form ~~U-4~~ U4." Filings shall be made with the ~~Commission~~ commission at its Division of Securities and Retail Franchising.

21VAC5-20-200. Termination of registration.

When an agent of the issuer terminates ~~a connection~~ his registration with an issuer, or an issuer terminates ~~connection with an agent~~ agent's registration, the issuer shall file notice of such termination on Form ~~U-5~~ U5 within 30 calendar days of the date of termination. Filings shall be made with the ~~Commission~~ commission at its Division of Securities and Retail Franchising.

21VAC5-20-220. Examination/qualification; waiver of examination requirement.

A. Except as described in subsection B of this section, an individual applying for registration as an agent of the issuer shall be required to provide evidence in the form of a ~~NASD~~ FINRA exam report of passing: (i) the Uniform Securities Agent State Law Examination, Series 63; (ii) the Uniform Combined State Law Examination, Series 66, ~~and the General Securities Representative Examination, Series 7~~; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.

B. The commission may, in a registered offering ~~that is~~ not being made to the general public or in a Small Company Offering Registration, waive the examination requirement for an officer or director of an issuer that is a corporation, or a general partner of an issuer ~~that is~~ of a limited partnership or a manager of an issuer that is a limited liability company who:

1. Will receive no commission or similar remuneration directly or indirectly in connection with the offer or sale of the issuer's securities; and
2. In the case of a small company offering registration, agrees to deliver to each prospective purchaser of a security to be issued by such issuer, at or before the time the offering document is required to be delivered, a copy of "A Consumer's Guide to Small Business Investments" prepared by NASAA (see CCH NASAA Reports ¶13676) and the application to register the agent is accompanied by an executed Affidavit Regarding Offers of Small Company Offering Registration (SCOR) Securities by Issuer Agents.

Part IV**Broker-Dealer and Agent Regulations****21VAC5-20-230. Notice of civil, criminal, administrative or arbitrational action.**

A. An applicant or a registrant shall notify the commission:

1. Within 30 calendar days of the date any complaint, pleading or notice is served or received giving notice of any civil, criminal or administrative charge or any arbitration proceeding or any formal order of investigation, including any such charge, proceeding or order by a self-regulatory organization registered under the Securities Exchange Act of 1934, against the applicant or registrant which directly or indirectly relates to the registration or sale of securities to any activity as a broker-dealer or agent or to any activity in which a breach of trust is alleged.

2. Within 30 calendar days of the date filed, any answer, reply or response to the complaint, pleading or notice referred to in subdivision 1 of this subsection.

3. Within 30 calendar days of the date of any decision, order or sanction rendered, or any appeal filed with respect to such decision, order or sanction, in regard to the complaint, pleading or notice referred to in subdivision 1 of this subsection.

B. A registrant who is a ~~NASD~~ FINRA member broker-dealer or is associated with a ~~NASD~~ FINRA member broker-dealer may file the notification required by subsection A of this section either with the commission's Division of Securities and Retail Franchising or on and in compliance with all requirements of ~~the NASAA/NASD Central Registration Depository system~~ CRD.

C. One copy of any item referred to in subdivision 1, 2 or 3 of this subsection shall be filed with the commission promptly following a request for same.

21VAC5-20-260. Supervision of agents.

A. A broker-dealer shall be responsible for the acts, practices, and conduct of its agents in connection with the sale of securities until such time as the agents have been properly terminated as provided by ~~21VAC5-20-60~~ 21VAC5-20-130.

B. Every broker-dealer shall exercise diligent supervision over the securities activities of all of its agents.

C. Every agent employed by a broker-dealer shall be subject to the supervision of a supervisor principal designated by such broker-dealer. ~~The supervisor may be the broker-dealer in the case of a sole proprietor, or a partner, officer, office manager or any qualified agent in the case of entities other than sole proprietorships.~~ All ~~designated supervisors~~ principals designated by the broker-dealer shall exercise reasonable supervision over the securities activities of all of the agents under their responsibility.

D. As part of its responsibility under this section, every broker-dealer shall establish, maintain and enforce written procedures, a copy of which shall be kept in each business office, which shall (i) set forth the procedures adopted by the broker-dealer to comply with the Act and regulations, including but not limited to the following duties imposed by this section, and (ii) state at which business office or offices the broker-dealer keeps and maintains the records required by 21VAC5-20-240:

1. The review and written approval by the designated supervisor of the opening of each new customer account;
2. The frequent examination of all customer accounts to detect and prevent irregularities or abuses;
3. The prompt review and written approval by a designated supervisor of all securities transactions by agents and all correspondence pertaining to the solicitation or execution of all securities transactions by agents;
4. The review and written approval by the designated supervisor of the delegation by any customer of discretionary authority with respect to the customer's account to the broker-

dealer or to a stated agent or agents of the broker-dealer and the prompt written approval of each discretionary order entered on behalf of that account; and

5. The prompt review and written approval of the handling of all customer complaints.

E. Every broker-dealer who has designated more than one ~~supervisor~~ principal pursuant to subsection C of this section shall designate ~~from among its partners, officers, or other qualified agents,~~ a ~~person~~ principal or group of ~~persons~~ principals, independent from the ~~designated business supervisor or supervisors~~ those that conduct direct agent supervision who shall: supervise and periodically review the activities of the principals designated pursuant to subsection C of this section.

~~1. Supervise and periodically review the activities of these supervisors designated pursuant to subsection C of this section; and~~

~~2. No less often than annually conduct a physical inspection of each business office of the broker-dealer to insure that the written procedures and compliance requirements are enforced.~~

All ~~supervisors~~ principals designated pursuant to ~~this subsection~~ subsections C and E shall exercise reasonable supervision over ~~the supervisors~~ those individuals under their responsibility to ensure compliance with ~~this subsection~~ these subsections.

F. Every broker-dealer shall no less often than annually conduct a physical inspection of each business office of the broker-dealer to ensure (i) the agent or agents at the respective business office [~~have not violated any~~ are in compliance with the] statutory provisions of the Act or regulations promulgated by the commission and (ii) the written procedures and compliance requirements of the broker-dealer are enforced.

For purposes of this section, the term "principal" means, but is not limited to, an individual engaged directly in (i) the management, direction, or supervision on a regular or continuous

basis on behalf of such broker-dealer of the following activities: sales, training, research, investment advice, underwriting, private placements, advertising, public relations, trading, maintenance of books or records, financial operations; or (ii) the training of persons associated with such broker-dealer for the management, direction, or supervision on a regular or continuous basis of any such activities.

21VAC5-20-280. Prohibited business conduct.

A. Every broker-dealer [and agent registered or required to be registered pursuant to § 13.1-505 of the Act] is required to observe high standards of commercial honor and just and equitable principles of trade in the conduct of [his its] business. The acts and practices described below [in this rule, among others,] are considered contrary to such standards and may constitute grounds for denial, suspension, or revocation of registration or such other action authorized by the Act. [The conduct set forth in subsections A through C of this section is not exhaustive.] No broker-dealer who is registered or required to be registered shall:

1. Engage in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers or in the payment upon request of free credit balances reflecting completed transactions of any of its customers, or take any action that directly or indirectly interferes with a customer's ability to transfer his account; provided that the account is not subject to any lien for moneys owed by the customer or other bona fide claim, including, but not limited to, seeking a judicial order or decree that would bar or restrict the submission, delivery or acceptance of a written request from a customer to transfer his account;
2. Induce trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

3. Recommend to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer ~~based upon reasonable inquiry concerning the customer's investment objectives, financial situation, risk tolerance and needs, and any other relevant information known by the broker-dealer.~~ The reasonable basis to recommend any such transaction to a customer shall be based upon the risks associated with a particular security, and the information obtained through the diligence and inquiry of the broker-dealer to ascertain the customer's investment profile. A customer's investment profile includes, but is not limited to, the customer's investment objectives, financial situation, risk tolerance and needs, tax status, age, other investments, investment experience, investment time horizon, liquidity needs, and any other relevant information known by the broker-dealer or of which the broker-dealer is otherwise made aware in connection with such recommendation;
4. Execute a transaction on behalf of a customer without authority to do so or, when securities are held in a customer's account, fail to execute a sell transaction involving those securities as instructed by a customer, without reasonable cause;
5. 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. Execute 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, or fail, prior to or at the opening of a margin account, to disclose to a noninstitutional customer the operation of a margin account and the risks associated with trading on margin at least as comprehensively as required by NASD FINRA Rule ~~2344~~ 2264;

7. Fail to segregate customers' free securities or securities held in safekeeping;
8. Hypothecate a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by Rules of the SEC;
9. Enter into a transaction with or for a customer at a price not reasonably related to the current market price of a security or receiving an unreasonable commission or profit;
10. Fail to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus, by the following means: (i) hard copy prospectus delivery or (ii) electronic prospectus delivery.

When a broker-dealer delivers a prospectus electronically, it must first allow its clients to affirmatively opt-in to the program. The acknowledgement of the opt-in may be by any written or electronic means, but the broker-dealer is required to acknowledge the opt-in. For any client that chooses not to opt-in to electronic delivery, the broker-dealer shall continue to deliver to the client a hard copy of the prospectus;

11. Introduce customer transactions on a "fully disclosed" basis to another broker-dealer that is not exempt under § 13.1-514 B 6 of the Act;
12. a. Charge unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of moneys due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;
 - b. Charge a fee based on the activity, value or contents (or lack thereof) of a customer account unless written disclosure pertaining to the fee, which shall include

information about the amount of the fee, how imposition of the fee can be avoided and any consequence of late payment or nonpayment of the fee, was provided no later than the date the account was established or, with respect to an existing account, at least 60 days prior to the effective date of the fee;

13. 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 such conditions as are stated at the time of the offer to buy or sell;

14. Represent that a security is being offered to a customer "at a market" or a price relevant to the market price unless the broker-dealer knows or has reasonable grounds to believe that a market for the security exists other than that made, created or controlled by the broker-dealer, or by any person for whom he is acting or with whom he is associated in the distribution, or any person controlled by, controlling or under common control with the broker-dealer;

15. ~~Effect any transaction in or~~ Offer, induce the purchase or sale of, or effect any transaction in, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:

a. Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

b. Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any security, has been or will be entered by or for the same or different parties 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 shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers;

c. Effecting, alone or with one 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. Entering into a transaction with a customer in any security at an unreasonable price or at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;

e. Contradicting or negating the importance of any information contained in a prospectus or other offering materials that would deceive or mislead or using any advertising or sales presentation in a deceptive or misleading manner;

f. Leading a customer to believe that the broker-dealer or agent is in possession of material, nonpublic information that would affect the value of the security;

g. Engaging in a pattern or practice of making contradictory recommendations to different investors of similar investment objective for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstances of each investor;

h. Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution by, among other things, (i) 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 its nominees or (ii) parking or withholding securities;

i. Effecting any transaction in or inducing the purchase or sale of any security by means of any manipulative, deceptive, or other fraudulent device or contrivance including but not limited to the use of boiler room tactics or use of fictitious or nominee accounts;

j. Failing to comply with any prospectus delivery requirements promulgated under federal law or the Act;

k. Failing to promptly provide the most current prospectus or the most recently filed periodic report filed under § 13 of the Securities Exchange Act when requested to do so by a customer;

l. Marking any order tickets or confirmations as unsolicited when in fact the transaction was solicited; or

m. Failing to comply with the following provisions in connection with the solicitation of a purchase or sale of a designated security:

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

(2) Failing to include with the confirmation, the notice disclosure contained under 21VAC5-20-285, except the following shall be exempt from this requirement:

(a) Transactions in which the price of the designated security is \$5.00 or more, exclusive of costs or charges; however, if the designated security is a unit composed of one 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 \$5.00 or more, and 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 \$5.00 or more;

(b) Transactions that are not recommended by the broker-dealer or agent;

(c) Transactions by a broker-dealer: (i) whose commissions, commission equivalents, and mark-ups from transactions in designated securities during each of the preceding three months, and during 11 or more of the preceding 12 months, did not exceed 5.0% of its total commissions, commission-equivalents, and mark-ups from transactions in securities during those months; and (ii) 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 preceding 12 months; and

(d) Any transaction or transactions that, upon prior written request or upon its own motion, the commission conditionally or unconditionally exempts as not encompassed within the purposes of this section;

(3) For purposes of this section, the term "designated security" means any equity security other than a security:

(a) Registered, or approved for registration upon notice of issuance, on a national securities exchange and makes transaction reports available pursuant to 17 CFR 11Aa3-1 under the Securities Exchange Act of 1934;

(b) Authorized, or approved for authorization upon notice of issuance, for quotation in the NASDAQ system;

(c) Issued by an investment company registered under the Investment Company Act of 1940;

(d) That is a put option or call option issued by The Options Clearing Corporation; or

(e) Whose issuer has net tangible assets in excess of \$4,000,000 as demonstrated by financial statements dated within no less than 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; and

(i) In the event the issuer is other than a foreign private issuer, are the most recent financial statements for the issuer that have been audited and reported on by an independent public accountant in accordance with the provisions of 17 CFR 210.2-02 under the Securities Exchange Act of 1934; or

(ii) In the event the issuer is a foreign private issuer, are the most recent financial statements for the issuer that have been filed with the SEC; furnished to the SEC pursuant to 17 CFR 240.12g3-2(b) under the Securities Exchange Act of 1934; or prepared in accordance with generally accepted accounting principles 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.

16. 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 with or for the customer;

17. Publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless the broker-dealer believes that the transaction was a bona fide purchase or sale of the security; or which purports to quote the bid price or asked price for any security, unless the broker-dealer believes that the quotation represents a bona fide bid for, or offer of, the security;

18. Use any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;

19. Fail to make reasonably available upon request to any person expressing an interest in a solicited transaction in a security, not listed on a registered securities exchange or quoted on an automated quotation system operated by a national securities association approved by regulation of the commission, a balance sheet of the issuer as of a date within 18 months of the offer or sale of the issuer's securities and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, the names of the issuer's proprietor, partners or officers, the nature of the enterprises of the issuer and any available information reasonably necessary for evaluating the desirability or lack of desirability of investing in the securities of an issuer. All transactions in securities described in this subdivision shall comply with the provisions of § 13.1-507 of the Act;

20. Fail to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of the security, the existence of control to the customer, and if disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

21. Fail to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or

from a member participating in the distribution as an underwriter or selling group member;

22. Fail or refuse to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written request or complaint;

23. Fail to clearly and separately disclose to its customer, prior to any security transaction, providing investment advice for compensation or any materially related transaction that the customer's funds or securities will be in the custody of an investment advisor or contracted custodian, in a manner that does not provide Securities Investor Protection Corporation protection, or equivalent third-party coverage over the customer's assets;

24. Market broker-dealer services that are associated with financial institutions in a manner that is misleading or confusing to customers as to the nature of securities products or risks;

25. In transactions subject to breakpoints, fail to:

- a. Utilize advantageous breakpoints without reasonable basis for their exclusion;
- b. Determine information that should be recorded on the books and records of a member or its clearing firm, which is necessary to determine the availability and appropriateness of breakpoint opportunities; or
- c. Inquire whether the customer has positions or transactions away from the member that should be considered in connection with the pending transaction, and apprise the customer of the breakpoint opportunities; or

26. Use a certification or professional designation in connection with the offer, sale, or purchase of 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.

a. The use of such certification or professional designation includes, but is not limited to, the following:

(1) Use of a certification or designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(2) Use of a nonexistent or self-conferred certification or professional designation;

(3) Use of 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; or

(4) Use of a certification or professional designation that was obtained from a designating or certifying organization that:

(a) Is primarily engaged in the business of instruction in sales and/or marketing;

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

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

(d) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

b. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subdivision 26 a (4) of this subsection, when the organization has been accredited by:

(1) The American National Standards Institute;

(2) The Institute for Credentialing Excellence (formerly the National Commission for Certifying Agencies); or

(3) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.

c. In determining whether a combination of words (or an acronym 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, factors to be considered shall include:

(1) Use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(2) The manner in which those 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 within the organization; or

(2) Specifies an individual's area of specialization within the organization.

