

**RULES
OF
TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE
DIVISION OF SECURITIES**

**CHAPTER 0780-04-01
GENERAL ADMINISTRATION**

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0780-04-01-.01 RETAINED POWERS.

It is the express intent of these rules that such powers as are herein delegated by the commissioner are also retained and may be exercised by the commissioner at the commissioner's election.

Authority: T.C.A. §§. 48-1-115 and 48-1-116. **Administrative History:** Original rule filed September 9, 1980; effective October 24, 1980. Repeal and new rule filed September 28, 1990; effective November 12, 1990. Amendment filed December 23, 2014; effective March 23, 2015. On January 27, 2015, the Tennessee Department of Commerce and Insurance filed a withdrawal of the amendment. Repeal and new rule filed March 16, 2015; effective June 14, 2015.

0780-04-01-.02 SHORT TITLE.

These rules may be cited as the Tennessee Securities Rules.

Authority: T.C.A. §§ 48-1-115 and 48-1-116. **Administrative History:** Original rule filed September 9, 1980; effective October 24, 1980. Amendment filed July 5, 1983; effective August 4, 1983. Repeal and new rule filed September 28, 1990; effective November 12, 1990. Amendment filed December 23, 2014; effective March 23, 2015. On January 27, 2015, the Tennessee Department of Commerce and Insurance filed a withdrawal of the amendment. Repeal and new rule filed March 16, 2015; effective June 14, 2015.

0780-04-01-.03 DEFINITIONS.

- (1) When used in these rules and in the Tennessee Securities Act of 1980, as amended, unless the context otherwise requires:
 - (a) "Act" shall mean Chapter 866 of the Public Acts of 1980, otherwise known as the Tennessee Securities Act of 1980, as amended, and its codification in the Tennessee Code Annotated.
 - (b) "Assistant commissioner" shall mean the assistant commissioner for the Securities Division of the Department of Commerce and Insurance of the state of Tennessee, or any successor person authorized to exercise similar functions.
 - (c) "CRD System" shall mean the NASAA/FINRA Central Registration Depository System, commonly known as "CRD" and/or "Web CRD".
 - (d) "Division" shall mean the assistant commissioner, staff, employees, and agents of the Securities Division of the Department of Commerce and Insurance of the state of Tennessee or such other agency as shall administer the Act or any successor statute.

(Rule 0780-04-01-.03, continued)

- (e) "FINRA" shall mean the Financial Industry Regulatory Authority.
 - (f) "Government Securities Broker-Dealer" shall mean a broker-dealer who effects transactions only in securities issued or guaranteed by the United States or an instrumentality thereof.
 - (g) "IARD" shall mean the Investment Adviser Registration Depository as operated by the FINRA in cooperation with NASAA, other states, and the United States.
 - (h) "NASAA" shall mean the North American Securities Administrators Association, Inc.
 - (i) "NASD" shall mean the National Association of Securities Dealers, Inc. and/or the National Association of Securities Dealers Regulation, Inc. (now known as FINRA).
 - (j) "Nasdaq National Market" shall mean a distinct tier of The Nasdaq Stock Market comprised of securities that meet the requirements of and are authorized as a Nasdaq National Market security.
 - (k) "Rules" shall mean the Rules of the Department of Commerce and Insurance, Securities Division, as set forth in Chapter 0780-04.
 - (l) "SEC" shall mean the Securities and Exchange Commission of the United States or its staff, as appropriate.
 - (m) "Security" shall include the practice of "equity funding", "security funding", or "life funding" whereby mutual fund shares and insurance contracts are sold as a package with mutual fund shares being pledged as collateral for loans, the proceeds of which are used to pay the premium on life insurance policies.
 - (n) "State" shall mean any state, territory, or possession of the United States, the District of Columbia, and Puerto Rico.
 - (o) "Substantially all of the voting securities of the bank or other bank holding company" as used in T.C.A. § 48-1-103(b)(10) shall mean eighty percent (80%) or more of each class of such voting securities.
 - (p) "UAPA" shall mean the Uniform Administrative Procedures Act as set forth in T.C.A. § 4-5-101, et seq., and any rules promulgated thereunder to the extent such rules are not inconsistent with the Act or these Rules.
- (2) In construing terms used in these Rules and in the Act, the commissioner, to the extent consistent with the purposes fairly intended by the policy and provisions of the Act, will consider definitions, case law, SEC rules, and interpretive releases under the following federal statutes:
- (a) The Securities Act of 1933 (the "1933 Act");
 - (b) The Securities Exchange Act of 1934 (the "1934 Act");
 - (c) The Trust Indenture Act of 1939 (the "Trust Indenture Act");
 - (d) The Investment Company Act of 1940 (the "Investment Company Act"); and
 - (e) The Investment Advisers Act of 1940 (the "Investment Advisers Act").

