

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

AT RICHMOND, JULY 20, 2015

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

SECURITIES OFFICE  
DOCUMENT CONTROL CENTER  
2015 JUL 20 P 2: 36

CASE NO. SEC-2015-00014

ORDER ADOPTING AMENDED RULES

By Order to Take Notice ("Order") entered on March 30, 2015,<sup>1</sup> all interested persons were ordered to take notice that the State Corporation Commission ("Commission") would consider the adoption of revisions to Chapters 20, 40, 45 and 80 of Title 21 of the Virginia Administrative Code. On April 1, 2015, the Commission's Division of Securities and Retail Franchising ("Division") mailed and e-mailed the Order of the proposed rules to interested persons pursuant to the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia. The Order described the proposed revisions and afforded interested persons an opportunity to file comments and requests for hearing with the Clerk of the Commission on or before May 22, 2015. The Order provided that requests for hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments.

The Commission received written comments from Carrie Roth of the Virginia Biotechnology Research Partnership Authority, which supported adopting the proposed rules. Michael Koffler, Esquire, of the law firm of Sutherland Asbill & Brennan LLP, submitted written comments on behalf of their broker-dealer clients, which supported the proposed amendments to rule 21 VAC 5-20-280 A 10.

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<sup>1</sup> Doc. Con. Cen. No. 150330018.

The Commission also received two written comments objecting to certain portions of proposed new rule 21 VAC 5-40-190 relating to the proposed intrastate crowdfunding exemption ("ICE") passed by the 2015 Virginia General Assembly. J. Thomas O'Brien, Jr., Chairman, Business Law Council, Business Law Section of the Virginia Bar Association ("Business Law Section"), submitted written comments on behalf of the Business Law Section.<sup>2</sup> The Business Law Section discussed its concerns and requested changes regarding two aspects of the proposed rules: (1) the requirement for reviewed and audited financials for offerings of more than \$100,000 and \$500,000; and (2) the quarterly reporting requirements for so long as any shares sold in a crowdfunding offering remain outstanding.

Kirk T. Schroder, Esquire, of the law firm of Schroder Fidlow, PLC, submitted written comments and a request for hearing. Mr. Schroder's comments asserted that the proposed rules should: (1) require that intrastate crowdfunding exempt offerings occur only through registered Virginia funding portals; (2) give the funding portal the necessary authority to manage the crowd for the benefit of investors and offerors and to monitor compliance; (3) provide the funding portal a safe harbor from disputes between the investor and the offeror; and (4) establish a more appropriate cap of investor offerings at \$3 million.

By Order dated June 1, 2015,<sup>3</sup> the Commission directed the Division to provide a written response to the comments submitted by the Business Law Section and Mr. Schroder regarding ICE and provided the Business Law Section and Mr. Schroder an opportunity to reply to the Division's comments.

On June 8, 2015, the Division filed its response ("Response"). Among other comments, the Division stated that the proposed rules provide for the development of funding portals but do

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<sup>2</sup> The Business Law Section filed its comments out of time on May 27, 2015.

<sup>3</sup> Doc. Con. Cen. No. 150610007.

not mandate their use. In addition, the Division provided statistical information from other states regarding their crowdfunding rules, including those states that mandate funding portals.<sup>4</sup> The Division noted that only four of the 39 states that have adopted crowdfunding rules have mandated the use of funding portals, and nine additional states have pending rules that would mandate such portals.<sup>5</sup> The Division also responded to comments regarding the maximum offering amount suggested by Mr. Schroder and his request that the proposal include a safe harbor for funding portals.<sup>6</sup> The Division recommended that the Commission not adopt the changes requested by Mr. Schroder.

In addressing the Business Law Section's comments, the Division suggested several changes to the proposed ICE rules.<sup>7</sup> These changes include: (1) adopting the Business Law Section's requested changes to the proposed rules' requirements concerning financial statements; (2) changing the reporting requirements from quarterly to annually; and (3) limiting the time period for this reporting to a period of three years after an offering closes.

With these changes the Division recommended that the Commission adopt the proposed rules with the proposed revisions.