For purposes of this subdivision d, "financial services regulatory agency" includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under § 3 (a)(1) of the Investment Company Act of 1940 (15 USC § 80a-3(a)(1)).

e. Nothing in this regulation shall limit the commission's authority to enforce existing provisions of law;

27. Represent that securities will be listed or that application for listing will be made on a securities exchange or the NASDAQ system or other quotation system without reasonable basis in fact for the representation;

28. Falsify or alter so as to make false or misleading any record or document or any information provided to the commission;

29. Negotiate, facilitate, or otherwise execute a transaction on behalf of an investor involving securities issued by a third party pursuant to a claim for exemption under subsection B of § 13.1-514 of the Act unless the broker-dealer intends to report the securities owned and the value of such securities on at least a quarterly basis to the investor;

30. Offer or sell securities pursuant to a claim for exemption under subsection B of § 13.1-514 of the Act without having first verified the information relating to the securities offered or sold, which shall include, but not be limited to, ascertaining the risks associated with investing in the respective security;

31. [~~Hold itself out~~ Allow any person to represent or utilize its name] as a trading platform [~~for a registered broker-dealer~~] without conspicuously disclosing the name of the registered broker-dealer [~~when representing the broker-dealer~~] in effecting or attempting to effect purchases and sales of securities;

32. Fail to advise the customer, both at the time of solicitation and on the confirmation, of any and all compensation related to a specific securities transaction to be paid to the agent including commissions, sales charges, or concessions;

33. Fail to disclose, both at the time of solicitation and on the confirmation in connection with a principal transaction, a short inventory position in the firm's account of more than 3.0% of the issued and outstanding shares of that class of securities of the issuer;

34. Conduct sales contests in a particular security without regard to an investor's suitability;

35. Fail or refuse to promptly execute sell orders in connection with a principal transaction after a solicited purchase by a customer;

36. Solicit a secondary market transaction when there has not been a bona fide distribution in the primary market;

37. Compensate an agent in different amounts for effecting sales and purchases in the same security;

38. Fail to provide each customer with a statement of account with respect to all securities in the account, containing a value for each such security based on the closing market bid on a date certain for any month in which activity has occurred in a customer's account, but in no event less than three months;

39. Fail to comply with any applicable provision of the FINRA Rules or any applicable fair practice or ethical standard promulgated by the SEC or by a self-regulatory organization approved by the SEC; or

40. Engage in any conduct that constitutes a dishonest or unethical practice including, but not limited to, forgery, embezzlement, nondisclosure, incomplete disclosure or material omissions or untrue statements of material facts, manipulative or deceptive practices, or fraudulent course of business.

B. [Every agent is required to observe high standards of commercial honor and just and equitable principles of trade in the conduct of his business. The acts and practices described

below are considered contrary to such standards and may constitute grounds for denial, suspension, or revocation of registration or such other action authorized by the Act.] No agent who is registered or required to be registered shall:

1. Engage in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer;
2. Effect any securities transaction not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transaction is authorized in writing by the broker-dealer prior to execution of the transaction;
3. Establish or maintain an account containing fictitious information in order to execute a transaction which would otherwise be unlawful or prohibited;
4. Share directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents;
5. Divide or otherwise split the agent's commissions, profits or other compensation from the purchase or sale of securities in this state with any person not also registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control;~~or~~
6. Engage in conduct specified in subdivision A 2, 3, 4, 5, 6, 10, 15, 16, 17, 18, 23, 24, 25, 26, 28, 30, 31, 32, 34, 35, 36, 39, or 26 40 of this section;
7. Fail to comply with the continuing education requirements under 21VAC5-20-150 C;
or
8. Hold oneself out as representing any person other than the broker-dealer with whom the agent is registered and, in the case of an agent whose normal place of business is not on the premises of the broker-dealer, failing to conspicuously disclose the name of

the broker-dealer for whom the agent is registered when representing the dealer in effecting or attempting to effect the purchases or sales of securities.

~~C. It shall be deemed a demonstration of a lack of business knowledge by an agent insofar as business knowledge is required for registration by § 13.1-505 A 3 of the Act, if an agent fails to comply with any of the applicable continuing education requirements set forth in any of the following and such failure has resulted in an agent's denial, suspension, or revocation of a license, registration, or membership with a self-regulatory organization.~~

- ~~1. Schedule C to the National Association of Securities Dealers By-Laws, Part XII of the National Association of Securities Dealers, as such provisions existed on July 1, 1995;~~
- ~~2. Rule 345 A of the New York Stock Exchange, as such provisions existed on July 1, 1995;~~
- ~~3. Rule G 3(h) of the Municipal Securities Rulemaking Board, as such provisions existed on July 1, 1995;~~
- ~~4. Rule 341 A of the American Stock Exchange, as such provisions existed on July 1, 1995;~~
- ~~5. Rule 9.3A of the Chicago Board of Options Exchange, as such provisions existed on July 1, 1995; or~~
- ~~6. Article VI, Rule 9 of the Chicago Stock Exchange, as such provisions existed on July 1, 1995;~~
- ~~7. Rule 9.27(C) of the Pacific Stock Exchange, as such provisions existed on July 1, 1995; or~~
- ~~8. Rule 640 of the Philadelphia Stock Exchange, as such provisions existed on July 1, 1995.~~

~~Each or all of the education requirements standards listed above may be changed by each respective entity and if so changed will become a requirement if the change does not materially reduce the educational requirements expressed above or reduce the investor protection provided by the requirements.~~

~~D. C.~~ No person shall publish, give publicity to, or circulate any notice, circular, advertisement, newspaper article, letter, investment service or communication which, though not purporting to offer a security for sale, describes the security, for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

~~E. The purpose of this subsection is to identify practices in the securities business which are generally associated with schemes to manipulate and to identify prohibited business conduct of broker-dealers or sales agents.~~

~~1. Entering into a transaction with a customer in any security at an unreasonable price or at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.~~

~~2. Contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead or using any advertising or sales presentation in a deceptive or misleading manner.~~

~~3. In connection with the offer, sale, or purchase of a security, falsely leading a customer to believe that the broker-dealer or agent is in possession of material, nonpublic information which would affect the value of the security.~~

~~4. In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors of~~

~~similar investment objective for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstances of each investor.~~

~~5. Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution by, among other things, (i) 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 its nominees or (ii) parking or withholding securities.~~

~~6. Although nothing in this subsection precludes application of the general antifraud provisions against anyone for practices similar in nature to the practices discussed below, the following subdivisions a through f specifically apply only in connection with the solicitation of a purchase or sale of OTC (over the counter) unlisted non-NASDAQ equity securities:~~

~~a. Failing to advise the customer, both at the time of solicitation and on the confirmation, of any and all compensation related to a specific securities transaction to be paid to the agent including commissions, sales charges, or concessions.~~

~~b. In connection with a principal transaction, failing to disclose, both at the time of solicitation and on the confirmation, a short inventory position in the firm's account of more than 3.0% of the issued and outstanding shares of that class of securities of the issuer; however, subdivision 6 of this subsection shall apply only if the firm is a market maker at the time of the solicitation.~~

~~c. Conducting sales contests in a particular security.~~

~~d. After a solicited purchase by a customer, failing or refusing, in connection with a principal transaction, to promptly execute sell orders.~~

- ~~e. Soliciting a secondary market transaction when there has not been a bona fide distribution in the primary market.~~
 - ~~f. Engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same security.~~
- ~~7. Effecting any transaction in, or inducing the purchase or sale of any security by means of any manipulative, deceptive or other fraudulent device or contrivance including but not limited to the use of boiler room tactics or use of fictitious or nominee accounts.~~
- ~~8. Failing to comply with any prospectus delivery requirements promulgated under federal law or the Act.~~
- ~~9. In connection with the solicitation of a sale or purchase of an OTC unlisted non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under § 13 of the Securities Exchange Act when requested to do so by a customer.~~
- ~~10. Marking any order tickets or confirmations as unsolicited when in fact the transaction was solicited.~~
- ~~11. For any month in which activity has occurred in a customer's account, but in no event less than every three months, failing to provide each customer with a statement of account with respect to all OTC non-NASDAQ equity securities in the account, containing a value for each such security based on the closing market bid on a date certain; however, this subdivision shall apply only if the firm has been a market maker in the security at any time during the month in which the monthly or quarterly statement is issued.~~

~~12. Failing to comply with any applicable provision of the Rules of Fair Practice of the NASD or any applicable fair practice or ethical standard promulgated by the SEC or by a self-regulatory organization approved by the SEC.~~

~~13. In connection with the solicitation of a purchase or sale of a designated security:~~

~~a. Failing to disclose to the customer the bid and ask price, at which the broker-dealer effects transactions with individual, retail customers, of the designated security as well as its spread in both percentage and dollar amounts at the time of solicitation and on the trade confirmation documents; or~~

~~b. Failing to include with the confirmation, the notice disclosure contained in subsection F of this section, except the following shall be exempt from this requirement:~~

~~(1) Transactions in which the price of the designated security is \$5.00 or more, exclusive of costs or charges; however, if the designated security is a unit composed of one 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 \$5.00 or more, and 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 \$5.00 or more.~~

~~(2) Transactions that are not recommended by the broker-dealer or agent.~~

~~(3) Transactions by a broker-dealer: (i) whose commissions, commission equivalents, and mark-ups from transactions in designated securities during each of the preceding three months, and during 11 or more of the preceding 12 months, did not exceed 5.0% of its total commissions, commission equivalents, and mark-ups from transactions in securities during those months; and (ii) 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 preceding 12 months.~~

~~(4) Any transaction or transactions that, upon prior written request or upon its own motion, the commission conditionally or unconditionally exempts as not encompassed within the purposes of this section.~~

~~c. For purposes of this section, the term "designated security" means any equity security other than a security:~~

~~(1) Registered, or approved for registration upon notice of issuance, on a national securities exchange and makes transaction reports available pursuant to 17 CFR 11Aa3-1 under the Securities Exchange Act of 1934;~~

~~(2) Authorized, or approved for authorization upon notice of issuance, for quotation in the NASDAQ system;~~

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

~~(4) That is a put option or call option issued by The Options Clearing Corporation; or~~

~~(5) Whose issuer has net tangible assets in excess of \$4,000,000 as demonstrated by financial statements dated within no less than 15 months that the broker or 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, and~~

~~(a) In the event the issuer is other than a foreign private issuer, are the most recent financial statements for the issuer that have been audited and reported on by an independent public accountant in accordance with the provisions of 17 CFR 210.2-02 under the Securities Exchange Act of 1934; or~~

~~(b) In the event the issuer is a foreign private issuer, are the most recent financial statements for the issuer that have been filed with the SEC; furnished to the SEC pursuant to 17 CFR 240.12g3-2(b) under the Securities Exchange Act of 1934; or prepared in accordance with generally accepted accounting principles 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.~~

F. ~~Customer notice requirements follow:~~

~~IMPORTANT CUSTOMER NOTICE READ CAREFULLY~~

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

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

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

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

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

~~Q. How does the spread relate to my investments?~~

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

~~Q. How do I compute the spread?~~

~~A. If you bought 100 shares at an ASK price of \$1.00, you would pay \$100 (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 (100 shares X \$.50 = \$50). In this example, if you sold at the BID price, you would suffer a loss of 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. The laws of some states require your broker-dealer or sales agent to disclose the BID and ASK price on your confirmation and include this notice in some instances. If the BID and ASK were not explained to you at the time you discussed this investment with your broker, you may have further rights and remedies under both state and federal law.~~

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

~~A. If you cannot work the problem out with your broker-dealer, you may contact the Virginia State Corporation Commission or the securities commissioner in the state in which you reside, the United States Securities and Exchange Commission, or the National Association of Securities Dealers, Inc.~~

~~G. No broker-dealer or agent shall engage in any conduct that constitutes a dishonest or unethical practice, including, but not limited to, forgery, embezzlement, nondisclosure,~~

~~incomplete disclosure or misstatement of material facts, manipulative or deceptive practices, or fraudulent course of business.~~

~~H. No broker-dealer or agent shall engage in any conduct specified in subsection A, B, C, D, E, or G of this section which shall be grounds under the Act for imposition of a penalty, denial of a pending application, refusal to renew, revocation of an effective registration, or any other action the Act shall allow.~~

21VAC5-20-285. Customer notice for designated securities.

A. Broker-dealers that solicit the purchase and sale of designated securities shall provide the following notice to customers:

IMPORTANT CUSTOMER NOTICE-READ CAREFULLY

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

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

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

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

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

Q. How does the spread relate to my investments?

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

Q. How do I compute the spread?

A. If you bought 100 shares at an ASK price of \$1.00, you would pay \$100 (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 (100 shares X \$.50 = \$50). In this example, if you sold at the BID price, you would suffer a loss of 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. The laws of some states require your broker-dealer or sales agent to disclose the BID and ASK price on your confirmation and include this notice in some instances. If the BID and ASK were not explained to you at the time you discussed this investment with your broker, you may have further rights and remedies under both state and federal law.

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

A. If you cannot work the problem out with your broker-dealer, you may contact the Virginia State Corporation Commission or the securities commissioner in the state in which you reside, the United States Securities and Exchange Commission, or FINRA.

B. For the purpose of this section, the term "designated security" shall be defined as in subdivision A 15 m 3 under 21VAC5-20-280.

21VAC5-20-330. Model rules for sales of securities at financial institutions.

A. This section applies exclusively to broker-dealer services conducted by broker-dealers and their agents on the premises of a financial institution where retail deposits are taken or through an affiliate of the financial institution.

This section does not alter or abrogate a broker-dealer's obligation to comply with other applicable laws, rules, or regulations that may govern the operations of broker-dealers and their agents, including but not limited to, supervisory obligations. This Broker-dealers are responsible for the acts, practices, and conduct of their agents in connection with the offer and sale of securities. Additionally, this section does not apply to broker-dealer services provided to nonretail customers.

B. For purposes of this section, the following terms have the meanings indicated:

"Affiliate" means (i) an entity that a financial institution owns, in whole or in part or (ii) an entity that is a subsidiary of the financial institution's parent company.

"Broker-dealer services" means the investment banking or securities business as defined in paragraph ~~(p)~~ (u) of Article I of the ~~By-Laws of the NASD~~ FINRA By-Laws [, amended by SR-FINRA-2008-0026, effective December 15, 2008] .

"Financial institution" means federal and state-chartered banks, savings and loan associations, savings banks, credit unions, and the service corporations of such institutions located in Virginia.

"Networking arrangement" means a contractual or other arrangement between a broker-dealer and a financial institution by which the broker-dealer conducts broker-dealer services on the premises of the financial institution where retail deposits are taken or through an affiliate of the financial institution.

C. Standards for broker-dealer conduct. No broker-dealer shall conduct broker-dealer services ~~on the premises of a financial institution where retail deposits are taken~~ pursuant to a networking arrangement unless the broker-dealer and its agents comply with the following requirements:

1. Setting. Wherever practical, broker-dealer services shall be conducted in a physical location distinct from the area in which the financial institution's retail deposits are taken. In those situations where there is insufficient space to allow separate areas, the broker-dealer has a heightened responsibility to distinguish its services from those of the financial institution. In all situations, the broker-dealer shall identify its services in a manner that clearly distinguishes those services from the financial institution's retail deposit-taking activities. The broker-dealer's name shall be clearly displayed in the area in which the broker-dealer conducts its services.

2. a. Networking arrangements. There shall be a written agreement between the financial institution and its associated broker-dealer that shall [~~be filed with the commission at its Division of Securities and Retail Franchising at least 90 days prior to its effective date, which shall include~~], at a minimum, [address] the [areas items] listed below. [The written agreement shall be filed with the commission at its Division of Securities and Retail Franchising at least 90 days prior to its effective date.]

