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

CHAPTER 0780-04-03
INDUSTRY REGULATION

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1. All broker-dealer applicants who are eligible must apply for initial registration in Tennessee through the CRD System by complying with the application procedure required by the CRD System. The application filed through the CRD System shall contain the following, unless waived by order of the commissioner.

(i) A Form BD and all information and exhibits required by such Form;

(ii) The appropriate application fee as set forth in the Act; and

(iii) Satisfactory evidence of a passing score on an appropriate principal's examination taken by the executive officers or principals of the applicant.

2. Broker-dealers applying through the CRD System shall also, concurrently with the filing of an application through the CRD System, file with the Division, unless waived by the commissioner:

(i) (I) A copy of the applicant's most recent annual audited report filed pursuant to SEC Rule 17a-5 (17 C.F.R. § 240.17a-5), plus all quarterly FOCUS Reports filed pursuant to that Rule since the most recent annual audited report; or

(II) If the applicant has not yet had an audit performed pursuant to its first fiscal year of existence, in lieu of complying with item (1)(a)2.(i)(I) of this Rule it may submit an unaudited balance sheet and income statement in such detail as will disclose the nature and amount of assets and liabilities and the net worth of the applicant. Such financial statements shall be prepared as of a date within thirty

(30) days of the filing date and shall be certified as to their correctness by the sole proprietor, a general partner, or a duly authorized executive officer of the applicant, and shall be accompanied by a Designation of Accountant form to be executed by the accountant designated on such form; or

(III) The financial reports required by items (1)(a)2.(i)(I)-(II) of this Rule shall demonstrate compliance with the appropriate net capital requirement for a registered broker-dealer.

(ii) Such other information as the Division may request from a particular applicant to determine eligibility for registration.

(b) Other Broker-Dealer Applicants. All applications for initial registration as a broker-dealer other than those specified in subparagraph (1)(a) of this Rule shall be submitted directly to the Division and shall contain the following information, unless waived by order of the commissioner:

1. A Form BD and all information and exhibits required by such Form;

2. The appropriate application fee as set forth in the Act;

3. (i) A balance sheet and income statement as of the end of the applicant's most recent fiscal year prepared in accordance with generally accepted accounting principles consistently applied and examined and reported on by an independent: (I) certified public accountant; or (II) public accountant currently licensed in the state of Tennessee, and any subsequent quarterly balance sheets and income statements prepared in accordance with generally accepted accounting principles consistently applied; or

(ii) If the applicant has not yet had an audit performed in its first year of existence, in lieu of complying with subpart (1)(b)3.(i) of this Rule, it may submit an unaudited balance sheet and income statement in such detail as will disclose the nature and amount of assets and liabilities and the net worth of the applicant. Such financial statements shall be prepared as of a date within thirty (30) days of the filing date and shall be certified as to their correctness by the sole proprietor, a general partner, or a duly authorized executive officer of the applicant, and shall be accompanied by a Designation of Accountant form as provided by the Division. Such Designation of Accountant form shall be executed by the designated accountant;

(iii) The financial reports required by subparts (1)(b)3.(i)-(ii) of this Rule shall demonstrate compliance with the appropriate net capital requirement for a registered broker-dealer;

4. Satisfactory evidence of a passing score on an appropriate principal's examination taken by the executive officers or principals of the applicant; and

5. Such other information as the Division may request of a particular applicant to determine eligibility for registration.

(c) An application is deemed filed for purposes of T.C.A. § 48-1-110(a)(4) and this Rule when it is complete. An application is deemed to be complete when all of the information requested by the Division pursuant to subparagraph (1)(a) or parts (1)(b)1.-5. of this Rule is received by the Division.

(d) All broker-dealers who are eligible must apply for renewal of registration in Tennessee through the CRD System by complying with the requirements of the CRD System. Applications for renewal of other broker-dealers must be submitted directly to the Division and must contain the following:

1. The appropriate renewal form as received from the Division and all information and exhibits required by such form; and

2. The appropriate fee as set forth in the Act.

(e) A person who acts as a "clearing broker-dealer" with respect to any securities transaction in Tennessee must register as a broker-dealer in Tennessee.

(f) A registered broker-dealer shall not conduct business in this state through an agent unless and until the broker-dealer has registered that agent in this state.