On June 19, 2015, Mr. Schroder filed a reply to the Division's Response ("Reply").<sup>8</sup> Mr. Schroder submitted additional information and argument supporting his requested changes to the proposed rules. He concluded that "[f]unding [p]ortals, not individual offerors, create, enhance and enable communities to positively affect crowdfunding efforts," and that "[w]ithout such a

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<sup>4</sup> Doc. Con. Cen. No. 150620051.

<sup>5</sup> *Id.* at 3.

<sup>6</sup> Response at 4.

<sup>7</sup> *Id.* at 3-4.

<sup>8</sup> Doc. Con. Cen. No. 150620368.

model, the proposed Virginia ICE rules will provide a lower than expected benefit to potential offerors and investors and may open unintended consequences from a new experimental approach that, while sounding good in theory, has no established track record."<sup>9</sup> Mr. Schroder also requested that the Commission provide a safe harbor for funding portals.<sup>10</sup> Finally, Mr. Schroder contemporaneously filed a letter with the Commission's Clerk, stating that "[t]his letter serves to amend my request in a letter to you, dated May 21, 2015, for a hearing on the above referenced matter and instead to request for oral argument on the matter," citing Rule 5 VAC 5-20-210 of the Commission's Rules of Practice and Procedure ("Commission Rules").<sup>11</sup>

The Business Law Section did not file a reply to the Division's response.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the proposed amendments as recommended by the Division should be adopted.

The Commission notes that Mr. Schroder requests oral argument as permitted by 5 VAC 5-20-210 of the Commission's Rules. Pursuant to this Rule, oral argument is discretionary, not mandatory. In this instance, based on the consideration of the comments filed in this matter, we find that oral argument is not necessary in order to promulgate the ICE rules herein. The Commission has provided for initial and responsive comments to be filed in this matter, and this has given interested persons an opportunity to present all of their arguments supporting their requests. We find that the requested oral argument is neither required as a matter of law nor is it necessary to consider and rule on this matter.

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<sup>9</sup> Reply at 8.

<sup>10</sup> Reply at 7.

<sup>11</sup> *Virginia Pilot Ass'n. v. Commonwealth*, 145 Va. 757, 765 (Va. 1926).

The Commission has fully considered Mr. Schroder's requests and finds that, at this time, the proposed rules should not mandate the use of funding portals. Rather, we conclude that it is reasonable to allow the use of such portals to remain discretionary for the new crowdfunding business model. The Commission further observes that only four of 39 states that have decided this question mandate the use of funding portals, and only nine additional states currently have mandates pending. Moreover, without any further empirical evidence, the potential cost to issuers of a funding portal was a factor in adopting the rules without mandating such portals.

Since the rules are adopted without mandating funding portals, the Commission need not address the request for a safe harbor for said funding portals. The Commission recognizes that the initial establishment of an investor offering cap of \$2 million is consistent with the Virginia crowdfunding legislation as well as with maximum offering caps established by other states with crowdfunding legislation.<sup>12</sup>

For the foregoing reasons, we find it reasonable to adopt the proposed amended rules as recommended by the Division.

Accordingly, IT IS ORDERED THAT:

(1) The proposed rules are attached hereto, made a part hereof, and hereby are ADOPTED effective July 31, 2015.

(2) AN ATTESTED COPY hereof, together with a copy of the adopted rules, shall be sent by the Division in care of Ronald W. Thomas, Director, who forthwith shall give further notice of the adopted rules by mailing or e-mailing a copy of this Order to all interested persons.

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<sup>12</sup> See, e.g., Response at 4.

(3) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the adopted rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the *Virginia Register of Regulations*.

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

STATE CORPORATION COMMISSION, DIVISION OF SECURITIES AND RETAIL  
FRANCHISING

Securities Rule Changes 2015

**21VAC5-20-85. Limited Canadian broker-dealer registration.**

A. A broker-dealer that is resident in Canada and has no office or other physical presence in the Commonwealth of Virginia may, provided the broker-dealer is registered under this section, effect transactions in securities:

1. With or for a person from Canada who is temporarily residing in or visiting the Commonwealth with whom the Canadian broker-dealer had a bona fide business-client relationship before the person entered this Commonwealth; or
2. With or for a person present in this Commonwealth whose transactions are in a Canadian self-directed tax advantaged retirement account of which the person is the holder or contributor.