(Rule 0780-04-01-.03, continued)

- (3) Unless the context otherwise requires or a rule expressly provides otherwise, terms defined in the Act shall have the same meaning when used in these Rules.

Authority: T.C.A. §§ 48-1-103(b)(10), 48-1-115, 48-1-116, and Public Acts of 2001, Chapter 61.
Administrative History: Original rule filed September 9, 1980; effective October 24, 1980. Amendment filed January 13, 1983; effective February 14, 1983. Amendment filed July 5, 1983; effective August 4, 1983. Amendment filed March 7, 1984; effective April 6, 1984. Amendment filed November 21, 1985; effective December 21, 1985. Repeal and new rule filed September 28, 1990; effective November 12, 1990. Amendment filed May 15, 2002; effective July 29, 2002. Amendment filed April 5, 2004; effective June 19, 2004. Amendment filed December 23, 2014; effective March 23, 2015. On January 27, 2015, the Tennessee Department of Commerce and Insurance filed a withdrawal of the amendment. Repeal and new rule filed March 16, 2015; effective June 14, 2015.

0780-04-01-.04 ADMINISTRATION OF THE ACT.

(1) General.

- (a) The commissioner delegates to the assistant commissioner all of the power and duties granted to and imposed upon the commissioner by the Act, except the power:
1. To impose any sanction pursuant to T.C.A. §§ 48-1-104, 48-1-108, 48-1-109, 48-1-112, 48-1-116, or 48-1-121 in any contested case, as such term is defined in the UAPA;
 2. To adopt any rule as such term is defined in the UAPA;
 3. To grant immunity to any person pursuant to T.C.A. § 48-1-118(d); and
 4. To appoint any investigative agent pursuant to T.C.A. § 48-1-118.
- (b) Without limiting the foregoing delegation, the assistant commissioner is expressly empowered to:
1. Issue orders of investigation pursuant to T.C.A. § 48-1-118(a);
 2. Conduct investigations as provided by T.C.A. § 48-1-118(b);
 3. Issue exemption orders pursuant to T.C.A. § 48-1-103(b)(11);
 4. Issue orders of effective registration, orders of denial, and other orders not involving any sanctions; and
 5. Accept, on behalf of the commissioner, settlement agreements reached between the Division and any person pursuant to T.C.A. § 4-5-105.
- (c) The Division's office hours shall be between 8:00 a.m. and 4:30 p.m. (Central Time) on weekdays, except legal holidays. Normally, appointments will not be made before 8:30 a.m. or after 4:00 p.m.
- (d) Unless expressly required or requested otherwise, only the original executed copy of each form is required. If a document or form pertains to more than one security, subject, or application, a separate copy and transmittal letter for each security, subject, or application shall be filed, except as expressly provided otherwise elsewhere in these Rules.

(2) Filing Fees.

(Rule 0780-04-01-.04, continued)