(g) The registration of a broker-dealer shall be subject to revocation proceedings even though the registrant has filed an application to withdraw its registration, and an application for registration as a broker-dealer shall be subject to denial proceedings even though the applicant has filed a written request to withdraw its application. The commissioner may institute a revocation or denial proceeding under T.C.A. § 48-1-112 within thirty (30) days after the filing date of an application to withdraw on Form BDW by a registrant or a written request to withdraw by an applicant and enter a revocation order as of the last date on which registration was effective or a denial order as of the filing date of the written request to withdraw an application. For purposes of this subparagraph, "filing date" shall mean the date upon which the Form BDW filed on behalf of a registrant or a written request filed on behalf of an applicant is actually received by the Division through the CRD System or through a direct filing with the Division, whichever is appropriate for the applicant.

(h) Abandonment.

1. The Division may determine that an application to register a broker-dealer has been abandoned if:

(i) The application has been on file with the Division for more than one hundred eighty (180) days without becoming registered and no written communication has been received by the Division in connection with the application during such time period; or

(ii) A period of one hundred (180) days has elapsed since the date of the Division's receipt of the most recent written communication to the Division from or on behalf of the applicant.

2. Upon the determination that an application has been abandoned, the Division shall, by Order of Abandonment, cancel the pending application without prejudice and, within thirty (30) days of such cancellation, mail a copy of the Order of Abandonment to the last known business address of the applicant.

(2) Agent Registration.

(a) CRD System Eligible Agent Applicants.

1. All agent applicants who are eligible must apply for initial registration in Tennessee through the CRD System by complying with the application

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

procedure required by the CRD System. The application filed through the CRD System shall contain the following:

(i) A Form U4 and all information and exhibits required by such Form;

(ii) The appropriate application fee as set forth in the Act; and

(iii) Satisfactory evidence of a passing score by the applicant on the appropriate examinations.

2. Agents applying for registration through the CRD System shall also provide directly to the Division such other information as the Division may request from a particular applicant to determine eligibility for registration.

(b) Other Agent Applicants. All applications for registration as an agent other than those specified in subparagraph (2)(a) of this Rule shall be submitted directly to the Division and shall contain the following information:

1. A Form U4 and all information and exhibits required by such Form;

2. The appropriate application fee as set forth in the Act;

3. Satisfactory evidence of a passing score by the applicant on the appropriate examinations; and

4. Such other information as the Division may request of a particular applicant to determine eligibility for registration.

(c) An application is deemed filed for purposes of T.C.A. § 48-1-110(a)(4) and this Rule when it is complete. An application is deemed to be complete when all information requested by the Division pursuant to subparagraph (2)(a) or parts (2)(b)1.-4. of this Rule is received by the Division.

(d) All agents who are eligible must apply for renewal of registration in Tennessee through the CRD System by complying with the requirements of the CRD System. Applications for renewal of all other agents must be submitted directly to the Division and must contain the following:

1. The appropriate renewal form as received from the Division and all information and exhibits required by such form; and

2. The appropriate fee as set forth in the Act.

(e) The registration of an agent shall be subject to revocation proceedings even though the registrant has filed an application to terminate his or her registration, and an application for registration as an agent shall be subject to denial proceedings even though the applicant has filed to withdraw his or her application. The commissioner may institute a revocation or denial proceeding under T.C.A. § 48-1-112 within thirty (30) days after the filing date of an application to terminate or withdraw on Form U5 by a registrant or an applicant and enter a revocation order as of the last date on which registration was effective or a denial order as of the filing date of the request to withdraw an application. For purposes of this subparagraph, “filing date” shall mean the date upon which notice of the Form U5 filed on behalf of a registrant or an applicant is actually received by the Division through the CRD System, or for non-CRD System agents, the date upon which the Form U5 is received directly by the Division.

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

(f) There is no provision under the Act to transfer an individual agent's registration. When an agent terminates his relationship with a broker-dealer with whom he is registered and commences a new relationship with another broker-dealer, a termination of registration shall be effected by the broker-dealer with which the individual agent had the prior relationship and an application for initial registration shall be filed by the broker-dealer with which the individual agent proposes to have the new relationship. The termination of registration shall be effected by the broker-dealer by submitting a Form U5 through the CRD System or directly with the Division, whichever is appropriate, within thirty (30) days of the date of termination. The filings prescribed in this subparagraph (2)(f) are not required in the event of a mass transfer of agent registrations pursuant to CRD System operational procedures and are not required in the event of a succession as permitted in T.C.A. § 48-1-110(c).