B. Application for registration as a broker-dealer under this section 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.

C. An application for registration as a broker-dealer under this section shall be deemed incomplete for purposes of applying for registration unless the following executed forms, fee, and information are submitted to the commission:

1. An application in the form required by the jurisdiction in which the broker-dealer maintains its principal place of business.

2. Statutory fee payable to the Treasurer of Virginia in the amount of \$200 United States currency pursuant to § 13.1-505 F of the Act.
3. Evidence that the applicant is registered as a broker-dealer in the jurisdiction from which it is effecting the transactions.
4. Evidence that the applicant is a member of a self-regulatory organization or stock exchange in Canada.
5. Any other information the commission may require.

D. A broker-dealer registered under this section shall:

1. Maintain its provincial or territorial registration and its membership in a self-regulatory organization or stock exchange in good standing;
2. Provide the commission upon request with its books and records relating to its business in the Commonwealth of Virginia as a broker-dealer;
3. Immediately notify the commission of any criminal action taken against it, or of any finding or sanction imposed on the broker-dealer as a result of any self-regulatory or regulatory action involving fraud, theft, deceit, misrepresentation, or similar conduct;
4. Disclose to its clients in the Commonwealth of Virginia that the broker-dealer and its agents are not subject to the full regulatory requirements of the Act.

E. A broker-dealer's registration under this section, and any renewal thereof, shall expire annually at midnight on the 31st day of December unless renewed in accordance with subsection F of this section.

F. To renew its registration, a broker-dealer registered under this section shall file with the commission at its ~~Division of Securities and Retail Franchising~~ division the most recent renewal application, if any, filed in the jurisdiction in which the broker-dealer maintains its principle place

of business, or if no such renewal application is required, the most recent application filed pursuant to subdivision C 1 of this section along with the statutory fee in the amount of \$200 United States currency pursuant to § 13.1-505 F of the Act.

G. A Canadian broker-dealer registered under this section and acting in accordance with the limitations set out in this section is exempt from all other rules applicable to broker-dealers except ~~21VAC5-20-280~~ the anti-fraud provisions of the Act and the requirements set out in this section.

**21VAC5-20-155. Limited Canadian broker-dealer agent registration.**

A. An agent of a Canadian broker-dealer who has no office or other physical presence in the Commonwealth of Virginia may, provided the broker-dealer agent is registered under this section, effect transactions in securities as permitted for a broker-dealer registered under 21VAC5-20-85.

B. Application for registration as a broker-dealer agent under this section 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.

C. An application for registration as a broker-dealer agent under this section shall be deemed incomplete for purposes of applying for registration unless the following executed forms, fee, and information are submitted to the commission:

1. An application in the form required by the jurisdiction in which the broker-dealer maintains its principal place of business.
2. Statutory fee payable to the Treasurer of Virginia in the amount of \$30 United States currency pursuant to § 13.1-505 G of the Act.

3. Evidence that the applicant is registered as a broker-dealer agent in the jurisdiction from which it is effecting the transactions.

4. Any other information the commission may require.

D. A broker-dealer agent registered under this section shall:

1. Maintain his provincial or territorial registration in good standing;

2. Immediately notify the commission of any criminal action taken against him, or of any finding or sanction imposed on him as a result of any self-regulatory or regulatory action involving fraud, theft, deceit, misrepresentation or similar conduct.

E. A broker-dealer agent's registration under this section, and any renewal thereof, shall expire annually at midnight on the 31st day of December unless renewed in accordance with subsection F of this section.

F. To renew the registrations of its agents, a broker-dealer registered under this section shall file with the commission at its ~~Division of Securities and Retail Franchising~~ division the most recent renewal application, if any, filed in the jurisdiction in which the broker-dealer maintains its principal place of business, or if no such renewal application is required, the most recent application filed pursuant to subdivision C 1 of this section along with the statutory fee in the amount of \$30 United States currency pursuant to § 13.1-505 G of the Act.