- (1) A description of the responsibilities of each party, including the features of the sales program and the roles of registered and unregistered personnel;
- (2) A description of the responsibilities of broker-dealer personnel authorized to make investment sales or recommendations;
- (3) A description of how referrals to associated broker-dealer personnel will be made;
- (4) A description of compensation arrangements for unregistered personnel;

(5) A description of training to be provided to both registered and unregistered personnel;

(6) A description of broker-dealer office audits to be conducted by the broker-dealer, including frequency, reports associated with financial institutions and records to be reviewed; ~~and~~

(7) Authority of the financial institution and regulators to have access to relevant records of the broker-dealer and the financial institution in order to evaluate compliance with the agreement; and

(8) A statement identifying whether the broker-dealer will offer or sell securities issued pursuant to an exemption from registration under 21VAC5-45-20 (Regulation D, Rule 506, 15 USC § 77r(b)(4)(D), 17 CFR 230.506).

b. Program management. The program's management of the broker-dealer's networking arrangements shall address and include at a minimum, those items listed below.

(1) A description of relevant referral activities and compensation arrangements;

(2) A description of appropriate training requirements for various classes of personnel;

(3) The scope and frequency of compliance reviews and the manner and frequency of reporting to broker-dealer compliance supervisors and the financial institution compliance management group;

(4) The process of verifying that security purchases and sales are being conducted in accordance with the written networking agreement;

(5) The permissible use of financial institution and broker-dealer customer information, including how compliance with Virginia and federal law and with the broker-dealer's privacy policies will be achieved; and

(6) The existence of any potential conflicts of interest between the broker-dealer activities and the financial institution and its affiliates and appropriate disclosure of the conflicts that result from the relationship; and

(7) A description of the method in which the broker-dealer will determine the suitability of the securities for its customers and a description of the supervisory procedures imposed for the offer and sale of securities issued pursuant to an exemption from registration under 21VAC5-45-20 (Regulation D, Rule 506, 15 USC § 77r(b)(4)(D), 17 CFR 230.506).

c. If a financial institution has a networking arrangement with a registered broker-dealer, an affiliate of the financial institution may also be registered as a broker-dealer and may also employ agents that are registered with the broker-dealer with which there is a networking arrangement. If the financial institution's affiliate is a registered broker-dealer, and both the affiliate and the broker-dealer operating under a networking arrangement employs dual agents, both the broker-dealer and the affiliate are equally responsible for the supervision of the agents. The agents must be registered for both the broker-dealer and the affiliate.

3. Customer disclosure and written acknowledgment.

a. At or prior to the time that a customer's securities brokerage account is opened by a broker-dealer on the premises of a financial institution where retail deposits are taken, the broker-dealer or its agents shall:

(1) Disclose, orally and in writing, that the securities products purchased or sold in a transaction with the broker-dealer:

(a) Are not insured by the Federal Deposit Insurance Corporation ("FDIC") or the National Credit Union Administration ("NCUA");

(b) Are not deposits or other obligations of the financial institution and are not guaranteed by the financial institution; and

(c) Are subject to investment risks, including possible loss of principal invested.

(2) Make reasonable efforts to obtain from each customer during the account opening process a written acknowledgment of the disclosures required by subdivision C 3 a (1).

(3) Provide written disclosures that are conspicuous, easy to comprehend and presented in a clear and concise manner.

(4) Disclose, orally and in writing, that the broker-dealer and the financial institution are separate entities, and when mutual funds or other securities are bought through the broker-dealer, the client is doing business with the broker-dealer and not with the financial institution.

(5) Disclose, orally and in writing that the broker-dealer and the financial institution will likely receive compensation as a result of the purchase of securities or advisory services by the client through the broker-dealer.

b. If broker-dealer services include any written or oral representations concerning insurance coverage, other than FDIC insurance coverage, then clear and accurate written or oral explanations of the coverage must also be provided to the customers when such representations are first made.

4. Communications with the public.

a. All of the broker-dealer's confirmations and account statements must indicate clearly that the broker-dealer services are provided by the broker-dealer. Such indication may include the name of the financial institution or any of the financial institution's affiliates, but the name of the broker-dealer shall be in print larger than the name of the financial institution.

b. Advertisements and sales literature that announce the location of a financial institution where broker-dealer services are provided by the broker-dealer or its agents, or that are distributed by the broker-dealer or its agents on the premises of a financial institution, must disclose that securities products: are not insured by the FDIC; are not deposits or other obligations of the financial institution and are not guaranteed by the financial institution; and are subject to investment risks, including possible loss of the principal invested. The shorter logo format described in subdivision C 4 d may be used to provide these disclosures.

c. Recommendations by a broker-dealer or its agents concerning nondeposit investment products with a name similar to that of a financial institution must only occur pursuant to policies and procedures reasonably designed to minimize risk of customer confusion.

d. The following shorter logo format disclosures may be used by a broker-dealer or its agents in advertisements and sales literature, including material published, or designed for use, in radio or television broadcasts, automated teller machine ("ATM") screens, billboards, signs, [~~social media,~~] posters and brochures, to comply with the requirements of subdivision C 4 b provided that such disclosures are displayed in a conspicuous manner:

- (1) Not FDIC insured;
- (2) No bank guarantee;
- (3) May lose value.

e. As long as the omission of the disclosures required by subdivision C 4 b would not cause the advertisement or sales literature to be misleading in light of the context in which the material is presented, the disclosures are not required with respect to messages contained in:

- (1) Radio broadcasts of 30 seconds or less;
- (2) Electronic signs, including billboard-type signs that are electronic, time and temperature signs and ticker tape signs, but excluding messages contained in such media as television, on-line computer services, or ATMs; and
- (3) Signs, such as banners and posters [~~or social media~~], when used only as location indicators.

5. Notification of termination. The broker-dealer must promptly notify the financial institution if any agent of the broker-dealer who is employed by the financial institution is terminated for cause by the broker-dealer.

6. Referral fees paid to unregistered financial institution employees. Unregistered financial institution employees may only receive a one-time nominal fee of a fixed dollar amount for each customer referral, and only if the payment is not contingent on whether the referral results in an investment activity or a transaction.

7. Prohibited conduct.

In addition to the provisions of subsections A and B of 21VAC5-20-280, unless otherwise specified herein, broker-dealers and broker-dealer agents offering broker-

dealer services in association with a financial institution or an affiliate of the financial institution, pursuant to a networking arrangement, shall not:

(1) Accept or receive compensation directly or indirectly from the financial institution for broker-dealer services provided;

(2) Identify themselves as being affiliated with the financial institution or any of the financial institution's affiliated companies;

(3) Fail to follow the terms of a networking agreement between a financial institution or any affiliated company of the financial institution concerning the offer and sale of securities; and

(4) Use nonregistered employees of the financial institution or any affiliate of the financial institution to solicit investors.

DOCUMENTS INCORPORATED BY REFERENCE (21VAC5-20)

Rule 1250 of FINRA By-Laws, Continuing Education Requirements, amended by SR-FINRA-2011-013, eff. October 17, 2011, Financial Industry Regulatory Authority, Inc.

Rule 345 A of the New York Stock Exchange Rules, Continuing Education for Registered Persons, effective as existed July 1, 1995, New York Stock Exchange.

Rule G-3(h) of the Municipal Securities Rulemaking Board, Classification of Principals and Representatives; Numerical Requirements; Testing; Continuing Education Requirements, effective as existed July 1, 1995, Municipal Securities Rulemaking Board.

Rule 341A of the New York Stock Exchange Market Rules, Continuing Education for Registered Persons, effective as existed May 14, 2012, New York Stock Exchange.

Rule 9.3A of the Chicago Board Options Exchange, Continuing Education for Registered Persons, effective as existed July 1, 1995, Chicago Board Options Exchange.

Article VI, Rule 11 of the Rules of the Chicago Stock Exchange, Inc., Continuing Education for Registered Persons, effective as existed July 1, 1995, Chicago Stock Exchange, Inc.

FINRA, Rule 2264, Margin Disclosure Statement, amended by SR-FINRA-2011-065, eff. December 5, 2011.

Article I, Paragraph u of FINRA By-Laws [, amended by SR-FINRA-2008-0026, effective December 15, 2008] .

21VAC5-30-50. Requirements for registration statements relating to nonissuer distributions.

A. The requirements for a registration statement filed pursuant to § 13.1-508 of the Act relating to securities to be offered and sold pursuant to a nonissuer distribution (i.e., "secondary trading") are:

1. a. The registration statement shall contain the issuer's most recent 10-K Annual Report and 10-Q Quarterly Report filed with the SEC pursuant to § 13 or § 15(d) of the Securities Exchange Act of 1934 (15 USC § 78m or o(d)).

b. The registration statement pertaining to the securities of a Canadian issuer which have been registered pursuant to the Multijurisdictional Disclosure System described by the SEC in Release No. 33-6841 shall contain the issuer's most recent Annual Information Form (plus the issuer's latest audited fiscal year-end financial statements) and Quarterly Report as filed with the appropriate Canadian regulatory authority.

2. If within 12 months of the date of filing the registration statement any 8-K Current Report has been filed with the SEC pursuant to § 13 or § 15(d) of the Securities

Exchange Act of 1934, then a copy of each such report shall be filed with the registration statement.

3. If within 12 months of the date of filing the registration statement any Form 10 general form for registration of securities has been filed with the SEC pursuant to § 12(d) or (g) of the Securities Exchange Act of 1934, then a copy of each such form shall be filed with the registration statement.

4. If within 12 months of the date of filing the registration statement a registration statement has been filed with the SEC pursuant to § 6 of the Securities Act of 1933 (15 USC § 77f), then a copy of each such registration statement shall be filed with this registration statement.

B. For purposes of this section, the word "registered" as used in § 13.1-508 A 2 (i) of the Act shall mean registered pursuant to this Act, the Securities Act of 1933 or the Securities Exchange Act of 1934.

C. The requirement for delivery of a prospectus under § 13.1-508 D of the Act, with respect to securities registered pursuant to this section, shall be met by compliance with 21VAC5-20-280 A 49 10.

D. A registration statement filed pursuant to this section need not comply with 21VAC5-30-40.

21VAC5-30-80. Adoption of NASAA statements of policy.

The commission adopts the following NASAA statements of policy that shall apply to the registration of securities in the Commonwealth. It will be considered a basis for denial of an application if an offering fails to comply with an applicable statement of policy. While applications not conforming to a statement of policy shall be looked upon with disfavor, where good cause is shown, certain provisions may be modified or waived by the commission.

1. Options and Warrants, as amended March 31, 2008.
2. Underwriting Expenses, Underwriter's Warrants, Selling Expenses and Selling Security Holders, as amended March 31, 2008.
3. Real Estate Programs, as amended May 7, 2007.
4. Oil and Gas Programs, as amended May 7, 2007.
5. Cattle-Feeding Programs, as adopted September 17, 1980.
6. Unsound Financial Condition, as amended March 31, 2008.
7. Real Estate Investment Trusts, as amended May 7, 2007.
8. Church Bonds, as adopted April 29, 1981.
9. Small Company Offering Registrations, as adopted April 28, 1996.
10. NASAA Guidelines Regarding Viatical Investment, as adopted October 1, 2002.
11. Corporate Securities Definitions, as amended March 31, 2008.
12. Church Extension Fund Securities, as amended April 18, 2004.

DOCUMENTS INCORPORATED BY REFERENCE (21VAC5-30)

Statement of Policy Regarding Church Extension Fund Securities, adopted April 17, 1994, amended April 18, 2004, North American Securities Administrators Association, Inc.

21VAC5-40-40. ~~Nasdaq/National Market System exemption. (Repealed.)~~

~~In accordance with § 13.1-514 A-12 of the Act, the following are exempt from the securities registration requirements of the Act: any security listed or approved for listing upon notice of issuance on the National Association of Securities Dealers Automated Quotation National Market System (Nasdaq/National Market System); any other security of the same issuer that is~~

~~of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing.~~

~~1. The Commission shall have authority by rule or order to deny, suspend or revoke the exemption created by this section as to a specific issue or category of securities when necessitated by the public interest and for the protection of investors.~~

~~2. The Commission may rescind this section by order if it determines that the Nasdaq/National Market System's requirements for listing or maintenance of securities of an issuer as set forth in the Memorandum of Understanding: The Uniform Model Marketplace Exemption from State Securities Registration Requirements, adopted April 28, 1990, by membership of the North American Securities Administrators Association, Inc., published in The Commerce Clearing House NASAA Reports, paragraph 2351, have been so changed or insufficiently applied that the protection of investors contemplated by the exemption no longer is afforded.~~

~~3. The Commission may rescind this section by order if it determines that the NASD has not provided on a timely basis to the Commission upon its request materially complete prospectuses in the form most recently filed with the SEC as well as any other relevant information the Commission may deem to be necessary pertaining to initial public offerings that the NASD ordinarily obtains in regulating issuers listed on the Nasdaq/National Market System, based on agreement with the Commission concerning the information to be provided.~~

21VAC5-40-60. Chicago Board Options Exchange. (Repealed.)

~~A. In accordance with § 13.1-514 A 12 of the Act, the following are exempt from the securities registration requirements of the Act: securities listed or approved for listing upon issuance on the Chicago Board Options Exchange, Inc. ("CBOE"); securities of the same issuer~~

~~that are of senior or substantially equal rank; securities called for by subscription rights or warrants so listed or approved; or warrants or rights to purchase or subscribe to any of the foregoing.~~

~~B. The State Corporation Commission shall have authority by rule or order to deny, suspend or revoke the exemption created by this rule as to a specific issue or category of securities when necessitated by the public interest and for the protection of investors.~~

~~C. The State Corporation Commission may rescind this rule by order if it determines that CBOE's requirements for listing or maintenance of securities of an issuer as set forth in the "Memorandum of Understanding Between the North American Securities Administrators Association, Inc., and the Chicago Board Options Exchange, Inc.," approved May 30, 1991, by membership of the North American Securities Administrators Association, Inc., published in the Commerce Clearing House, "NASAA Reports," paragraph 801 et seq., have been so changed or insufficiently applied that the protection of investors contemplated by the exemption no longer is afforded.~~

~~D. The State Corporation Commission may rescind this rule by order if it determines that CBOE has not provided on a timely basis to the State Corporation Commission upon its request materially complete prospectuses in the form most recently filed with the Securities and Exchange Commission as well as other relevant information the State Corporation Commission may deem to be necessary pertaining to initial public offerings, all linked securities and entities whose securities' values underlie Contingent Value Rights that CBOE ordinarily obtains in regulating issuers listed on CBOE, based on agreement with the State Corporation Commission concerning the information to be provided.~~

21VAC5-40-80. Philadelphia Stock Exchange, Inc. (Repealed.)

~~A. In accordance with § 13.1-514 A 12 of the Act, the following are exempt from the securities registration requirements of the Act: securities listed or approved for listing upon notice of issuance on Tier I of the Philadelphia Stock Exchange, Inc. (the Exchange); securities of the same issuer that are of senior or substantially equal rank; securities called for by subscription rights or warrants so listed or approved; or warrants or rights to purchase or subscribe to any of the foregoing.~~

~~B. The State Corporation Commission shall have authority by rule or order to deny, suspend or revoke the exemption created by this rule as to a specific issue or category of securities when necessitated by the public interest and for the protection of investors.~~

~~C. The State Corporation Commission may rescind this rule by order if it determines that the Exchange's requirements for listing or maintenance of securities of an issuer as set forth in the "Memorandum of Understanding Between the North American Securities Administrators Association, Inc. and the Philadelphia Stock Exchange, Inc.," approved October 12, 1994, by membership of the North American Securities Administrators Association, Inc., published in the Commerce Clearing House, "NASAA Reports," paragraph 2941 et seq., have been so changed or insufficiently applied that the protection of investors contemplated by the exemption no longer is afforded.~~

~~D. The State Corporation Commission may rescind this rule by order if it determines that the Exchange has not provided on a timely basis to the State Corporation Commission upon its request materially complete prospectuses in the form most recently filed with the Securities and Exchange Commission as well as other relevant information the State Corporation Commission may deem to be necessary pertaining to initial public offerings that the Exchange ordinarily obtains in regulating issuers listed on the Exchange, based on agreement with the State Corporation Commission concerning the information to be provided.~~

21VAC5-40-90. Pacific Stock Exchange, Inc. (Repealed.)