- (a) All fees required by the Act that are submitted directly to the Division shall be made by check payable to the order of the Tennessee Department of Commerce and Insurance. Certified checks are not required.
 - (b) Pursuant to T.C.A. § 48-1-107(b), the minimum non-refundable filing fee for all applications for securities registration shall be three hundred dollars (\$300). If an application is withdrawn prior to effectiveness or before a pre-effective stop order is entered, the Division shall retain the minimum filing fee and refund the remainder, if any, to the applicant in accordance with subparagraph (2)(c) of this Rule.
 - (c) Refunds of refundable fees will not be made unless a written request is filed with the Division specifying the following:
 - 1. The name of the applicant;
 - 2. The law under which the application was filed and the approximate date of filing; and
 - 3. The amount of the funds claimed as due and the grounds upon which the claim is made.
- (3) Filing Requirements.
- (a) Applications, reports, and registration statements, including exhibits, shall be filed on good quality white paper, eight and one-half (8 ½) inches by eleven (11) inches or eight and one-half (8 ½) inches by fourteen (14) inches in size. Tables, charts, maps, and financial statements may be on larger paper if folded to those sizes and the final prospectus may be on smaller paper if the registrant so desires.
 - (b) All documents filed with the Division shall be in clear and easily readable form and suitable for photocopying and/or scanning.
 - (c) Exhibits may be attached or filed separately, properly marked or identified.
 - (d) Each copy of registration statements, prospectuses, offering circulars, and offering memoranda must be bound securely. The Division reserves the right to reject any such document the pages of which are not securely bound together.
 - (e)
 - 1. All applications, reports, registration statements, financial statements, correspondence, exhibits, and/or other information required or requested pursuant to the Act or these Rules may be submitted to the Division in the paper format prescribed in this paragraph (3) or through the CRD System or other electronic data gathering, access, and retrieval methods acceptable to the Division.
 - 2. Applications, reports, registration statements, financial statements, correspondence, exhibits, and/or other information filed through the CRD System or other electronic data gathering, access, and retrieval methods acceptable to the Division shall be in clear, easily accessible, and readable formats which shall be suitable for reproduction on good quality white paper eight and one-half (8 ½) inches by eleven (11) inches or eight and one-half (8 ½) inches by fourteen (14) inches in size.
 - 3. Upon conversion and preservation through the CRD System or the Division's electronic data gathering, access, and retrieval methods, all original applications,

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reports, registration statements, financial statements, correspondence, exhibits, and/or other information filed in the paper format prescribed in this paragraph (3) may be stored and subsequently destroyed pursuant to records management procedures consistent with those adopted and amended by the Division from time to time.

(4) Forms.

- (a) All filings submitted with the Division shall be on the proper form as designated under these Rules. An application shall be deemed submitted on the proper form unless objection to the form is made by the Division prior to the effective date of the application. The following forms, as in effect at the time of use, are approved for filing with the Division:
1. "Form U-1", Uniform Application to Register Securities;
 2. "Form U-2", Uniform Consent to Service of Process (naming the commissioner as the party to be served);
 3. "Form U-2A", Uniform Form of Corporate Resolution;
 4. "Form U4", Uniform Application for Securities Industry Registration or Transfer;
 5. "Form U5", Uniform Termination Notice for Securities Industry Registration;
 6. "Form U7", Small Company Offering Registration Form;
 7. "Form U-CF", Uniform Notice of Federal Crowdfunding Offering;
 8. "Form USB", Uniform Surety Bond;
 9. "Form BD", Uniform Application for Broker-Dealer Registration;
 10. "Form BDW", Uniform Request for Broker-Dealer Withdrawal;
 11. "Form ADV", Uniform Application for Investment Adviser Registration;
 12. "Form ADV-E", Certificate of Accounting of Client Securities and Funds in the Possession or Custody of an Investment Adviser;
 13. "Form ADV-W", Notice of Withdrawal from Registration as an Investment Adviser;
 14. "Form D", Notice of Sale of Securities Pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption;
 15. "Form NF", Uniform Investment Company Notice Filing;
 16. "Form IN-0911", Application for Registration as an Oil and Gas Issuer-Dealer;
 17. "Form IN-1460", Notice of Sale of Securities Pursuant to Accredited Investor Exemption;
 18. "Form IN-1461", Notice of Sale of Securities Pursuant to Employee Stock Purchase/Option Plan Exemption;