G. A Canadian broker-dealer agent registered under this section and acting in accordance with the limitations set out in this section is exempt from all other rules applicable to a broker-dealer agent except ~~21VAC5-20-280~~ the anti-fraud provisions of the Act and the requirements set out in this section.

**21VAC5-20-280. Prohibited business conduct.**

A. Every broker-dealer is required to observe high standards of commercial honor and just and equitable principles of trade in the conduct of its 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 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. 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 FINRA Rule 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, either 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 acknowledgment 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 induce the purchase or sale of, 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; or

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;

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;

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 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 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 National Association of Securities Dealers Automated Quotations (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. Allow any person to represent or utilize its name as a trading platform without conspicuously disclosing the name of the registered broker-dealer in effecting or attempting to effect purchases and sales of securities; or

32. 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;

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, or 32 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. 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.

D. The purpose of this subsection is to identify practices in the securities business that are generally associated with schemes to manipulate and to identify prohibited business conduct of broker-dealers or sales agents who are registered or required to be registered.

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 that 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 anti-fraud 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 over the counter (OTC) 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 FINRA Rules or any applicable fair practice, privacy, 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 under 21VAC5-20-285, 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 million 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

(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.

**21VAC5-40-190. Intrastate crowdfunding exemption.**

A. In accordance with § 13.1-514 B 21 of the Act, an offer or sale of a security by an issuer is exempt from the securities, broker-dealer and agent registration requirements of the Act if the offer or sale meets all of the following requirements:

1. The issuer of the security is a business entity:

a. Formed under the laws of the Commonwealth;

b. Authorized to do business in the Commonwealth; and

c. That has its principal place of business in the Commonwealth.

2. The offering is sold only to residents of the Commonwealth in compliance with the requirements for the federal exemption for intrastate offerings under § 3(a)(11) of the Securities Act of 1933, 15 USC 77c(a)(11), and SEC Rule 147, 17 CFR 230.147.

3. The securities offered and sold pursuant to this exemption are equity securities of the issuer. This exemption is not available to debt offerings.

4. The sum of all cash and other consideration to be received for all sales of the securities in reliance on this exemption does not exceed \$2 million, less the aggregate amount received for all sales of securities by the issuer within 12 months before the first offer or sale made in reliance upon this exemption, and if the offering is:

a. [~~\$100,000~~ \$500,000] or less, if the issuer has financial statements prepared the previous year that have been certified by the principal executive officer of the issuer to be true and complete in all material respects;

b. More than [~~\$100,000~~ \$500,000] but less than [~~\$500,000~~ \$1,000,000], if the issuer has undergone a financial review of the financial statements of its most recently completed fiscal year, conducted by an independent certified public accountant in accordance with generally accepted accounting principles; or

c. [~~\$500,000~~ \$1,000,000] or more, if the issuer has undergone an audit of the financial statements of its most recently completed fiscal year, conducted by an independent certified public accountant in accordance with generally accepted accounting principles.

5. The issuer has not accepted more than \$10,000 from any single purchaser unless the purchaser is an accredited investor as defined by Rule 501 of SEC Regulation D, 17 CFR 230.501.

6. At least 20 days before an offer of securities is made in reliance on this exemption or the use of any publicly available Internet website in connection with an offering of securities in reliance on this exemption, the issuer files with the commission in writing or in electronic form, all of the following:

a. A notice of claim of exemption from registration on Form ICE specifying that the issuer intends to conduct an offering in reliance on this exemption, accompanied by a nonrefundable filing fee of \$250 payable to the Treasurer of Virginia.

b. A copy of the disclosure statement or Form ICE to be provided to prospective investors in connection with the offering. The disclosure statement or Form ICE shall contain all of the following:

(1) A description of the issuer, including type of entity, the address and telephone number of its principal office, its formation history, and its business plan;

(2) A description of the intended use of the offering proceeds, including any amounts to be paid, as compensation or otherwise, to any owner, executive officer, director, managing member, or other person occupying a similar status or performing similar functions on behalf of the issuer;