~~A. In accordance with § 13.1-514 A 12 of the Act, the following are exempt from the securities registration requirements of the Act: securities listed or approved for listing upon notice of issuance on Tier I of the Pacific Stock Exchange, Inc. (the Exchange); securities of the same issuer that are of senior or substantially equal rank; securities called for by subscription rights or warrants so listed or approved; or warrants or rights to purchase or subscribe to any of the foregoing.~~

~~B. The State Corporation Commission shall have authority by rule or order to deny, suspend or revoke the exemption created by this rule as to a specific issue or category of securities when necessitated by the public interest and for the protection of investors.~~

~~C. The State Corporation Commission may rescind this rule by order if it determines that the Exchange's requirements for listing or maintenance of securities of an issuer as set forth in the "Memorandum of Understanding Between the North American Securities Administrators Association, Inc. and the Pacific Stock Exchange, Inc.," approved October 12, 1994, by membership of the North American Securities Administrators Association, Inc., published in the Commerce Clearing House, "NASAA Reports," paragraph 2841 et seq., have been so changed or insufficiently applied that the protection of investors contemplated by the exemption no longer is afforded.~~

~~D. The State Corporation Commission may rescind this rule by order if it determines that the Exchange has not provided on a timely basis to the State Corporation Commission upon its request materially complete prospectuses in the form most recently filed with the Securities and Exchange Commission as well as other relevant information the State Corporation Commission may deem to be necessary pertaining to initial public offerings that the Exchange ordinarily obtains in regulating issuers listed on the Exchange, based on agreement with the State Corporation Commission concerning the information to be provided.~~

21VAC5-40-180. Certain options, warrants, and rights.

In accordance with § 13.1-514 A 12 of the Act, the following securities are exempt from the securities registration requirements of the Act:

1. A put or a call option contract, a warrant, or a subscription right on or with respect to a federal covered security so specified in § 18 (b)(1) of the Securities Act of 1933 (15 USC § 77r(b)(1)) or by rule adopted under that provision;
2. An option or similar derivative security on a security or index of securities or foreign currencies issued by a clearing agency registered under the Securities Act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a facility of a national securities association registered under the Securities Exchange Act of 1934 or an offer or sale of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or
3. An option or a derivative security designated by the SEC under § 9 (b) of the Securities Act of 1934 (15 USC § 78i(b)).

FORMS (21VAC5-40)

~~Form D, Notice of Exempt Offering of Securities, U.S. Securities and Exchange Commission, SEC1972, (eff. 9/08).~~

Form D, Notice of Exempt Offering of Securities, U.S. Securities and Exchange Commission, SEC1972 (rev. 2/12).

21VAC5-45-20. Offerings conducted pursuant to Rule 506 of federal Regulation D (17 CFR 230.506): Filing requirements and issuer-agent exemption.

A. An issuer offering a security that is a covered security under § 18 (b)(4)(D) of the Securities Act of 1933 (15 USC § 77r(b)(4)(D)) shall file with the commission no later than 15 days after the first sale of such federal covered security in this Commonwealth:

1. A notice on SEC Form D (17 CFR 239.500), as filed with the SEC.
2. A filing fee of \$250 payable to the Treasurer of Virginia.

B. An amendment filing shall contain a copy of the amended SEC Form D. No fee is required for an amendment.

C. For the purpose of this chapter, SEC "Form D" is the document, as adopted by the SEC and in effect on ~~September 15, 2008~~ February 27, 2012, entitled "Form D, Notice of Exempt Offering of Securities."

D. Pursuant to § 13.1-514 B 13 of the Act, an agent of an issuer who effects transactions in a security exempt from registration under the Securities Act of 1933 pursuant to rules and regulations promulgated under § 4(2) thereof (15 USC § 77d(2)) is exempt from the agent registration requirements of the Act.

FORMS (21VAC5-45)

~~Form D, Notice of Exempt Offering of Securities, U.S. Securities and Exchange Commission, SEC1972, (eff. 9/08).~~

Form D, Notice of Exempt Offering of Securities, U.S. Securities and Exchange Commission, SEC1972 (rev. 2/12).

Part I

Investment Advisor Registration, Notice Filing for Federal Covered Advisors, Expiration,
Renewal, Updates and Amendments, Terminations and Merger or Consolidation

21VAC5-80-10. Application for registration as an investment advisor and notice filing as a federal covered advisor.

A. Application for registration as an investment advisor shall be filed in compliance with all requirements of the ~~Investment Advisor Registration Depository (IARD) system~~ IARD and in full compliance with forms and regulations prescribed by the commission and shall include all information required by such forms.

B. An application shall be deemed incomplete for ~~purposes of applying for~~ registration as an investment advisor unless the applicant submits the following executed forms, fee, and information ~~are submitted~~:

1. Form ADV Parts ~~1~~ 1 and ~~2~~ 2 submitted to the IARD system.
2. The statutory fee made payable to FINRA in the amount of \$200 submitted to the IARD system pursuant to § 13.1-505 F of the Act.
3. A copy of the client agreement.
4. A copy of the firm's supervisory and procedures manual as required by 21VAC5-80-170.
5. Copies of all advertising materials.
6. Copies of all stationery and business cards.
7. A signed affidavit stating that an investment advisor domiciled in Virginia has not conducted investment advisory business prior to registration, and for investment

advisors domiciled outside of Virginia an affidavit stating that the advisor has fewer than six clients in any the prior 12-month period.

~~8. The following financial statements:~~

- ~~a. A trial balance of all ledger account;~~
- ~~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;~~
- ~~d. A statement as to the number of client accounts;~~
- ~~e. Financial statements prepared in accordance with generally accepted accounting principles that shall include a balance sheet, income statement, and statement of cash flow.~~

8. An audited or certified balance sheet prepared in accordance with generally accepted accounting practices reflecting the financial condition of the investment advisor not more than 90 days prior to the date of such filing.

9. A copy of the firm's disaster recovery plan as required by 21VAC5-80-160 F.

10. At Evidence of at least one qualified individual must have a with an investment advisor representative registration pending on the IARD system on behalf of the investment advisor ~~prior to the grant of registration.~~

~~11. Form IA XRF, "Cross-Reference Between ADV Part II, ADV Part 1A/1B, Schedule F, Contract and Brochure."~~

~~12. 11.~~ Any other information the commission may require.

For purposes of this section, the term "net worth" means an excess of assets over liabilities, as determined by generally accepted accounting principles, ~~but~~ Net worth shall not include as assets: prepaid expenses (except as to items properly classified as assets under generally

accepted accounting principles), deferred charges such as deferred income tax charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature, home furnishings, automobiles, and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

C. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

D. Every person who transacts business in this Commonwealth as a federal covered advisor shall file a notice as prescribed in subsection E of this section in compliance with all requirements of the ~~Investment Advisor Registration Depository (IARD) system~~ IARD.

E. A notice filing for a federal covered advisor shall be deemed incomplete unless the federal covered advisor submits the following executed forms, fee, and information ~~are~~ submitted:

1. Form ADV Parts 1 and 2.
2. ~~The statutory~~ A fee made payable to FINRA in the amount of \$200 ~~submitted to the~~ IARD system.

21VAC5-80-30. Renewals.

A. To renew its registration, an investment advisor will be billed by ~~the IARD system~~ the statutory fee of \$200 prior to the annual expiration date. A renewal of registration shall be

granted as of course upon payment of the proper fee together with any surety bond that the commission may require pursuant to 21VAC5-80-180 B unless the registration was, or the renewal would be, subject to revocation under § 13.1-506 of the Act.

B. To renew its notice filing, a federal covered advisor will be billed by the IARD system the statutory fee of \$200 prior to the annual expiration date. A renewal of notice filing shall be granted as a matter of course upon payment of the proper fee.

21VAC5-80-40. Updates and amendments.

A. An investment advisor or federal covered advisor shall ~~update its Form ADV as required by item 4, "When am I required to update my Form ADV?" of Form ADV: General Instructions and shall file all such information with the IARD system~~ file electronically on IARD, in accordance with Form ADV instructions, any amendments to the investment advisor's Form ADV.

1. An amendment will be considered to be filed promptly if filed within 30 days of the event that requires the filing of the amendment; and

2. Within 90 days of the end of the investment advisor's fiscal year, an investment advisor must file electronically on IARD an Annual Updating Amendment to the Form ADV.

3. An investment advisor is prohibited from using an amendment until it receives notice of acceptance from the commission through IARD.

B. An investment advisor shall file the balance sheet as prescribed by Part II 2A, Item 44 18 of Form ADV, unless excluded from such requirement, with the commission at its Division of Securities and Retail Franchising within 90 days of the investment advisor's fiscal year end. Any investment advisor who is registered in the state in which it maintains its principal place of business shall file with the commission at its Division of Securities and Retail Franchising any

financial documents required to be filed by the state within 10 days of the time it must file these documents in such state.

C. A federal covered advisor shall maintain all other-than-Annual Amendments to Part # 2 of Form ADV at its principal place of business and shall make a copy available to the commission at its Division of Securities and Retail Franchising within five days of its request.

21VAC5-80-50. Termination of registration and notice filings.

When an investment advisor or federal covered advisor desires to terminate its registration or notice filing, it shall file Form ADV-W ~~with the~~ on IARD ~~system~~. Notice of termination by a federal covered advisor shall be effective upon receipt by the commission or at a later date specified in the notice.

21VAC5-80-60. Investment advisor merger or consolidation.

In any merger, consolidation, or reorganization of an investment advisor or federal covered advisor, the surviving or new entity shall amend or file, as the case may be, a new application for registration or notice filing together with the proper fee ~~with the~~ on IARD ~~system~~.

For each investment advisor representative of the new or surviving entity who will transact business in this Commonwealth, an application for registration together with the proper fee or fees must also be filed ~~with the~~ on IARD ~~system~~ in full compliance with the forms prescribed by the commission. The foregoing filing requirement applies to each investment advisor representative who has a place of business located in the Commonwealth and who is connected with a federal covered advisor that is the new or surviving entity to the merger or consolidation.

Part II

Investment Advisor Representative Registration, Expiration, Updates and Amendments,
Termination, and Changing Connection from One Investment Advisor to Another**21VAC5-80-70. Application for registration as an investment advisor representative.**

A. Application for registration as an investment advisor representative shall be filed in compliance with all requirements of ~~the NASAA/NASD Central Registration Depository system~~ CRD and in full compliance with forms and regulations prescribed by the commission. The application shall include all information required by such forms.

B. An application shall be deemed incomplete ~~for purposes of applying~~ for registration as an investment advisor representative unless the following executed forms, fee and information are submitted:

1. Form ~~U-4~~ U4.
2. The statutory fee made payable to FINRA in the amount of \$30. ~~The check must be made payable to the NASD.~~
3. Evidence of passing: (i) the Uniform Investment Adviser Law Examination, Series 65; (ii) the Uniform Combined State Law Examination, Series 66, and the General Securities Representative Examination, Series 7; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.
4. All individuals listed on Part 1 of Form ADV in Schedule A and Item 2. A. of Part 1B as having supervisory ~~or control~~ responsibilities of the investment advisor shall take and pass the examinations as required in subdivision 3 of this subsection, and register as a representative of the investment advisor.
5. Any other information the commission may require.

C. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

21VAC5-80-90. Renewals.

To renew the registration of its investment advisor representatives, an investment advisor or federal covered advisor will be billed by the IARD system the statutory fee of \$30 per investment advisor representative. A renewal of registration shall be granted as a matter of course upon payment of the proper fee or fees unless the registration was, or the renewal would be, subject to revocation under § 13.1-506 of the Act.

21VAC5-80-100. Updates and amendments.

An investment advisor representative shall amend or update Form ~~U-4~~ U4 as required by the ~~"General Instructions" of Form U-4 Instructions.~~ "Amendment Filings" provisions set forth under "How to Use Form U4." All filings shall be made in compliance with all requirements of the ~~NASAA/NASD Central Registration Depository system~~ CRD.

21VAC5-80-110. Termination of registration.

A. When an investment advisor representative terminates ~~a connection~~ his registration with an investment advisor, or an investment advisor terminates ~~connection with~~ an investment advisor representative representative's registration, the investment advisor shall file ~~with the NASAA/NASD Central Registration Depository system~~ notice of such termination on Form ~~U-5~~ U5 within 30 calendar days of the date of termination. All filings shall be made on CRD.

B. When an investment advisor representative terminates ~~a connection~~ his registration with a federal covered advisor, the federal covered advisor shall file ~~with the NASAA/NASD Central Registration Depository system~~ notice of such termination on Form ~~U-5~~ U5 within 30 calendar days of the date of termination. All filings shall be made on CRD.

C. If a representative learns that the investment advisor has not filed the appropriate notice, the representative may file notice with the commission at its Division of Securities and Retail Franchising. The commission may terminate the representative's registration if the commission determines that an investment advisor (i) is no longer in existence, (ii) has ceased conducting securities business, or (iii) cannot reasonably be located.

21VAC5-80-130. Examination/qualification.

A. An individual applying for registration as an investment advisor representative shall be required to provide evidence of passing within the two-year period immediately preceding the date of the application: (i) the Uniform Investment Adviser Law Examination, Series 65; (ii) the Uniform Combined State Law Examination, Series 66 and the General Securities Representative Examination, Series 7; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.

B. Any individual who has been registered as an investment advisor or investment advisor representative in any state jurisdiction requiring the registration and qualification of investment advisors or investment advisor representatives within the two-year period immediately preceding the date of the filing of an application shall not be required to satisfy the examination requirements set forth in subsection A of this section, except that the commission may require additional examinations for any individual found to have violated any federal or state securities laws.

C. The examination requirements shall not apply to an individual who currently holds one of the following professional designations:

1. Certified Financial Planner (CFP) issued by the Certified Financial Planner Board of Standards, Inc.;
2. Chartered Financial Consultant (ChFC) awarded by The American College, Bryn Mawr, Pennsylvania;
3. Personal Financial Specialist (PFS) administered by the American Institute of Certified Public Accountants;
4. Chartered Financial Analyst (CFA) granted by the Association for Investment Management and Research;
5. Chartered Investment Counselor (CIC) granted by the Investment Counsel Association of America; or
6. Such other professional designation, after reasonable notice and subject to review by the commission, as the Director of the Division of Securities and Retail Franchising designates.

D. In lieu of meeting the examination requirement described in subsection A of this section, an applicant who meets all the qualifications set forth below may file with the commission at its Division of Securities and Retail Franchising an executed Affidavit for Waiver of Examination (Form S.A.3).

1. No more than one other individual connected with the applicant's investment advisor is utilizing the waiver at the time the applicant files Form S.A.3.

2. The applicant is, and has been for at least the five years immediately preceding the date on which the application for registration is filed, actively engaged in the investment advisory business.
3. The applicant has been for at least the two years immediately preceding the date on which the application is filed the president, chief executive officer or chairman of the board of directors of an investment advisor organized in corporate form or the managing partner, member, trustee or similar functionary of an investment advisor organized in noncorporate form.
4. The investment advisor or advisors referred to in subdivision 3 of this subsection has been actively engaged in the investment advisory business and during the applicant's tenure as president, chief executive officer, chairman of the board of directors, or managing partner, member, trustee or similar functionary had at least \$40 million under management.
5. The applicant verifies that he has read and is familiar with the investment advisor and investment advisor representative provisions of the Act and the provisions of Parts I through V of this chapter.
6. The applicant verifies that none of the questions in Item 14 (disciplinary history) on his Form ~~U-4~~ U4 have been, or need be, answered in the affirmative.

