

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, SEPTEMBER 7, 2011

110910141

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

FILED FOR FILING
2011 SEP -7 P 12:19
RECORDS SECTION
CASE NO. SEC-2011-00034

ORDER ADOPTING AMENDED RULES

By order entered on July 25, 2011, all interested persons were ordered to take notice that the State Corporation Commission ("Commission") would consider the adoption of a revision to Chapters 10 and 80 of Title 21 of the Virginia Administrative Code ("Regulations") entitled "Rules and Forms Governing Virginia Securities Act." On August 8, 2011, the Division of Securities and Retail Franchising ("Division") mailed the Order to Take Notice of the proposed Regulations to all interested parties pursuant to the Virginia Securities Act, § 13.1-501 *et seq.* of the Code of Virginia. The Order to Take Notice described the proposed amendments and afforded interested parties an opportunity to file comments and request a hearing by August 29, 2011, with the Clerk of the Commission.

No comments were filed nor were any requests for hearing made in this matter.

The Commission, upon consideration of the proposed amendments to the Regulations the recommendations of the Division, and the record in this case, finds that the proposed amendments to the Regulations should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The proposed Regulations are attached hereto, made a part hereof, and are hereby ADOPTED effective September 9, 2011.

(2) This matter is dismissed from the Commission's docket, and the papers herein shall be placed in the file for ended causes.

AN ATTESTED COPY of this Order shall be sent to each of the following by the Division to: the Commission's Division of Information Resources; the Commission's Office of General Counsel; and such other persons as the Division deems appropriate.

STATE CORPORATION COMMISSION, DIVISION OF SECURITIES AND RETAIL
FRANCHISING

Private advisor exception_July 2011

21VAC5-10-40. Definitions.

As used in this chapter ~~chapter~~ 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.

"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."

"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.

"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.

"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, 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.

Part IV
Exclusions

21VAC5-80-210. Exclusions from definition of "investment advisor" and "federal covered advisor."

A. The terms "investment advisor" and "federal covered advisor" do not include any person engaged in the investment advisory business whose only client is one (or more) of the following:

1. An investment company as defined in the Investment Company Act of 1940.
2. An insurance company licensed to transact insurance business in this Commonwealth.
3. A bank, a bank holding company as defined in the Bank Holding Company Act of 1956, a trust subsidiary organized under Article 3.1 (§ 6.1-32.1 et seq.) of Chapter 2 of Title 6.1 of the Code of Virginia, a savings institution, a credit union, or a trust company if the entity is either (i) authorized or licensed to transact such business in this Commonwealth or (ii) organized under the laws of the United States.
4. A broker-dealer so registered under the Act and under the Securities Exchange Act of 1934.
5. An employee benefit plan with assets of not less than \$5,000,000.
6. A governmental agency or instrumentality.
- ~~7. A corporation, general partnership, limited partnership, limited liability company, trust or other legal organization that (i) has assets of not less than \$5,000,000 and (ii) receives investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners, members or beneficiaries, provided the investment advisor or federal covered advisor is exempt from~~

~~registration pursuant to § 203(b)(3) of the Investment Advisors Act of 1940 or by any rule or regulation promulgated by the SEC under that section. If the entity's assets fall below \$5,000,000 for a period not to exceed 90 days, the investment advisor shall file an application to register with the division within 30 days.~~

B. Any investment advisor or federal covered advisor who (i) does not have a place of business located within this Commonwealth and (ii) during the preceding 12-month period has had fewer than six clients who are residents of this Commonwealth other than those listed in subsection A of this section is excluded from the registration and notice filing requirements of the Act.

C. The term "investment advisor" does not include any certified public accountant who holds a valid CPA certificate as defined by § 54.1-2000 of Title 54.1 of the Code of Virginia and who during the ordinary course of business:

1. Issues publications, writings, reports, or testimony in a court of law or in an arbitration as to the value of privately held securities in a transaction involving the purchase, sale or valuation of a business;
2. Issues publications, writings, reports or testimony in a court of law or in an arbitration as to the advisability of investing in, purchasing, or selling privately held securities in a transaction involving the purchase, sale or valuation of a business; or
3. Advises clients about the disposition or value of assets, of which ownership is evidenced by privately held securities and such assets are the subject of (i) bankruptcy, (ii) estate or gift tax planning or settlement, (iii) divorce, (iv) sale of a business, whether whole or in part, (v) employee stock option plan, or (vi) an insurance settlement.

21VAC5-80-215. Exemption for certain private advisors.

Registration under the Act shall not be required of any investment advisor or its investment advisor representative whose only client is or clients are a corporation, general partnership, limited partnership, limited liability company, trust, or other legal organization that:

1. Has assets of not less than \$5,000,000 and
2. Receives investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners, members, or beneficiaries, provided the investment advisor was exempt from registration pursuant to § 203(b)(3) of the Investment Advisors Act of 1940 immediately prior to July 21, 2011, and the investment advisor is subject to SEC Rule 203-1(e) granting an extension to investment advisors formerly exempt from registration under § 203(b)(3) of the Investment Advisers Act of 1940 until March 30, 2012, who would otherwise have been required to register with the SEC by July 21, 2011.