(3) The identity of each person that owns more than 10% of the ownership interests of any class of securities of the issuer and the amount of said securities held by such person;

(4) The identity of the executive officers, directors, or managing members of the issuer and any other individuals who occupy similar status or perform similar functions in the name of and on behalf of the issuer, including their titles and their prior business experience;

(5) The terms and conditions of the securities being offered including:

- (a) The type and amounts of any outstanding securities of the issuer;
- (b) The minimum and maximum amount of securities being offered, if any;
- (c) Either the percentage ownership of the issuer represented by the offered securities or the valuation of the issuer implied by the price of the offered securities;
- (d) The price per share, unit, or interest of the securities being offered;
- (e) Any restrictions on transfer of the securities being offered; and
- (f) A disclosure of any anticipated future issuance of securities that might dilute the value of the securities being offered;
- (6) The identity of any person that the issuer has or intends to retain to assist the issuer in conducting the offer and sale of the securities, including the owner of any websites, if known, but excluding any person acting solely as an accountant or attorney and any employees whose primary job responsibilities involve the operating business of the issuer rather than assisting the issuer in raising capital;
- (7) For each person identified as required in subdivision 6 b (6) of this subsection, a description of the consideration being paid to the person for such assistance;
- (8) A description of any litigation or legal proceedings involving the issuer or any executive officer, director, or managing member or other person occupying a similar status or performing similar functions on behalf of the issuer;
- (9) The issuer's financial statements for the three most recent fiscal years or for as much time as the issuer has been in existence, if less than three years;
- (10) The name and address, including the uniform resource locator, of each Internet website that will be used by the issuer to offer or sell securities under an exemption under this section; and

(11) Any additional information material to the offering, including, if appropriate, a discussion of significant risk factors that make the offering speculative or risky. This discussion shall be concise and organized logically and may not be limited to risks that could apply to any issuer or any offering.

c. An escrow agreement with a bank or other depository institution located in this Commonwealth, in which the purchaser funds will be deposited. At a minimum the escrow agreement shall provide that all offering proceeds will be released to the issuer only when the aggregate capital raised from all purchasers is equal to or greater than the minimum target offering amount specified in the disclosure statement as necessary to implement the business plan and all purchasers will receive a return of their subscription funds if that target offering amount is not raised by the time stated in the disclosure statement. The depository institution may contract with the issuer to collect reasonable fees for its escrow services regardless of whether the target offering amount is reached; however such fees shall not be deducted from purchaser funds if the target offering amount is not raised by the time stated in the disclosure statement. The issuer shall disclose in its disclosure statement or Form ICE whether any interest earned on escrowed purchaser funds will be paid to purchasers on a pro rata basis if the minimum target amount, as described above, is not raised.

7. The issuer is not, either before or as a result of the offering:

a. A company that is engaged or proposes to engage in the business of investing, reinvesting, owning, holding or trading in securities, including an investment company as defined by 15 USC § 80a-3, or a hedge fund, commodity pool, or similar investment vehicle;

b. Subject to the reporting requirements of § 13 or 15(d) of the Securities Exchange Act of 1934, 15 USC 78m and 78o(d);

c. A company that has not yet defined its business operations, has no business plan, has no stated investment goal for the funds being raised, or that plans to engage in a merger with or acquisition of an unspecified business entity or entities, or without an allocation of proceeds to sufficiently identifiable properties or objectives; or

d. A company that is engaged in or proposes to engage in petroleum exploration or production, mining, or other extractive industries.

8. The issuer informs each prospective purchaser that the securities are not registered under federal or state securities laws and that the securities are subject to limitations on transfer or resale and displays the following legend conspicuously on the cover page of the disclosure statement:

THESE SECURITIES ARE BEING SOLD IN RELIANCE ON AN EXEMPTION TO THE FEDERAL SECURITIES REGISTRATION REQUIREMENTS UNDER SECTION 3(a)(11) OF THE SECURITIES ACT OF 1933 AND UNDER SECTION 13.1-514 OF THE VIRGINIA SECURITIES ACT. THESE SECURITIES CAN ONLY BE SOLD TO RESIDENTS OF VIRGINIA AND ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AS CONTAINED IN SUBSECTIONS (e) AND (f) OF SEC RULE 147, 17 CFR 230.147. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME AND THAT THEY MAY LOSE ALL OF THE INVESTMENT AND CAN AFFORD THE LOSS OF THE INVESTMENT.