Part III

~~Investment Advisor, Federal Covered Advisor and Investment Advisor Representative~~

~~Regulations~~

21VAC5-80-145. Custody requirements for investment advisors. (Repealed.)

~~A. For purposes of this section, the following definitions shall apply:~~

~~1. "Custody" means holding directly or indirectly, client funds or securities, or having any authority to obtain possession of them (which may include possession of a user ID and password).~~

~~a. Custody includes:~~

~~(1) Possession of client funds or securities unless received inadvertently and returned to the sender promptly, but in any case within three business days of receiving them;~~

~~(2) Any arrangement (including a general power of attorney) under which the investment advisor is permitted to withdraw client funds or securities maintained with a custodian upon the investment advisor's instruction to the custodian; and~~

~~(3) Any capacity (such as general partner of a limited partnership, managing member of a limited liability company, or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives the investment advisor or the investment advisor's supervised person legal ownership of or access to client funds or securities.~~

~~b. Receipt of client's securities or checks drawn by clients and made payable to unrelated third parties will not meet the definition of custody if forwarded to the third party within 24 hours of receipt and the advisor maintains the following records:~~

~~(1) 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 advisor;~~
- ~~(h) Date sent to client or sender;~~
- ~~(i) Form of delivery to client or sender, or copy of the form of delivery to client or sender; and~~
- ~~(j) Mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.~~

~~2. "Independent representative" means a person who:~~

- ~~a. Acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or contract is obliged to act in the best interest of the advisory client or the limited partners, members, or other beneficial owners;~~
- ~~b. Does not control, is not controlled by, and is not under common control with the investment advisor; and~~
- ~~c. Does not have, and has not had within the past two years, a material business relationship with the investment advisor.~~

~~3. "Qualified custodian" means the following independent institutions or entities that are not affiliated with the advisor by any direct or indirect common control and have not had a material business relationship with the advisor in the previous two years:~~

- ~~a. A bank or savings association that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act, 12 USC § 1813;~~
- ~~b. A registered broker-dealer holding the client assets in customer accounts;~~
- ~~c. A registered futures commission merchant registered under § 4f(a) of the Commodity Exchange Act, 7 USC § 6f(a), holding the 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 for future delivery and options thereon; and~~
- ~~d. A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.~~

~~B. Requirements.~~

- ~~1. If the investment advisor is registered or required to be registered, it is unlawful and deemed to be a fraudulent, deceptive, or manipulative act, practice, or course of business under § 13.1-503 of the Virginia Securities Act for the investment advisor to have custody of client funds or securities unless:
 - ~~a. The investment advisor notifies the commission in writing that the investment advisor has or may have custody. Such notification is required on Form ADV submitted to the IARD system;~~
 - ~~b. A qualified custodian maintains those funds and securities in a separate account for each client under that client's name or in accounts that contain only investment advisor's clients' funds and securities, under the investment advisor's name as agent or trustee for the clients;~~~~

~~c. If the investment advisor opens an account with a qualified custodian on his client's behalf, either under the client's name or under the investment advisor's name as agent, the investment advisor must notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information;~~

~~d. At least quarterly, the investment advisor sends a copy of the qualified custodian's account statements or a proprietary account statement to each client for whom the investment advisor has custody of funds or securities, identifying the amount of funds and of each security of which the investment advisor has custody at the end of the period and setting forth all transactions during that period and if proprietary account statements are utilized or the advisor has custody pursuant to subdivision A 1-a (3) of this section and does not comply with subdivision 4 of this subsection;~~

~~(1) An independent certified public accountant verifies all client funds and securities by actual examination at least once during each calendar year at a time chosen by the accountant without prior notice or announcement to the advisor and that is irregular from year to year, and files a copy of the auditor's report and financial statements with the commission within 30 days after the completion of the examination, along with a letter stating that it has examined the funds and securities and describing the nature and extent of the examination;~~

~~(2) The independent certified public accountant, upon finding any material discrepancies during the course of the examination, notifies the commission within one business day of the finding, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the Division of Securities and Retail Franchising;~~

~~(3) If the investment advisor is a general partner of a limited partnership (or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle), the account statements required under subdivision 1 d of this subsection must be sent to each limited partner (or member or other beneficial owner or their independent representative); and~~

~~(4) A client may designate an independent representative to receive, on his behalf, notices and account statements as required under subdivisions 1 c and d of this subsection.~~

~~2. An advisor who has custody as defined in subdivision A 1 a (2) of this section by having fees directly deducted from client accounts shall provide the following safeguards:~~

~~a. The investment advisor must have written authorization from the client to deduct advisory fees from the account held with the qualified custodian.~~

~~b. Each time a fee is directly deducted from a client account, the investment advisor must concurrently:~~

~~(1) Unless a qualified custodian is calculating the fee, send the qualified custodian an invoice of the amount of the fee to be deducted from the client's account; and~~

~~(2) Send the client an invoice itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee. The invoice will notify the client that the custodian will not be checking the accuracy of the fees and this responsibility is the client's.~~

~~c. The investment advisor notifies the commission in writing that the investment advisor intends to use the safeguards provided above. Such notification is required to be given on Schedule F of the Form ADV.~~

~~d. An investment advisor having custody solely because it meets the definition of custody as defined in subdivision A 1 a (2) of this section and who complies with the safekeeping requirements in subdivisions 1 and 2 of this subsection will not be required to meet the financial requirements for custodial advisors as set forth in 21VAC5-80-180 and subdivisions 1 d (1) and (2) of this subsection provided the investment advisor sends a copy of the qualified custodian's account statements in accordance with subdivision 1 d of this subsection.~~

~~3. An investment advisor who has custody as defined in subdivision A 1 a (3) of this section and who does not meet the exception provided in subdivision C 3 of this section must, in addition to the safeguards set forth in subdivisions 1 a through d of this subsection, also comply with the following:~~

~~a. Hire a qualified independent party to review all fees, expenses, and capital withdrawals from the pooled accounts.~~

~~b. Send all invoices or receipts to the qualified independent party, detailing the amount of the fee, expenses, or capital withdrawal and the method of calculation such that the qualified independent party can:~~

~~(1) Determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement); and~~

~~(2) Forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment advisor.~~

~~c. For purposes of this section, a qualified independent party means a person who:~~

~~(1) Is engaged by an investment advisor to act as a financially qualified gatekeeper for the payment of fees, expenses, and capital withdrawals from the pooled investment (Examples would include an independent CPA or an attorney);~~

~~(2) Does not control and is not controlled by and is not under common control with the investment advisor, either directly or indirectly; and~~

~~(3) Does not have, and has not had within the past two years, any other material business relationship with the investment advisor.~~

~~d. The investment advisor notifies the commission in writing that the investment advisor intends to use the safeguards provided above. Such notification is required to be given on Schedule F of the Form ADV.~~

~~e. An investment advisor having custody solely because it meets the definition of custody as defined in subdivision A 1 a (3) of this section and who complies with the safekeeping requirements in subdivisions 1 and 3 of this subsection will not be required to meet the financial requirements for custodial advisors as set forth in 21VAC5-80-180.~~

~~4. When a trust retains an investment advisor, investment advisor representative, or employee, director, or owner of an investment advisor as trustee, and the investment advisor acts as the investment advisor to that trust, the investment advisor shall:~~

~~a. Notify the commission in writing that the investment advisor intends to use the safeguards provided below. Such notification is required to be given on Form ADV submitted to the IARD system.~~

~~b. Send to the grantor of the trust, the attorney for the trust if it is a testamentary trust, the co-trustee (other than the investment advisor; investment advisor representative; or employee, director, or owner of the investment advisor); or a~~

~~defined beneficiary of the trust, at the same time that it sends any invoice to the qualified custodian, an invoice showing the amount of the trustees' fee or investment management or advisory fee, the value of the assets on which the fees were based, and the specific manner in which the fees were calculated. The invoice will notify the recipient that the custodian will not be checking the accuracy of the fees and that the responsibility is either the grantor's, trust's attorney's, co-trustee's or beneficiary's.~~

~~c. Enter into a written agreement with a qualified custodian that specifies the qualified custodian will not deliver trust securities to the investment advisor, any investment advisor representative or employee, director, or owner of the investment advisor, nor will transmit any funds to the investment advisor, any investment advisor representative or employee, director or owner of the investment advisor, except that the qualified custodian may pay trustees' fees to the trustee and investment management or advisory fees to investment advisor, provided that:~~

~~(1) The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co-trustee (other than the investment advisor, investment advisor representative, or employee, director, or owner of the investment advisor); or a defined beneficiary of the trust has authorized the qualified custodian in writing to pay those fees;~~

~~(2) The statements for those fees show the amount of the fees for the trustee and, in the case of statements for investment management or advisory fees, show the value of the trust assets on which the fee is based and the manner in which the fee was calculated; and~~

~~(3) The qualified custodian agrees to send to the grantor of the trust, the attorneys for a testamentary trust, the co-trustee (other than the investment advisor, investment advisor representative, or employee, director, or owner of the investment advisor); or a defined beneficiary of the trust, at least quarterly, a statement of all~~

~~disbursements from the account of the trust, including the amount of investment management fees paid to the investment advisor and the amount of trustees' fees paid to the trustee.~~

~~d. Except as otherwise set forth in subdivision 4 d (1) of this subsection, the qualified custodian may transfer funds or securities, or both, of the trust only upon the direction of the trustee (who may be the investment advisor; investment advisor representative; or employee, director, or owner of the investment advisor), who the investment advisor has duly accepted as an authorized signatory. The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co-trustee (other than the investment advisor; investment advisor representative; or employee, director, or owner of the investment advisor); or a defined beneficiary of the trust, must designate the authorized signatory for management of the trust. The direction to transfer funds or securities, or both, can only be made to the following:~~

- ~~(1) To a trust company, bank trust department, or brokerage firm independent of the investment advisor for the account of the trust to which the assets relate;~~
- ~~(2) To the named grantors or to the named beneficiaries of the trust;~~
- ~~(3) To a third person independent of the investment advisor in payment of the fees or charges of the third person including, but not limited to:
 - ~~(a) Attorney's, accountant's, or qualified custodian's fees for the trust; and~~
 - ~~(b) Taxes, interest, maintenance, or other expenses, if there is property other than securities or cash owned by the trust;~~~~
- ~~(4) To third persons independent of the investment advisor for any other purpose legitimately associated with the management of the trust; or~~

~~(5) To a broker-dealer in the normal course of portfolio purchases and sales, provided that the transfer is made on payment against delivery basis or payment against trust receipt.~~

~~e. An investment advisor having custody solely because it meets the definition of custody as defined in subdivision A 1 a (3) of this section and who complies with the safekeeping requirements in subdivisions 1 and 4 of this subsection, will not be required to meet the financial requirements for custodial advisors as set forth in 21VAC5-80-180.~~

~~C. Exceptions.~~

~~1. With respect to shares of an open-end company as defined in § 5(a)(1) of the Investment Company Act of 1940, 15 USC § 80a-5(a)(1) (mutual fund), the investment advisor may use the mutual fund's transfer agent in lieu of a qualified custodian for purposes of complying with subsection B of this section.~~

~~2. Certain privately offered securities.~~

~~a. An investment advisor is not required to comply with subsection B of this section with respect to securities that are:~~

~~(1) Acquired from the unaffiliated issuer in a transaction or chain of transactions not involving any public offering;~~

~~(2) Uncertificated, and ownership thereof is recorded only on books of the issuer or its transfer agent in the name of the client; and~~

~~(3) Transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.~~

~~b. Notwithstanding subdivision 2 a of this subsection, the provisions of subdivision 2 of this subsection are available with respect to securities held for the account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if the limited partnership is audited, the audited financial statements are distributed, as described in subdivision 3 of this subsection and the investment advisor notifies the commission in writing that the investment advisor intends to provide audited financial statements, as described above. Such notification is required to be given on Schedule F of the Form ADV.~~

~~3. The investment advisor is not required to comply with subdivision B 1 d (1) through (3) of this section with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) that is subject to audit at least annually and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within 120 days of the end of its fiscal year. The investment advisor shall also notify the commission in writing that the investment advisor intends to employ the use of the audit safeguards described above. Such notification is required to be given on Schedule F of the Form ADV.~~

~~4. The investment advisor is not required to comply with this section with respect to the account of an investment company registered under the Investment Company Act of 1940, 15 USC §§ 80a-1 to 80a-64.~~

~~5. The investment advisor is not required to comply with safekeeping requirements of subsection B of this section or the net worth and bonding requirements of 21VAC5-80-180 if the investment advisor has custody solely because the investment advisor, investment advisor representative or employee, director, or owner of the investment~~

~~advisor is a trustee for a beneficial trust, if all of the following conditions are met for each trust:~~

~~a. The beneficial owner of the trust is a parent, a grandparent, a spouse, a sibling, a child, a grandchild, or other family relative designated as the legal beneficiary of the trustee. These relationships shall include "step" relationships.~~

~~b. For each account under subdivision 5 a of this subsection the investment advisor complies with the following:~~

~~(1) Provide a written statement to each beneficial owner of the account setting forth a description of the requirements of subsection B of this section and the reasons why the investment advisor will not be complying with those requirements.~~

~~(2) Obtain from each beneficial owner a signed and dated statement acknowledging the receipt of the written statement required under subdivision 5 b (1) of this subsection.~~

~~(3) Maintain a copy of both documents described in subdivisions 5 b (1) and (2) of this subsection until the account is closed or the investment advisor is no longer trustee.~~

~~6. Any investment advisor who intends to have custody of client funds or securities but is not able to utilize a qualified custodian as defined in subdivision A 3 of this section shall first obtain specific approval, in writing, from the commission and comply with all of the applicable safekeeping provisions under subsection B of this section including taking responsibility for those provisions that are designated to be performed by a qualified custodian.~~

Part III

Investment Advisor, Federal Covered Advisor, and Investment Advisor Representative

Regulations

21VAC5-80-146. Custody of client funds or securities by investment advisors.

A. For purposes of this section the following definitions shall apply:

"Control" means the power, directly or indirectly, to direct the management or policies of a person whether through ownership of securities, by contract, or otherwise. Control includes:

1. Each of the investment advisor's officers, partners, or directors exercising executive responsibility (or persons having similar status or functions) is presumed to control the investment advisor;

2. A person is presumed to control a corporation if the person:

a. Directly or indirectly has the right to vote 25% or more of a class of the corporation's voting securities; or

b. Has the power to sell or direct the sale of 25% or more of a class of the corporation's voting securities;

3. A person is presumed to control a partnership if the person has the right to receive upon dissolution, or has contributed, 25% or more of the capital of the partnership;

4. A person is presumed to control a limited liability company if the person:

a. Directly or indirectly has the right to vote 25% or more of a class of the interests of the limited liability company;

b. Has the right to receive upon dissolution, or has contributed, 25% or more of the capital of the limited liability company;

c. Is an elected manager of the limited liability company; or

5. A person is presumed to control a trust if the person is a trustee or managing agent of the trust.

"Custody" means holding directly or indirectly, client funds or securities, or having any authority to obtain possession of them or has the ability to appropriate them. The investment advisor has custody if a related person holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of them, in connection with advisory services the investment advisor provides to clients.

1. Custody includes:

a. Possession of client funds or securities unless the investment advisor receives them inadvertently and returns them to the sender promptly but in any case within three business days of receiving them;

b. Any arrangement (including general power of attorney) under which the investment advisor is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment advisor's instruction to the custodian; and

c. Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives the investment advisor or its supervised person legal ownership of or access to client funds or securities.