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19. "Form IN-1493", Designation of Accountant;
 20. "Regulation A – Tier 2", Uniform Notice Filing of Regulation A – Tier 2 Offering; and
 21. "Notice of Exemption", Notice of Intention to Offer or Sell Securities Pursuant to the Invest Tennessee Exemption.
- (b) All instructions on the above named forms are applicable, except as expressly provided elsewhere in these Rules, and are adopted verbatim and incorporated herein by reference.
- (c) In cases where a form, as set out in subparagraph (4)(a), directly or indirectly requires the maintenance of certain books and records, the registrant shall maintain adequate books and records to comply with the filing requirements of the form and all books and records requirements as provided in the Act and the Rules.
- (5) Division Records.
- (a) In compliance with the Tennessee Public Records Act, T.C.A. § 10-7-503(a)(2)(A-B), the Division shall make available to the public for inspection any part of an application to register securities, notice filing, or a filing pursuant to a claim of exemption from securities registration, except as set forth in subparagraph (5)(f) of this Rule.
- (b) 1. The Division shall make available to the public for inspection in connection with any registered broker-dealer or investment adviser or applicant for broker-dealer or investment adviser registration or notice filing by an investment adviser:
- (i) The current Form BD or the current Form ADV and all schedules and exhibits thereto; and
 - (ii) Financial statements filed pursuant to these Rules within the preceding five (5) years.
2. Any noncurrent Form BD filings, noncurrent Form ADV filings, noncurrent schedules and exhibits to such forms and financial statements filed pursuant to these Rules prior to the preceding five (5) years may be preserved by the Division in paper or electronic format for public inspection or may be stored and subsequently destroyed pursuant to records management procedures consistent with those adopted and amended by the Division from time to time.
- (c) With respect to any registered agent or investment adviser representative or application for an agent's or investment adviser representative's registration, the Division shall make available to the public for inspection the Form U4 and Form U5 of such agent or investment adviser representative, together with all exhibits.
- (d) The Division shall not make available to the public for inspection any document or other material it obtains in connection with any matter which is the subject of a private investigation or that it obtains for the purpose of determining whether to commence a private or public investigation until such time, if ever, such document or other material is used in litigation or in a contested case.
- (e) Any document which is available for inspection shall also be available for copying (including electronic reproduction through the CRD System or other electronic data gathering, access, and retrieval method acceptable to the Division) upon payment of the cost of copies as determined by the Division from time to time.

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(f) Requests for Confidentiality.

1. Introduction. Upon the grant of a request made pursuant to part (5)(f)2. of this Rule, the assistant commissioner will withhold from public inspection, for such time as in the assistant commissioner's judgment is necessary, information received in connection with a registration statement, application, or report, if the assistant commissioner finds that such information is reasonably shown to be:
 - (i) Proprietary information that is in fact confidential, including, but not limited to, trade secrets, the release of which would be damaging or prejudicial to the business concerned; or
 - (ii) Financial information that is in fact confidential, the release of which would be damaging or prejudicial to the person concerned.
2. Request for Confidentiality. A request for confidential treatment of any information received in connection with any registration statement, application, or report submitted to the assistant commissioner should accompany the submission of such information and such information must be submitted separately from other parts of the filing and marked "Confidential Treatment Requested". The request for confidentiality will itself be available for public inspection and should not contain information for which confidential treatment is requested. Such request must be signed by the person filing the registration statement, application, or report and contain the following:
 - (i) A statement identifying the information which is the subject of the request and the registration statement, application, or report relating thereto;
 - (ii) A statement of the grounds upon which the request is made, including a statement as to the confidentiality of the information and the measures taken to protect its confidentiality, and a statement of the adverse consequences which are expected to result if the information is disclosed through the public records of the Division;
 - (iii) A statement of the specific time for which confidential treatment of the information is necessary and the basis for such conclusions; and
 - (iv) A statement of the extent to which such information has been or will be disclosed to present or proposed investors, franchisees, lenders, or other persons.
3. Denial of Request. Material for which confidential treatment is requested shall not be deemed filed unless the request is granted, and may be withdrawn by the applicant if the request is denied, unless (i) the assistant commissioner has already taken an official action in reliance on such information prior to receiving the request for confidential treatment, (ii) the assistant commissioner determines that the withdrawal of such information is otherwise contrary to the public interest or the protection of investors, or (iii) the material for which confidential treatment is requested is otherwise required to be filed with the Division elsewhere in these Rules. If withdrawn, such information will not be considered by the assistant commissioner in connection with the registration statement, application, or report.
4. Granting Request. If a request for confidential treatment is granted, the person making such request will be notified in writing, the information will be marked "confidential" and kept separate from the public file, and the registration

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statement, application, or report will be noted with substantially the following legend: "Additional portions of this filing have been granted confidential treatment and are contained in a separate confidential file."

5. Disclosure of Confidential Information.

(i) Information held confidential pursuant to part (5)(f)4. of this Rule may be disclosed by the assistant commissioner, at any time and in the assistant commissioner's sole discretion, whether on the assistant commissioner's own motion or upon the request of any person.