IN MAKING AN INVESTMENT DECISION, INVESTORS SHOULD RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS REVEALED IN THESE OFFERING DOCUMENTS, INCLUDING THE MERITS AND RISKS INVOLVED.

THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE AUTHORITY OR REGULATORY COMMISSION NOR HAVE THESE ENTITIES CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

9. If the offer and sale of securities under this section is made through the Internet, all of the following requirements are met:

a. Any person acting as the Internet website operator shall be an issuer, a registered broker-dealer, or a funding portal that is in compliance with all commission, SEC, and FINRA requirements, including, if it is a funding portal, making any required notice filings with the commission;

b. Internet website operators shall comply with all commission, SEC, and FINRA requirements applicable to intrastate offerings through the Internet;

c. Internet website operators shall maintain records of all offers and sales of securities effected through its Internet website for five years from the close of the offering; and

d. The issuer and the Internet website operator shall keep and maintain records of the offers and sales of securities made through the Internet website for five years from the close of the offering. The issuer and the Internet website operator shall promptly provide ready access to the records to the commission on request. The

commission may access, inspect, and review any Internet website described in this subdivision 9 and its records.

10. All payments for the purchase of securities are directed to and held by the depository institution subject to the provisions of subdivision 6 c of this subsection.

11. The issuer does not pay, directly or indirectly, any commission or remuneration to an executive officer, director, managing member, or other individual who has a similar status or performs similar functions in the name of and on behalf of the issuer for offering or selling the securities unless he is registered as a broker-dealer agent under the Act. An executive officer, director, managing member, or other individual who has a similar status or performs similar functions in the name of and on behalf of the issuer is exempt from the agent registration requirements of the Act if he does not receive, directly or indirectly, any commission or remuneration for offering or selling securities of the issuer that are exempt from registration under this section.

12. The issuer provides a copy of Form ICE or the disclosure statement provided to the commission under subdivision 6 b of this subsection to each prospective purchaser at the time the offer of securities is made to the prospective purchaser.

13. The term of the offering does not exceed 12 months after the date of the first offer.

B. The issuer shall provide a [ quarterly annual ] report to the issuer's purchasers [ until none of the securities issued under this section are outstanding for each of the issuer's next three fiscal years, the first of which being that fiscal year that ends following the commencement of the offering ]. All of the following apply to the [ quarterly annual ] report described in this subsection:

1. The issuer shall provide the report free of charge to the purchasers;

2. An issuer may satisfy the report requirement under this subsection by making the information available on an internet website if the information is made available within 45 days after the end of each fiscal [ quarter year ] and remains available until the next [ quarterly annual ] report is issued;

3. The issuer shall file each report with the commission and shall provide a written copy of the report to any purchaser on request; and

4. The report shall include all of the following:

a. The compensation received by each director and executive officer of the issuer, including cash compensation earned since the previous report and on an annual basis and any bonuses, stock options, other rights to receive securities of the issuer or any affiliate of the issuer, or other compensation received; and

b. An analysis by management of the issuer's business operations and financial condition.

C. The exemption provided in this section shall not be used in conjunction with any other exemption under the Act, except offers and sales to control persons shall not count toward the limitation in subdivision A 4 of this section.

D. The exemption described in this section shall not be available to the issuer, any of the issuer's predecessors, any affiliate of the issuer, or any control person of the issuer:

1. Within the past 10 years, has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the SEC;

2. Within the past 10 years, has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;

3. Is currently subject to any state or federal administrative enforcement order or judgment, entered within the past 10 years, finding fraud or deceit in connection with the purchase or sale of any security; or

4. Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the past 10 years, that temporarily, preliminarily, or permanently restrains or enjoins the party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

E. Subsection D of this section shall not apply if:

1. The party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment, or decree creating the disqualification was entered against such party;

2. Before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or

3. The issuer establishes it did not know and exercising reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this subsection.