2. Receipt of checks drawn by clients and made payable to third parties will not meet the definition of custody if forwarded to the third party within three business days of receipt and the investment advisor maintains the records required under 21VAC5-80-160 A 23;

"Independent certified public accountant" means a certified public accountant that meets the standards of independence described in Rule 2-01(b) and (c) of Regulation S-X (17 CFR 210.2-01(b) and (c)).

"Independent party" means a person that:

1. Is engaged by the investment advisor to act as a gatekeeper for the payment of fees, expenses, and capital withdrawals from the pooled investment;
2. Does not control and is not controlled by and is not under common control with the investment advisor;
3. Does not have, and has not had within the past two years, a material business relationship with the investment advisor; and
4. Shall not negotiate or agree to have material business relations or commonly controlled relations with an investment advisor for a period of two years after serving as the person engaged in an independent party agreement.

"Independent representative" means a person who:

1. Acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or contract is obliged to act in the best interest of the advisory client or the limited partners, members, or other beneficial owners;
2. Does not control, is not controlled by, and is not under common control with investment advisor; and
3. Does not have, and has not had within the past two years, a material business relationship with the investment advisor.

"Qualified custodian" means:

1. A bank or savings association that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act;
2. A broker-dealer registered in this jurisdiction and with the SEC holding the client assets in customer accounts;
3. A registered futures commission merchant registered under Section 4f(a) of the Commodity Exchange Act, holding the 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 for future delivery and options thereon; and
4. A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

"Related person" means any person, directly or indirectly, controlling or controlled by the investment advisor, and any person that is under common control with the investment advisor.

B. Requirements: It is unlawful and deemed to be a fraudulent, deceptive, or manipulative act, practice, or course of business for an investment advisor, registered or required to be registered, to have custody of client funds or securities unless:

1. The investment advisor notifies the commission promptly in writing that the investment advisor has or may have custody. Such notification is required to be given on Form ADV.
2. A qualified custodian maintains those funds and securities:
 - a. In a separate account for each client under that client's name; or

b. In accounts that contain only the investment advisor's clients' funds and securities, under the investment advisor's name as agent or trustee for the clients, or, in the case of a pooled investment vehicle that the investment advisor manages, in the name of the pooled investment vehicle.

3. If an investment advisor opens an account with a qualified custodian on its client's behalf, under the client's name, under the name of the investment advisor as agent, or under the name of a pooled investment vehicle, the investment advisor must notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information. If the investment advisor sends account statements to a client to which the investment advisor is required to provide this notice, and the investment advisor must include in the notification provided to that client and in any subsequent account statement the investment advisor sends that client a statement urging the client to compare the account statements from the custodian with those from the investment advisor.

4. The investment advisor has a reasonable basis, after due inquiry, for believing that the qualified custodian sends an account statement, at least quarterly, to each client for which it maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period.

5. If the investment advisor or a related person is a general partner of a limited partnership (or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle):

a. The account statements required under subdivision 4 of this subsection must be sent to each limited partner (or member or other beneficial owner), and

b. The investment advisor must:

(1) Enter into a written agreement with an independent party who is obliged to act in the best interest of the limited partners, members, or other beneficial owners to review all fees, expenses and capital withdrawals from the pooled accounts;

(2) Send all invoices or receipts to the independent party, detailing the amount of the fee, expenses or capital withdrawal and the method of calculation such that the independent party can:

(a) Determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement); and

(b) Forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment advisor.

6. An independent certified public accountant, pursuant to a written agreement between the investment advisor and the independent certified public accountant, verifies by actual examination at least once during each calendar year the client funds and securities of which the investment advisor has custody. The time will be chosen by the independent certified public accountant without prior notice or announcement to the investment advisor and will be irregular from year to year. The written agreement must provide for the first examination to occur within six months of becoming subject to this subdivision, except that, if the investment advisor maintains client funds or securities pursuant to this section as a qualified custodian, the agreement must provide for the first examination to occur no later than six months after obtaining the internal control report. The written agreement must require the independent certified public accountant to:

a. File a certificate on Form ADV-E with the commission within 120 days of the time chosen by the independent certified public accountant in subdivision 6 of this

subsection, stating that it has examined the funds and securities and describing the nature and extent of the examination;

b. Upon finding any material discrepancies during the course of the examination, notify the commission within one business day of the finding, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the commission; and

c. Upon resignation or dismissal from, or other termination of, the engagement, or upon removing itself or being removed from consideration for being reappointed, file within four business days Form ADV-E accompanied by a statement that includes:

(1) The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent certified public accountant; and

(2) An explanation of any problems relating to examination scope or procedure that contributed to such resignation, dismissal, removal, or other termination.

7. If the investment advisor maintains, or if the investment advisor has custody because a related person maintains, client funds or securities pursuant to this section as a qualified custodian in connection with advisory services the investment advisor provides to clients:

a. The independent certified public accountant the investment advisor retains to perform the independent verification required by subdivision 6 of this subsection must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by the Public Company Accounting Oversight Board in accordance with its rules; and

b. The investment advisor must obtain, or receive from its related person, within six months of becoming subject to this subdivision and thereafter no less frequently than once each calendar year a written internal control report prepared by an independent certified public accountant:

(1) The internal control report must include an opinion of an independent certified public accountant as to whether controls have been placed in operation as of a specific date, are suitably designed, and are operating effectively to meet control objectives relating to custodial services, including the safeguarding of funds and securities held by either the investment advisor or a related person on behalf of the investment advisors clients, during the year;

(2) The independent certified public accountant must verify that the funds and securities are reconciled to a custodian other than the investment advisor or the investment advisors related person; and

(3) The independent certified public accountant must be registered with and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by the Public Company Accounting Oversight Board in accordance with its rules.

8. A client may designate an independent representative to receive on his behalf notices and account statements as required under subdivisions 3 and 4 of this subsection.

C. Exceptions:

1. With respect to shares of an open-end company as defined in Section 5(a)(1) of the Investment Company Act of 1940 ("mutual fund"), the investment advisor may use the mutual fund's transfer agent in lieu of a qualified custodian for purposes of complying with subsection B of this section;

2. Certain privately offered securities are exempt, including:

a. The investment advisor is not required to comply with subdivision B 2 of this section with respect to securities that are:

(1) Acquired from the issuer in a transaction or chain of transactions not involving any public offering;

(2) Uncertificated and ownership thereof is recorded only on the books of the issuer or its transfer agent in the name of the client; and

(3) Transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

b. Notwithstanding subdivision 2 a of this subsection, the provisions of this subdivision 2 are available with respect to securities held for the account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if the limited partnership is audited, and the audited financial statements are distributed, as described in subdivision 4 of this subsection and the investment advisor notifies the commission in writing that the investment advisor intends to provide audited financial statements as described above. Such notification is required to be provided on Form ADV.

3. Notwithstanding subdivision B 6 of this section, an investment advisor is not required to obtain an independent verification of client funds and securities maintained by a qualified custodian if all of the following are met:

a. The investment advisor 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;

b. The investment advisor has written authorization from the client to deduct advisory fees from the account held with the qualified custodian;

c. Each time a fee is directly deducted from a client account, the investment advisor concurrently:

(1) Sends the qualified custodian or if subdivision B 5 of this section applies sends the independent party designated pursuant to subdivision B 5 b (2) of this section, an invoice or statement of the amount of the fee to be deducted from the client's account; and

(2) Sends the client an invoice or statement itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee. The invoice will notify the client that the custodian will not be checking the accuracy of the fees and this responsibility is the client's.

d. The investment advisor notifies the commission in writing that the investment advisor intends to use the safeguards provided above. Such notification is required to be given on Form ADV.

Check Item 9.A. on Form ADV Part 1A as "No" if the only reason the investment advisors have custody is because they engage in direct fee deduction. Item 2.I. of Form ADV Part 1B asks detailed questions that are more useful in determining associated risk.

4. An investment advisor is not required to comply with subdivisions B 3 and B 4 of this section and shall be deemed to have complied with subdivision B 6 of this section with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) if each of the following conditions are met:

a. The advisor sends to all limited partners (or members or other beneficial owners) at least quarterly, a statement, showing:

(1) The total amount of all additions to and withdrawals from the fund as a whole as well as the opening and closing value of the fund at the end of the quarter based on the custodian's records;

(2) A listing of all long and short positions on the closing date of the statement in accordance with FASB Rule Accounting Standards Codification (ASC) 946-210-50;

(3) The total amount of additions to and withdrawals from the fund by the investor as well as the total value of the investor's interest in the fund at the end of the quarter.

The listing in subdivision 4 a (2) of this subsection follows FASB Rule Accounting Standards Codification (ASC) 946-210-50-6 whereby long and short positions representing more than 5.0% of the net assets of the fund must be reported as outlined in subsection 50-6 of the FASB Rule. All provisions of subsection 50-6 in the FASB Rule apply to the position disclosure required on the quarterly customer statement. This is the same reporting format required by Rule 13F under the Securities Exchange Act of 1934 for investment managers' annual reports.

b. At least annually the fund is subject to an audit and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) and the commission within 120 days of the end of its fiscal year;

c. The audit is performed by an independent certified public accountant that is registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by the Public Company Accounting Oversight Board in accordance with its rules;

d. Upon liquidation, the advisor distributes the fund's final audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) and the commission promptly after the completion of such audit:

e. The written agreement with the independent certified public accountant must require the independent certified public accountant to, upon resignation or dismissal from, or other termination of, the engagement, or upon removing itself or being removed from consideration for being reappointed, notify the commission within four business days accompanied by a statement that includes:

(1) The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent certified public accountant; and

(2) An explanation of any problems relating to audit scope or procedure that contributed to such resignation, dismissal, removal, or other termination.

f. The investment advisor must also notify the commission in writing that the investment advisor intends to employ the use of the statement delivery and audit safeguards described above. Such notification is required to be given on Form ADV.

5. The investment advisor is not required to comply with this section with respect to the account of an investment company registered under the Investment Company Act of 1940.

[6. When a supervised person of an advisor serves as the executor, conservator or trustee for an estate, conservatorship or personal trust solely because the supervised person has been appointed in these capacities as a result of a family or personal relationship with the decedent, beneficiary or grantor (but not a relationship resulting

from a past or present client relationship with the advisor), the advisor will not be required to comply with the requirements of subsection B if the advisor complies with the following:

a. Provides a written statement to each beneficial owner of the account setting forth a description of the requirements of subsection B of this section and includes the reasons why the investment advisor will not be required to comply with those requirements.

b. Obtains from each beneficial owner a signed and dated statement acknowledging the receipt of the written statement required under subdivision C 6 a of this section.

c. Maintains a copy of both documents described in subdivisions C 6 a and b of this section until the account is closed or the investment advisor is no longer executor, conservator or trustee.]

D. Delivery to related persons. Sending an account statement under subdivision B 5 of this section or distributing audited financial statements under subdivision C 4 of this section shall not satisfy the requirements of this section if such account statements or financial statements are sent solely to limited partners (or members or other beneficial owners) that themselves are limited partnerships (or limited liability companies, or another type of pooled investment vehicle) and are related persons.

21VAC5-80-160. Recordkeeping requirements for investment advisors.

A. Every investment advisor registered or required to be registered under the Act shall make and keep true, accurate and current the following books, ledgers and records, except an investment advisor having its principal place of business outside this Commonwealth and registered or licensed, and in compliance with the applicable books and records requirements, in the state where its principal place of business is located, shall only be required to make, keep current, maintain and preserve such of the following required books, ledgers and records as are

not in addition to those required under the laws of the state in which it maintains its principal place of business:

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 advisor for the purchase or sale of any security, of any instruction received by the investment advisor 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 advisor 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 or dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.
4. All check books, bank statements, canceled checks and cash reconciliations of the investment advisor.
5. All bills or statements (or copies of), paid or unpaid, relating to the business as an investment advisor.
6. All trial balances, financial statements prepared in accordance with generally accepted accounting principles which shall include a balance sheet, income statement and such other statements as may be required pursuant to 21VAC5-80-180, and internal

audit working papers relating to the investment advisor's business as an investment advisor.

7. Originals of all written communications received and copies of all written communications sent by the investment advisor relating to (i) any recommendation made or proposed to be made and any advice given or proposed to be given; (ii) any receipt, disbursement or delivery of funds or securities; and (iii) the placing or execution of any order to purchase or sell any security; however, (a) the investment advisor 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 advisor, and (b) if the investment advisor sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 10 persons, the investment advisor 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 advisor shall retain with a copy of the notice, circular or advertisement a memorandum describing the list and the source thereof.

8. A list or other record of all accounts which list identifies the accounts in which the investment advisor is vested with any discretionary power with respect to the funds, securities or transactions of any client.

9. All powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment advisor, or copies thereof.

10. All written agreements (or copies thereof) entered into by the investment advisor with any client, and all other written agreements otherwise related to the investment advisor's business as an investment advisor.

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 advisor circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment advisor), 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 advisor or any investment advisory representative of the investment advisor 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 advisor nor any investment advisory representative of the investment advisor 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 such transaction shall not be construed as an admission that the investment advisor or investment 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 following definitions will apply. The term "advisory representative" means any partner, officer or director of the investment

advisor; 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 advisor prior to the effective dissemination of the recommendations:

- (1) Any person in a control relationship to the investment adviser;
- (2) Any affiliated person of a controlling person; and
- (3) Any affiliated person of an affiliated person.

"Control" means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with the company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the ownership interest of a company shall be presumed to control the company.

c. An investment advisor shall not be deemed to have violated the provisions of this subdivision 12 because of his failure to record securities transactions of any investment advisor representative if the investment advisor 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 of this subsection, where the investment advisor 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 advisor or any investment advisory representative of

such investment advisor has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment advisor nor any investment advisory representative of the investment advisor 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 such transaction shall not be construed as an admission that the investment advisor or investment 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 advisor 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 less, the investment advisor 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 following definitions will apply. The term "advisory representative," when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, means any partner, officer, director or employee of the investment advisor 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 advisor prior to the effective dissemination of the recommendations or of the information concerning the recommendations:

- (1) Any person in a control relationship to the investment advisor;
- (2) Any affiliated person of a controlling person; and
- (3) Any affiliated person of an affiliated person.

d. An investment advisor shall not be deemed to have violated the provisions of this subdivision 13 because of his failure to record securities transactions of any investment advisor representative if he establishes that he 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 such investment advisor in accordance with the provisions of 21VAC5-80-190 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 advisor by means of a solicitor to whom a cash fee was paid by the advisor, the following:

- a. Evidence of a written agreement to which the advisor is a party related to the payment of such fee;

b. A signed and dated acknowledgement of receipt from the client evidencing the client's receipt of the investment advisor'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, acknowledgement and solicitor disclosure statement will be considered to be in compliance if such documents are in compliance with Rule 275.206(4)-3 of the Investment Advisers Act of 1940.

For purposes of this regulation, the term "solicitor" means any person or entity who, for compensation, acts as an agent of an investment advisor in referring potential clients.

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 advisor circulates or distributes directly or indirectly, to two or more persons (other than persons connected with the investment advisor); however, 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 advisor or any investment advisor 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 the client.

19. Written procedures to supervise the activities of employees and investment advisor 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 advisor representatives, which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

21. Any records documenting dates, locations and findings of the investment advisor's annual review of these policies and procedures conducted pursuant to subdivision ~~E-2~~ F of 21VAC5-80-170.

22. ~~Form IA XRF, "Cross Reference Between ADV Part II, ADV Part 1A/1B, Schedule F, Contract and Brochure."~~ Copies, with original signatures of the investment advisor's appropriate signatory and the investment advisor representative, of each initial Form U4 and each amendment to Disclosure Reporting Pages (DRPs U4) must be retained by the investment advisor (filing on behalf of the investment advisor representative) and must be made available for inspection upon regulatory request.