(I) To other state or federal regulatory agencies, in accordance with law;

(II) When necessary or appropriate in any proceeding or investigation pursuant to the law under which the information was filed; or

(III) Upon a determination by the assistant commissioner that continued confidential treatment is no longer justified because the reasons therefore no longer exist or because public interest in disclosing such information outweighs the public interest in not doing so. If the assistant commissioner concludes that the disclosure of such information is necessary and in the public interest and that it is impractical under the circumstances to give notice to the person who requested confidential treatment of the information, the information may be disclosed without notice. Otherwise, the person who requested confidential treatment of such information will be given notice that the release of such information is under consideration and the reasons therefore, and an opportunity to make written representations promptly, within not more than five (5) business days, regarding the continued need and justification for continued confidentiality.

(ii) Requests to Inspect Confidential Information. A request to inspect confidential information pursuant to subitem (5)(f)5.(i)(III) of this Rule should be in writing, signed by the person making the request, and must state the justification for the request. A copy of the request for inspection will ordinarily be forwarded to the person who requested confidential treatment of the information in accordance with subitem (5)(f)5.(i)(III) of this Rule. If a request for inspection should be held confidential, the reasons therefore must be stated in such request, in accordance with part (5)(f)2. of this Rule.

(iii) Nothing contained herein shall be interpreted as affording any person a right to withdraw information once it has been received by the assistant commissioner, except as provided in part (5)(f)3. of this Rule.

6. All documents described in paragraph (5) of this Rule may be maintained or submitted to the Division through the CRD System or other electronic data gathering, access, and retrieval methods acceptable to the Division.

Authority: T.C.A. §§ 48-1-103(b)(11), 48-1-104, 48-1-107(b), 48-1-108, 48-1-109, 48-1-110, 48-1-111, 48-1-112, 48-1-115, 48-1-116, 48-1-117, 48-1-118, 48-1-121, 48-1-125, 4-5-105, 10-7-503(a)(2)(A-B), Public Acts of 1997, Chapter 164, § 8, and Public Acts of 2001, Chapter 61. **Administrative History:** Original rule filed September 9, 1980; effective October 24, 1980. Repeal and new rule filed September 28, 1990; effective November 12, 1990. Amendment filed November 6, 1997; effective January 20, 1998. Amendment filed May 15, 2002; effective July 29, 2002. Amendment filed April 5, 2004; effective June 19,

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2004. Amendment filed December 23, 2014; effective March 23, 2015. On January 27, 2015, the Tennessee Department of Commerce and Insurance filed a withdrawal of the amendment. Repeal and new rule filed March 16, 2015; effective June 14, 2015. Amendments filed September 28, 2017; effective December 27, 2017.

0780-04-01-.05 NO-ACTION LETTERS AND INTERPRETIVE OPINIONS.

- (1) In case of any question concerning the Act, the Division staff may in its sole discretion entertain a request for a no-action letter or interpretive opinion. If issued, a no-action letter or an interpretive opinion only expresses the current position of the Division staff with respect to enforcement, and is not binding on the commissioner or third parties. A request for a no-action letter or interpretive opinion must be in writing and in the format described in SEC Release No. 33-6269.
- (2) The Division will maintain an index, chronologically and by statutory section, of all no-action letters and interpretive opinions issued. Copies of such letters may be reviewed in the Division's office and copies thereof obtained upon payment of reasonable costs of duplication.

Authority: T.C.A. §§ 48-1-115, 48-1-116, and 48-1-117(e). **Administrative History:** Original rule filed September 9, 1980; effective October 24, 1980. Repeal and new rule filed September 28, 1990; effective November 12, 1990. Amendment filed December 23, 2014; effective March 23, 2015. On January 27, 2015, the Tennessee Department of Commerce and Insurance filed a withdrawal of the amendment. Repeal and new rule filed March 16, 2015; effective June 14, 2015.

0780-04-01-.06 REPEALED.

Authority: Public Acts of 1980, Chapter 866, § 16(a). **Administrative History:** Original rule filed September 9, 1980; effective October 24, 1980. Repeal filed September 28, 1990; effective November 12, 1990. Amendment filed December 23, 2014; effective March 23, 2015. On January 27, 2015, the Tennessee Department of Commerce and Insurance filed a withdrawal of the amendment. Repeal and new rule filed March 16, 2015; effective June 14, 2015.