F. An Internet website through which an offer or sale of securities under this section is made is not subject to the broker-dealer or agent registration requirements of the Act if the Internet website meets all of the following conditions:

1. It does not offer investment advice or recommendations;

2. It does not solicit purchases, sales, or offers to buy the securities offered or displayed on the Internet website;

3. It does not compensate employees, agents, or other persons for the solicitation or based on the sale of securities displayed or referenced on the Internet website; and

4. It does not hold, manage, possess, or otherwise handle purchaser funds or securities.

G. As used in this section, "financial review" means a limited inquiry and analytical procedure of much narrower scope than an audit, undertaken by a certified public accountant for the purpose of expressing limited assurance that financial statements are presented in accordance with generally accepted accounting principles.

H. As used in this section, "control person" means (i) an officer, director, partner, managing member, trustee, or other person having the power, directly or indirectly, to direct the management or policies of the issuer, whether by contract or otherwise; or (ii) a person that owns 10% or more of any class of the outstanding securities of the issuer.

I. As used in this section, "funding portal" means any person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others, solely pursuant to § 4(6) of the Securities Act of 1933 that does not:

1. Offer investment advice or recommendations;

2. Solicit purchases, sales, or offers to buy the securities offered or displayed on its Internet website or portal;

3. Compensate employees, agents, or other persons for such solicitation or based on the sales of securities displayed or referenced on its Internet website or portal;

4. Hold, manage, possess, or otherwise handle investor funds or securities; or

5. Engage in such other activities as the SEC, by rule, determines [ appropriate inappropriate ].

J. The issuer or other designated person shall be notified by letter or electronic communication when the exemption filing is effective. If, however, on or before the initial commencement date of the offering, and after timely filing the materials required by subdivision A 6 of this section with the commission, the issuer has not been notified that any one or more of the filed materials fails to conform to the requirements of this section, the proposed offering shall be deemed effective.

K. Upon completion of an offering made in reliance on this exemption, the issuer shall file a final sales report with the commission, by letter or electronic communication, no later than 30 days after the last sale in the offering that includes the following information:

1. The time period in which the offering was open;
2. The number of investors that purchased shares or units in the offering;
3. The dollar amount sold in the offering; and
4. The dollar amount, if any, returned to investors, purchasers, or subscribers.

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

#### FORMS (21VAC5-40)

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

Intrastate Crowdfunding Exemption, Form ICE (eff. 7/15)

**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 ~~February 27, 2012~~ September 23, 2013, 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.

**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~~ meets the qualifications set forth in subsection A of this section and is 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 and is in good standing under 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~~ director of the ~~Division of Securities and Retail Franchising~~ division 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~~ division 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 U4 have been, or need be, answered in the affirmative.

**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, or failing to comply with any applicable privacy provision or standard promulgated by the SEC or by a self-regulatory organization approved by the SEC.

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 21VAC5-80-146.

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~~ 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~~ 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 21VAC5-80-146.

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~~ 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)).

**21VAC5-80-220. Performance based fees.**

A. In accordance with § 13.1-503 C of the Act, an investment advisor may enter into, extend, or renew any investment advisory contract to provide for compensation to the investment advisor on the basis of a share of the capital gains upon, or the capital appreciation of, the funds or any portion of the funds of a client, provided that the following conditions of this section are satisfied.

B. Nature of the client:

1. a. The client entering into the contract subject to this section must be a natural person or a company, as defined in subdivision 2 of this subsection and in the definition of "company" in subsection E of this section, who immediately after entering into the contract has at least ~~\$750,000~~ \$1 million under the management of the investment advisor; or

b. A person who the registered investment advisor (and any person acting on his behalf) entering into the contract reasonably believes, immediately prior to entering into the contract, is a natural person or a company, as defined in subdivision 2 of this subsection and in the definition of "company" in subsection E of this section, whose net worth at the time the contract is entered into exceeds ~~\$1,500,000~~ \$2 million. (The

net worth of a natural person may include assets held jointly with such person's spouse.)