23. Where the advisor inadvertently held or obtained a client's securities or funds and returned them to the client within three business days or has forwarded third party checks within three business days of receipt, the advisor will be considered as not having custody but shall keep the following record to identify all securities or funds held or obtained relating to the inadvertent custody:

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 advisor;

h. Date sent to client or sender;

i. Form of delivery to client or sender, or copy of the form of delivery to client or sender; and

j. Mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.

24. If an investment advisor 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 subdivision C 2 of 21VAC5-80-146, the advisor 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 that are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

B. 1. If an investment advisor subject to subsection A of this section has custody or possession of securities or funds of any client, the records required to be made and kept under subsection A of this section shall also include:

~~4.~~ a. A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for such accounts and all other debits and credits to the accounts.

~~2.~~ b. 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.

~~3.~~ c. Copies of confirmations of all transactions effected by or for the account of any client.

~~4.~~ d. 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.

~~5.~~ e. A copy of any records required to be made and kept under ~~21VAC5-80-145~~ 21VAC5-80-146.

f. A copy of any and all documents executed by the client (including a limited power of attorney) under which the advisor is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the advisor's instruction to the custodian.

g. A copy of each of the client's quarterly account statements as generated and delivered by the qualified custodian. If the advisor also generates a statement that is delivered to the client, the advisor shall also maintain copies of such statements along with the date such statements were sent to the clients.

h. If applicable to the advisor'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.

i. A record of any finding by the independent certified public accountant of any material discrepancies found during the examination.

j. If applicable, evidence of the client's designation of an independent representative.

2. If an investment advisor has custody because it advises a pooled investment vehicle, as defined in 21VAC5-80-146 A in the definition of custody in clause 1 c, the advisor shall also keep the following records:

a. True, accurate, and current account statements:

b. Where the advisor complies with 21VAC5-80-146 C 4, the records required to be made and kept shall include:

(1) The date or dates of the audit;

(2) A copy of the audited financial statements; and

(3) 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 advisor complies with 21VAC5-80-146 B 5, the records required to be made and kept shall include:

(1) A copy of the written agreement with the independent party reviewing all fees and expenses, indicating the responsibilities of the independent third party.

(2) Copies of all invoices and receipts showing approval by the independent party for payment through the qualified custodian.

C. Every investment advisor subject to subsection A of this section who renders any investment advisory 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 advisor, 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 advisor 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 advisor in such manner that the identity of any client to whom the investment advisor renders investment advisory services is indicated by numerical or alphabetical code or some similar designation.

E. Every investment advisor 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 through subdivision 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 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 record, the first two years of which shall be maintained in the principal office of the investment advisor.

2. Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment advisor and of any predecessor, shall be maintained in the principal office of the investment advisor 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 in an easily accessible place for a period of not less than five years, the first two years of which shall be maintained in the principal office of the investment advisor, from the end of the fiscal year during which the investment advisor last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media.

4. Books and records required to be made under the provisions of subdivisions A 17 through A 22, inclusive, of this section shall be maintained and preserved in an easily accessible place for a period of not less than five years, from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment advisor, or for the time period during which the investment advisor was registered or required to be registered in the state, if less.

5. Notwithstanding other record preservation requirements of this subsection, the following records or copies shall be required to be maintained at the business location of the investment advisor from which the customer or client is being provided or has been provided with investment advisory services: (i) records required to be preserved under subdivisions A 3, A 7 through A 10, A 14 and A 15, A 17 through A 19, subsections B and C, and (ii) the records or copies required under the provision of subdivisions A 11

and A 16 of this section which records or related records identify the name of the investment advisor representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the period described in this subsection.

F. Every investment advisor shall establish and maintain a written disaster recovery plan that shall address at a minimum:

1. The identity of individuals that will conduct or wind down business on behalf of the investment advisor in the event of death or incapacity of key persons;
2. Means to provide notification to clients of the investment advisor and to those states in which the advisor is registered of the death or incapacity of key persons;
 - a. Notification shall be provided to the Division of Securities and Retail Franchising via the IARD/CRD system within 24 hours of the death or incapacity of key persons.
 - b. Notification shall be given to clients within five business days from the death or incapacity of key persons.
3. Means for clients' accounts to continue to be monitored until an orderly liquidation, distribution or transfer of the clients' portfolio to another advisor can be achieved or until an actual notice to the client of investment advisor death or incapacity and client control of their assets occurs;
4. Means for the credit demands of the investment advisor to be met; and
5. Data backups sufficient to allow rapid resumption of the investment advisor's activities.

G. An investment advisor subject to subsection A of this section, before ceasing to conduct or discontinuing business as an investment advisor, 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 commission in writing of the exact address where the books and records will be maintained during such period.

H. 1. The records required to be maintained pursuant to this section may be immediately produced or reproduced by photograph on film or, as provided in subdivision 2 of this subsection, on magnetic disk, tape or other computer storage medium, and be maintained for the required time in that form. If records are preserved or reproduced by photographic film or computer storage medium, the investment advisor shall:

- a. Arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record;
- b. Be ready at all times to promptly provide any facsimile enlargement of film or computer printout or copy of the computer storage medium which the commission by its examiners or other representatives may request;
- c. Store separately from the original one other copy of the film or computer storage medium for the time required;
- d. With respect to records stored on computer storage medium, maintain procedures for maintenance of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction; and
- e. With respect to records stored on photographic film, at all times have available, for the commission's examination of its records, facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

2. Pursuant to subdivision 1 of this subsection, an advisor may maintain and preserve on computer tape or disk or other computer storage medium records which, in the ordinary course of the advisor's business, are created by the advisor on electronic media or are received by the advisor solely on electronic media or by electronic transmission.

I. Any book or record made, kept, maintained, and preserved in compliance with SEC Rules 17a-3 (17 CFR 240.17a-3) and 17a-4 (17 CFR 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.

J. For purposes of this section, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client; and "discretionary power" shall not include discretion as to the price at which or the time when a transaction is or is to be effected if, before the order is given by the investment advisor, the client has directed or approved the purchase or sale of a definite amount of the particular security.

K. For purposes of this section, "principal place of business" and "principal office" mean the executive office of the investment advisor from which the officers, partners, or managers of the investment advisor direct, control, and coordinate the activities of the investment advisor.

L. Every investment advisor registered or required to be registered in this Commonwealth and has its principal place of business in a state other than the Commonwealth shall be exempt from the requirements of this section to the extent provided by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290), provided the investment advisor is licensed in such state and is in compliance with such state's recordkeeping requirements.

21VAC5-80-170. Supervision of investment advisor representatives.

A. An investment advisor shall be responsible for the acts, practices, and conduct of its investment advisor representatives in connection with advisory services until such time as the investment advisor representatives have been properly terminated as provided by 21VAC5-80-110.

B. Every investment advisor shall exercise diligent supervision over the advisory activities of all of its investment advisor representatives.

C. Every investment advisor representative employed by an investment advisor shall be subject to the supervision of a supervisor designated by such investment advisor. The supervisor may be the investment advisor in the case of a sole proprietor, or a partner, officer, office manager or any qualified investment advisor representative in the case of entities other than sole proprietorships. All designated supervisors shall exercise reasonable supervision over the advisory activities of all investment advisor representatives under their responsibility.

D. As part of its responsibility under this section, every investment advisor, except entities employing no more than one investment advisor representative, shall establish, maintain and enforce written procedures, a copy of which shall be kept in each business office, which shall set forth the procedures adopted by the investment advisor to comply with the Act and associated regulations, which shall include but not be limited to the following duties imposed by this section; provided that an investment advisor having its principal place of business outside this Commonwealth and registered or licensed, and in compliance with the applicable books and records requirements, in the state where its principal place of business is located, shall only be required to make, keep current, maintain and preserve such of the following required books, ledgers and records as are not in addition to those required under the laws of the state in which it maintains its principal place of business:

1. The review and written approval by the designated supervisor of the opening of each new client account;
2. The frequent examination of all client accounts to detect and prevent irregularities or abuses;
3. The prompt review and written approval by a designated supervisor of all advisory transactions by investment advisor representatives and of all correspondence pertaining to the solicitation or execution of all advisory transactions by investment advisor representatives;
4. The prompt review and written approval of the handling of all client complaints.

E. Every investment advisor who has designated more than one supervisor pursuant to subsection C of this section shall designate from among its partners, officers, or other qualified investment advisor representatives, a person or group of persons, independent from the designated business supervisor or supervisors who shall: ~~1. Supervise~~ supervise and periodically review the activities of the supervisors designated pursuant to subsection C of this section; ~~and 2. No less often than annually, conduct a physical inspection of each business office under his supervision to ensure that the written procedures and compliance requirements are being enforced.~~ All supervisors designated pursuant to this subsection E shall exercise reasonable supervision over the supervisors under their responsibility to ~~insure~~ ensure compliance with this subsection.

F. Every investment advisor who has more than one business office where its investment advisor representatives offer investment advisory related services shall no less often than annually, conduct an independent physical inspection of each business office under his supervision to ensure (i) the investment advisor representative at the respective business office [~~has not violated any~~ are in compliance with the] statutory provision of the Act or associated

regulations promulgated by the commission and (ii) the written procedures and compliance requirements are being enforced.

21VAC5-80-180. Requirements for surety bonds and financial reporting.

A. Investment advisors required to provide a balance sheet pursuant to Part II 2A, Item 44 18 of Form ADV must demonstrate a net worth in excess of \$25,000. In the case of an investment advisor that is registered in the state in which it maintains its principal place of business, its balance sheet must demonstrate that it is in compliance with the state's net worth or net capital requirements (as the case may be).

B. Investment advisors who maintain their principal place of business in the Commonwealth of Virginia and are subject to subsection A of this section, whose net worth drops below \$25,001, must notify the Division of Securities and Retail Franchising within 24 hours of initial awareness of the discrepancy and immediately take action to establish a net worth in excess of \$25,000 or obtain a surety bond in the penalty amount of \$25,000. The surety bond form must be utilized. Additionally, within 24 hours after transmitting such notice, the investment advisor shall file a report with the Division of Securities and Retail Franchising of its financial condition, including the following:

1. A trial balance of all ledger accounts.
2. A computation of net worth.
3. A statement of all client funds or securities which are not segregated.
4. A computation of the aggregate amount of client ledger debit balances.
5. A statement as to the number of client accounts.

C. An investment advisor registered in the state in which it maintains its principal place of business and subject to subsection A of this section whose net worth or net capital (as the case

may be) drops below the state's requirement, must notify the Division of Securities and Retail Franchising within 24 hours of initial awareness of the discrepancy and immediately take action to establish a net worth or net capital that is in compliance with the state's requirement. Additionally, within 24 hours after transmitting such notice, the investment advisor shall file a report with the Division of Securities and Retail Franchising of its financial condition, including the following:

1. A trial balance of all ledger accounts.
2. A computation of net worth or net capital.
3. A statement of all client funds or securities which are not segregated.
4. A computation of the aggregate amount of client ledger debit balances.
5. A statement as to the number of client accounts.

21VAC5-80-190. Disclosure requirements.

A. For purposes of compliance with § 13.1-505.1 of the Act, a copy of Part ~~II~~ 2 of Form ADV must be given to clients of investment advisors, ~~or a brochure containing such information may be utilized.~~

B. The investment advisor or its registered representatives shall deliver the disclosure information required by this section to an advisory client or prospective advisory client:

1. Not less than 48 hours prior to entering into any investment advisory contract with such client or prospective client, or
2. At the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five calendar days after entering into the contract.

C. The investment advisor, or its registered representatives, shall offer to deliver the disclosure information required by this section to an advisory client or prospective advisory client annually, within 90 days of any investment advisor's fiscal year end.

D. A copy of Part ~~II~~ 2 of Form ADV ~~or the brochure~~ to be given to clients must be filed by investment advisors with the commission at its Division of Securities and Retail Franchising not later than the time of its use.

~~E. If an investment advisor renders substantially different types of investment advisory services to different advisory clients, any information required by Part II of Form ADV may be omitted from the statement furnished to an advisory client or prospective advisory client if such information is applicable only to a type of investment advisory service or fee which is not rendered or charged, or proposed to be rendered or charged to that client or prospective client.~~

F. E. An investment advisor and its representative who receives compensation for assisting a client in the selection of another investment advisor may only assist that client in the selection of another investment advisor pursuant to a written agreement between the assisting investment advisor and the other investment advisor. The written agreement must describe the assisting activities and compensation, contain the assisting investment advisor's undertaking to perform consistent with the other investment advisor's instructions, and require that the assisting investment advisor representative provide the prospective clients with written disclosure documents of the assisting investment advisor and the other investment advisor. The disclosure document of an investment advisor who assists clients in the selection of another investment advisor shall always contain the following information in addition to other information required by subsection A of ~~of~~ this section:

1. The name of the assisting investment advisor representative;
2. The name of the other investment advisor;

3. The nature of the relationship, including any affiliation between the assisting investment advisor representative and the other investment advisor;
4. A statement that the assisting investment advisor representative will be compensated for his services by the other investment advisor;
5. The terms of such compensation arrangement, including a description of the compensation paid to the assisting investment advisor representative;
6. Compensation differentials charged to clients above the normal other investment advisor's fee, as a result of the cost of obtaining clients by compensating the assisting investment advisor representative.

21VAC5-80-200. Dishonest or unethical practices.

A. An investment advisor or federal covered advisor is a fiduciary and has a duty to act primarily for the benefit of his clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment advisor or federal covered advisor and his clients and the circumstances of each case, an investment advisor or federal covered advisor who is registered or required to be registered shall not engage in unethical practices, including the following:

1. Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security 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, risk tolerance and needs, and any other information known or acquired by the investment advisor or federal covered advisor after reasonable examination of the client's financial records.

2. Placing an order to purchase or sell a security for the account of a client without written authority to do so.
3. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party authorization from the client.
4. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.
5. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.
6. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment advisor or federal covered advisor, or a financial institution engaged in the business of loaning funds or securities.
7. Loaning money to a client unless the investment advisor or federal covered advisor is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment advisor or federal covered advisor.
8. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment advisor or federal covered advisor, or misrepresenting the nature of the advisory services being offered or fees to be charged for the services, or omission to state a material fact necessary to make the statements made regarding

qualifications services or fees, in light of the circumstances under which they are made, not misleading.

9. Providing a report or recommendation to any advisory client prepared by someone other than the investment advisor or federal covered advisor without disclosing that fact.

This prohibition does not apply to a situation where the advisor uses published research reports or statistical analyses to render advice or where an advisor orders such a report in the normal course of providing service.

10. Charging a client an unreasonable advisory fee in light of the fees charged by other investment advisors or federal covered advisors providing essentially the same services.

11. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment advisor or federal covered advisor or any of his employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

a. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; or

b. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the advisor or his employees.

12. Guaranteeing a client that a specific result will be achieved as a result of the advice which will be rendered.

13. Directly or indirectly using any advertisement that does any one of the following:

a. Refers to any testimonial of any kind concerning the investment advisor or investment advisor representative or concerning any advice, analysis, report, or

other service rendered by the investment advisor or investment advisor representative;

b. Refers to past specific recommendations of the investment advisor or investment advisor representative that were or would have been profitable to any person; except that an investment advisor or investment advisor representative may furnish or offer to furnish a list of all recommendations made by the investment advisor or investment advisor representative within the immediately preceding period of not less than one year if the advertisement or list also includes both of the following:

(1) The name of each security recommended, the date and nature of each recommendation, the market price at that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each security; and

(2) A legend on the first page in prominent print or type that states that the reader should not assume that recommendations made in the future will be profitable or will equal the performance of the securities in the list;

c. Represents that any graph, chart, formula, or other device being offered can be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making that person's own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in the advertisement the limitations thereof and the risks associated to its use;

- d. Represents that any report, analysis, or other service will be furnished for free or without charge, unless the report, analysis, or other service actually is or will be furnished entirely free and without any direct or indirect condition or obligation;
- e. Represents that the commission has approved any advertisement; or
- f. Contains any untrue statement of a material fact, or that is otherwise false or misleading.

For the purposes of this section, the term "advertisement" includes any notice, circular, letter, or other written communication addressed to more than one person, or any notice or other announcement in any electronic or paper publication, by radio or television, or by any medium, that offers any one of the following:

- (i) Any analysis, report, or publication concerning securities;
- (ii) Any analysis, report, or publication that is to be used in making any determination as to when to buy or sell any security or which security to buy or sell;
- (iii) Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or
- (iv) Any other investment advisory service with regard to securities.

14. Disclosing the identity, affairs, or investments of any client to any third party unless required by law or an order of a court or a regulatory agency to do so, or unless consented to by the client.

15. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment advisor has custody or possession of such securities or funds, when the investment advisor's action is subject

to and does not comply with the safekeeping requirements of ~~21VAC5-80-145~~ 21VAC5-80-146.

16. Entering into, extending or renewing any investment advisory contract unless the contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment advisor or federal covered advisor and that no assignment of such contract shall be made by the investment advisor or federal covered advisor without the consent of the other party to the contract.

17. Failing to clearly and separately disclose to its customer, prior to any security transaction, providing investment advice for compensation or any materially related transaction that the customer's funds or securities will be in the custody of an investment advisor or contracted custodian in a manner that does not provide Securities Investor Protection Corporation protection, or equivalent third-party coverage over the customer's assets.

18. Using a certification or professional designation in connection with 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.

a. The use of such certification or professional designation includes, but is not limited to, the following:

- (1) Use of a certification or designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;
 - (2) Use of a nonexistent or self-conferred certification or professional designation;
 - (3) Use of 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; or
 - (4) Use of a certification or professional designation that was obtained from a designating or certifying organization that:
 - (a) Is primarily engaged in the business of instruction in sales and/or marketing;
 - (b) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;
 - (c) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or
 - (d) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.
- b. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subdivision 18 a (4) of this subsection, when the organization has been accredited by:
- (1) The American National Standards Institute;
 - (2) The Institute for Credentialing Excellence (formerly the National Commission for Certifying Agencies); or

(3) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.

c. In determining whether a combination of words (or an acronym 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, factors to be considered shall include:

(1) Use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(2) The manner in which those 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 within the organization; or

(2) Specifies an individual's area of specialization within the organization.

For purposes of this subdivision d, "financial services regulatory agency" includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under § 3 (a)(1) of the Investment Company Act of 1940 (15 USC § 80a-3(a)(1)).

e. Nothing in this regulation shall limit the commission's authority to enforce existing provisions of the law.

B. An investment advisor representative is a fiduciary and has a duty to act primarily for the benefit of his clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment advisor representative and his clients and the circumstances of each case, an investment advisor representative who is registered or required to be registered shall not engage in unethical practices, including the following:

1. Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security 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 and needs, and any other information known or acquired by the investment advisor representative after reasonable examination of the client's financial records.
2. Placing an order to purchase or sell a security for the account of a client without written authority to do so.
3. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party authorization from the client.
4. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

5. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.
6. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment advisor representative, or a financial institution engaged in the business of loaning funds or securities.
7. Loaning money to a client unless the investment advisor representative is engaged in the business of loaning funds or the client is an affiliate of the investment advisor representative.
8. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment advisor representative, or misrepresenting the nature of the advisory services being offered or fees to be charged for the services, or omission to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.
9. Providing a report or recommendation to any advisory client prepared by someone other than the investment advisor or federal covered advisor who the investment advisor representative is employed by or associated with without disclosing that fact. This prohibition does not apply to a situation where the investment advisor or federal covered advisor uses published research reports or statistical analyses to render advice or where an investment advisor or federal covered advisor orders such a report in the normal course of providing service.
10. Charging a client an unreasonable advisory fee in light of the fees charged by other investment advisor representatives providing essentially the same services.

11. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment advisor representative which could reasonably be expected to impair the rendering of unbiased and objective advice including:

a. *Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; or*

b. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the investment advisor representative.

12. Guaranteeing a client that a specific result will be achieved as a result of the advice which will be rendered.

13. Directly or indirectly using any advertisement that does any one of the following:

a. Refers to any testimonial of any kind concerning the investment advisor or investment advisor representative or concerning any advice, analysis, report, or other service rendered by the investment advisor or investment advisor representative;

b. Refers to past specific recommendations of the investment advisor or investment advisor representative that were or would have been profitable to any person; except that an investment advisor or investment advisor representative may furnish or offer to furnish a list of all recommendations made by the investment advisor or investment advisor representative within the immediately preceding period of not less than one year if the advertisement or list also includes both of the following:

(1) The name of each security recommended, the date and nature of each recommendation, the market price at that time, the price at which the

recommendation was to be acted upon, and the most recently available market price of each security; and

(2) A legend on the first page in prominent print or type that states that the reader should not assume that recommendations made in the future will be profitable or will equal the performance of the securities in the list;

c. Represents that any graph, chart, formula, or other device being offered can be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making that person's own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in the advertisement the limitations thereof and the risks associated with its use;

d. Represents that any report, analysis, or other service will be furnished for free or without charge, unless the report, analysis, or other service actually is or will be furnished entirely free and without any direct or indirect condition or obligation;

e. Represents that the commission has approved any advertisement; or

f. Contains any untrue statement of a material fact, or that is otherwise false or misleading.

For the purposes of this section, the term "advertisement" includes any notice, circular, letter, or other written communication addressed to more than one person, or any notice or other announcement in any electronic or paper publication, by radio or television, or by any medium, that offers any one of the following:

(i) Any analysis, report, or publication concerning securities;

(ii) Any analysis, report, or publication that is to be used in making any determination as to when to buy or sell any security or which security to buy or sell;

(iii) Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell;

or

(iv) Any other investment advisory service with regard to securities.

14. Disclosing the identity, affairs, or investments of any client to any third party unless required by law or an order of a court or a regulatory agency to do so, or unless consented to by the client.

15. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment advisor representative other than a person associated with a federal covered advisor has custody or possession of such securities or funds, when the investment advisor representative's action is subject to and does not comply with the safekeeping requirements of ~~21VAC5-80-145~~ 21VAC5-80-146.

16. Entering into, extending or renewing any investment advisory or federal covered advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment advisor representative and that no assignment of such contract shall be made by the investment advisor representative without the consent of the other party to the contract.

17. Failing to clearly and separately disclose to its customer, prior to any security transaction, providing investment advice for compensation or any materially related transaction that the customer's funds or securities will be in the custody of an investment advisor or contracted custodian in a manner that does not provide Securities Investor Protection Corporation protection, or equivalent third-party coverage over the customer's assets.

18. Using a certification or professional designation in connection with 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.

a. The use of such certification or professional designation includes, but is not limited to, the following:

(1) Use of a certification or designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(2) Use of a nonexistent or self-conferred certification or professional designation;

(3) Use of 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; or

(4) Use of a certification or professional designation that was obtained from a designating or certifying organization that:

(a) Is primarily engaged in the business of instruction in sales and or marketing;

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

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

(d) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

b. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subdivision 18 a (4) of this subsection, when the organization has been accredited by:

(1) The American National Standards Institute;

(2) The Institute for Credentialing Excellence (formerly the National Commission for Certifying Agencies); or

(3) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.

c. In determining whether a combination of words (or an acronym 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, factors to be considered shall include:

(1) Use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(2) The manner in which those 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 within the organization; or

(2) Specifies an individual's area of specialization within the organization.

For purposes of this subdivision d, "financial services regulatory agency" includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under § 3(a)(1) of the Investment Company Act of 1940 (15 USC § 80a-3(a)(1)).

e. Nothing in this regulation shall limit the commission's authority to enforce existing provisions of law.

C. The conduct set forth in subsections A and B of this section is not all inclusive. Engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices may be deemed an unethical business practice except to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290 (96)).

D. The provisions of this section shall apply to federal covered advisors to the extent that fraud or deceit is involved, or as otherwise permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290 (96)).

21VAC5-80-215. Exemption for certain private advisors.

A. For purposes of this section, the following definitions shall apply:

1. "Value of primary residence" means the fair market value of a person's primary residence, subtracted by the amount of debt secured by the property up to its fair market value.
2. "Private fund advisor" means an investment advisor who provides advice solely to one or more qualifying private funds.
3. "Qualifying private fund" means a private fund that meets the definition of a qualifying private fund in SEC Rule 203(m)-1, 17 CFR 275.203(m)-1.
4. "3(c)(1) fund" means a qualifying private fund that is eligible for the exclusion from the definition of an investment company under § 3(c)(1) of the Investment Company Act of 1940, 15 USC § 80a-3(c)(1).
5. "Venture capital fund" means a private fund that meets the definition of a venture capital fund in SEC Rule 203(l)-1, 17 CFR 275.203(l)-1.

B. Subject to the additional requirements of subsection C of this section, a private fund advisor shall be exempt from the registration requirements of § 13.1-504 of the Act if the private fund advisor satisfies each of the following conditions:

1. Neither the private fund advisor nor any of its advisory affiliates are subject to a disqualification as described in Rule 262 of SEC Regulation A, 17 CFR 230.262;
2. The private fund advisor files with the commission each report and amendment thereto that an exempt reporting advisor is required to file with the Securities and Exchange Commission pursuant to SEC Rule 204-4, 17 CFR 275.204-4; and
3. The private fund advisor pays a notice fee in the amount of \$250.

C. In order to qualify for the exemption described in subsection B of this section, a private fund advisor who advises at least one (3)(c)(1) fund that is not a venture capital fund shall, in

addition to satisfying each of the conditions specified in subsection B of this section, comply with the following requirements:

1. The private fund advisor shall advise only those 3(c)(1) funds (other than venture capital funds) whose outstanding securities (other than short-term paper) are beneficially owned entirely by persons who, after deducting the value of the primary residence from the person's net worth, would each meet the definition of a qualified client in SEC Rule 205-3, 17 CFR 275.205-3, at the time the securities are purchased from the issuer;
2. At the time of purchase, the private fund advisor shall disclose the following in writing to each beneficial owner of a 3(c)(1) fund that is not a venture capital fund:
 - a. All services, if any, to be provided to individual beneficial owners;
 - b. All duties, if any, the investment advisor owes to the beneficial owners; and
 - c. Any other material information affecting the rights or responsibilities of the beneficial owners; and
3. The private fund advisor shall obtain on an annual basis audited financial statements of each 3(c)(1) fund that is not a venture capital fund, and shall deliver a copy of such audited financial statements to each beneficial owner of the fund.

D. If a private fund advisor is registered with the Securities and Exchange Commission, the advisor shall not be eligible for this exemption and shall comply with the notice filing requirements applicable to federal covered investment advisors in § 13.1-504 of the Act.

E. A person is exempt from the registration requirements of § 13.1-504 of the Act if he is employed by or associated with an investment advisor that is exempt from registration in this Commonwealth pursuant to this section and does not otherwise act as an investment advisor representative.

F. The report filings described in subdivision B 2 of this section shall be made electronically ~~through the~~ on IARD system. A report shall be deemed filed when the report and the notice fee required by subdivision B 3 of this section are filed and accepted by ~~the~~ IARD system on the commission's behalf.

G. An investment advisor who becomes ineligible for the exemption provided by this section must comply with all applicable laws and regulations requiring registration or notice filing within 90 days from the date the investment advisor's eligibility for this exemption ceases.

H. An investment advisor to a 3(c)(1) fund (other than a venture capital fund) that has one or more beneficial owners who are not qualified clients as described in subdivision C 1 of this section is eligible for the exemption contained in subsection B of this section if the following conditions are satisfied:

1. The subject fund existed prior to May 7, 2012;
2. As of May 7, 2012, the subject fund ceases to accept beneficial owners who are not qualified clients, as described in subdivision C 1 of this section;
3. The investment advisor discloses in writing the information described in subdivision C 2 of this section to all beneficial owners of the fund; and
4. As of May 7, 2012, the investment advisor delivers audited financial statements as required by subdivision C 3 of this section.

DOCUMENTS INCORPORATED BY REFERENCE (21VAC5-80)

Rule 946-210-50, Accounting Standards Codification, Financial Accounting Standards Board, Norwalk, Connecticut (December 31, 2008).

21VAC5-100-10. ~~Rule governing disclosure~~ Disclosure of confidential information.

A. This section governs the disclosure by the commission of information or documents obtained or prepared by any member, subordinate or employee of the commission in the course of any examination or investigation conducted pursuant to the provisions of the Securities Act (§ 13.1-501 et seq. of the Code of Virginia). It is designed to implement the provisions of §§ 13.1-518 and 13.1-567 that permit disclosure of information to governmental and quasi-governmental entities approved by rule of the commission.

B. The Director of the Division of Securities and Retail Franchising or ~~his~~ the director's designee is hereby authorized to disclose information to the entities enumerated in subsections D, E, and F of this section. Disclosure shall be made only for the purpose of aiding in the detection or prevention of possible violations of law or to further administrative, legislative or judicial action resulting from possible violations of law. As a condition precedent to disclosure a writing shall be obtained from the receiving entity undertaking that it will exercise reasonable measures to preserve the confidential nature of the information.

C. Disclosure may be made only under the following circumstances:

1. In response to an entity's request for information relating to a specific subject or person.
2. By disseminating to an entity information which may indicate a possible violation of law within the administrative, regulatory or enforcement responsibility of that entity.
3. To participate in a centralized program or system designed to collect and maintain information pertaining to possible violations of securities, investment advisory, retail franchising or related laws.
4. To the extent necessary for participation in coordinated examinations or investigations.

D. The following are approved governmental entities (including any agencies, bureaus, commissions, divisions or successors thereof) of the United States:

1. Board of Governors of the Federal Reserve System or any Federal Reserve Bank.
2. Commodity Futures Trading Commission.
3. Congress of the United States, including either House, or any committee or subcommittee thereof.
4. Department of Defense.
5. Department of Housing & and Urban Development.
6. Department of Justice.
7. Department of Treasury.
8. Federal Deposit Insurance Corporation.
9. Office of Thrift Supervision.
10. Federal Trade Commission.
11. Postal Service.
12. Securities & and Exchange Commission.
13. Comptroller of the Currency.
14. Federal Bureau of Investigation.
15. Any other federal agency or instrumentality which demonstrates a need for access to confidential information.
16. Virginia General Assembly, including the House or the Senate, or any committee or subcommittee thereof.

E. The following are approved nonfederal governmental entities:

1. The securities or retail franchising regulatory entity of any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, state legislative bodies and state and local law-enforcement entities involved in the detection, investigation or prosecution of violations of law.
2. The securities or retail franchising regulatory entity of any foreign country, whether such entity is on a national, provincial, regional, state or local level, and law-enforcement entities within such countries.

F. The following are approved quasi-governmental entities:

- ~~1. American Stock Exchange.~~
- ~~2. Chicago Board Options Exchange.~~
- ~~3. Midwest Stock Exchange.~~
4. 1. Municipal Securities Rulemaking Board.
- ~~5. 2.~~ National Association of Attorneys General.
- ~~6. National Association of Securities Dealers, Inc.~~
- ~~7. New York Stock Exchange.~~
8. 3. North American Securities Administrators Association, Inc. NASAA.
- ~~9. Pacific Stock Exchange.~~
- ~~10. Philadelphia Stock Exchange.~~
- ~~11. 4.~~ Securities Investor Protection Corporation.
- ~~12. 5.~~ National White Collar Crime Center.
- ~~13. 6.~~ National Association of Securities Dealers Regulation, Inc. FINRA.

14. 7. Any other quasi-governmental entity ~~which~~ that demonstrates a need for access to confidential information.

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