2. The term "company" as used in subdivision 1 of this subsection does not include:

- a. A private investment company, as defined in subsection E of this section;
- b. An investment company registered under the Investment Company Act of 1940; or
- c. A business development company, as defined in § 202(a)(22) of the Investment Advisers Act of 1940 (15 USC § 80b-2(a)(22))

unless each of the equity owners (other than the investment advisor entering into a contract under this section) of any such company identified in ~~this~~ subdivision 2 of this subsection, is a natural person or company described in this subsection B.

C. *Disclosure.* In addition to the disclosure requirements of Form ADV, the advisor shall disclose to the client, or the client's independent agent, prior to entering into an advisory contract permitted by this section, all material information concerning the proposed advisory arrangement including the following:

1. That the fee arrangement may create an incentive for the advisor to make investments that are riskier or more speculative than would be the case in the absence of a performance fee;
2. Where relevant, that the advisor may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's account;
3. The time period which will be used to measure investment performance throughout the term of the contract and its significance in the computation of the fee;

4. The nature of any index which will be used as a comparative measure of investment performance, the significance of the index, and the reason the advisor believes the index is appropriate; and

5. Where an advisor's compensation is based on the unrealized appreciation of securities for which market quotations are not readily available, how such securities will be valued and the extent to which the valuation will be independently determined.

D. Arm's-length contract. The investment advisor (and any person acting on its behalf) who enters into the contract must reasonably believe, immediately prior to entering into the contract, that the contract represents an arm's-length arrangement between the parties and that the client (or in the case of a client which is a company as defined in subsection E of this section, the person, representing the company), alone or together with the client's independent agent, understands the proposed method of compensation and its risks. The representative of a company may be a partner, director, officer, or an employee of the company or the trustee, where the company is a trust, or any other person designated by the company or trustee, but must satisfy the definition of client's independent agent set forth in subsection E of this section.

E. Definitions. For the purpose of this section:

The term "affiliated person" has the same meaning as in § 2 (a)(3) of the Investment Company Act of 1940 (15 USC § 80a-2(a)(3)).

The term "client's independent agent" means any person agreeing to act as the client's agent in connection with the contract other than:

1. The investment advisor acting in reliance upon this section, an affiliated person of the investment advisor, an affiliated person of an affiliated person of the investment advisor, or an interested person of the investment advisor as defined in this subsection;

2. A person who receives, directly or indirectly, any compensation in connection with the contract from the investment advisor, an affiliated person of the investment advisor, an affiliated person of an affiliated person of the investment advisor or an interested person of the investment advisor as defined in this subsection; or
3. A person with any material relationship between himself (or an affiliated person of such person) and the investment advisor (or an affiliated person of the investment advisor) that exists, or has existed at any time during the previous two years.

The term "company" has the same meaning as in § 202 (a)(5) of the Investment Advisers Act of 1940 (15 USC § 80b-2(a)(5)).

The term "interested person" as used in the definition of "client's independent agent" of this section means:

1. Any member of the immediate family of any natural person who is an affiliated person of the investment advisor;
2. Any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued by the investment advisor or by a controlling person of the investment advisor if the beneficial or legal interest of the person in any security issued by the investment advisor or by a controlling person of the investment advisor:
  - a. Exceeds one tenth of one percent of any class of outstanding securities of the investment advisor or a controlling person of the investment advisor; or
  - b. Exceeds 5.0% of the total assets of the person (seeking to act as the client's independent agent); or
3. Any person or partner or employee of any person who at any time since the beginning of the last two years has acted as legal counsel for the investment advisor.

The term "private investment company" means a company which would be defined as an investment company under § 3 (a) of the Investment Company Act of 1940 (15 USC § 80a-3(a)) but for the exception provided from that definition by § 3 (c)(1) of such Act.

The term "securities for which market quotations are readily available" in subsection C of this section has the same meaning as in Rule 2a-4 (a)(1) under the Investment Company Act of 1940 (17 CFR 270.2a-4 (a)(1)).

The term "securities for which market quotations are not readily available" in subsection C of this section means securities not described in the above paragraph.