(g) All agent applicants who have voluntarily terminated registration with a broker-dealer and who are eligible under the rules established by the CRD System may apply for temporary registration with another broker-dealer through the CRD System by complying with the procedure required by the CRD System. In the case of all other voluntary terminations of a non-CRD agent's registration with a particular broker-dealer pursuant to subparagraph (2)(f) of this Rule, the Division may, in its discretion, allow the agent to be temporarily registered with the broker-dealer with whom the agent is seeking permanent registration. Such temporary registration will not be granted until the Form U4 is received by the Division, and a written request is made by such other broker-dealer. Any such temporary registration shall expire upon the grant or denial of the application for permanent registration, and in no event shall last more than thirty (30) days.

(h) Abandonment.

1. The Division may determine that an application to register an agent has been abandoned if:

(i) The application has been on file with the Division for more than one hundred eighty (180) days without becoming registered and no written communication has been received by the Division in connection with the application during such time period; or

(ii) A period of one hundred eighty (180) days has elapsed since the date of the Division's receipt of the most recent written communication to the Division from or on behalf of the applicant.

2. Upon the determination that an application through the CRD System has been abandoned, the Division shall, as provided through the routine operation of the CRD System, cancel such application without prejudice.

3. Upon determination that an application submitted directly to the Division has been abandoned, the Division shall, by Order of Abandonment, cancel the pending application without prejudice and, within thirty (30) days of such cancellation, mail a copy of the Order of Abandonment to the last known business address of the applicant.

(3) Investment Adviser Registration.

(a) IARD Eligible Investment Advisers.

1. All investment advisers who are eligible must apply for initial registration in Tennessee through the IARD by complying with the electronic application

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

procedures required by the IARD. The application filed through the IARD shall contain the following, unless waived by order of the commissioner:

(i) A Form ADV and all information and exhibits required by such Form;

(ii) The appropriate application fee as set forth in the Act; and

(iii) Satisfaction of the investment adviser representative examination requirements under paragraph (10) of this Rule by appropriate executive officers or principals of the applicant.

2. Investment advisers applying through the IARD shall also, concurrently with the filing of an application to the IARD, file with the Division, unless waived by order of the commissioner:

(i) (I) If the applicant is a corporation, a certified copy of its articles of incorporation and amendments thereto, and a copy of its bylaws certified by the secretary of the corporation;

(II) If the applicant is a partnership, a copy of its partnership agreement, certified by a general partner; or

(III) If the applicant is a limited liability company, a copy of its articles of organization as filed within the state in which it was formed, and a copy of its operating agreement, if any, certified by a managing member;

(ii) (I) A balance sheet prepared in accordance with generally accepted accounting principles consistently applied as of a date not more than ninety (90) days prior to the date of such application, which shall demonstrate compliance with the net capital requirement for a registered investment adviser in the state in which the applicant maintains its principal place of business. For purposes of this item (3)(a)2.(ii)(I), “principal place of business” means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser; or

(II) For any applicant which has or will have custody of client funds or securities, or which requires or will require prepayment of more than five hundred dollars ($500) in advisory fees six (6) or more months in advance, an audited balance sheet prepared in accordance with part (4)(a)2. of Rule 0780-04-03-.02. If such applicant has not yet had an audit performed pursuant to its first fiscal year of existence, it may submit an unaudited balance sheet in such detail as will disclose the nature and amount of assets and liabilities and the net worth and net capital of the applicant. Such financial statement shall be prepared as of a date within thirty (30) days of the filing date and shall be certified as to its correctness by the sole proprietor, a general partner, or a duly authorized executive officer of the applicant, and shall be accompanied by a designation of accountant to be executed by the accountant so designated to perform the applicant’s first annual audit; and

(iii) Such other information as the Division may request of a particular applicant to determine eligibility for registration.

(b) Other Investment Adviser Applicants. All applications for initial registration as an investment adviser other than those specified in subparagraph (3)(a) of this Rule shall be submitted in paper format directly to the Division and shall contain the following information, unless waived by order of the commissioner:

1. A Form ADV and all information and exhibits required by such Form;

2. The appropriate application fee as set forth in the Act;

3. (i) If the applicant is a corporation, a certified copy of its articles of incorporation and amendments thereto, and a copy of its bylaws certified by the secretary of the corporation;

(ii) If the applicant is a partnership, a copy of its partnership agreement, certified by a general partner; or

(iii) If the applicant is a limited liability company, a copy of its articles of organization as filed within the state in which it was formed, and a copy of its operating agreement certified by a managing member;

4. (i) A balance sheet prepared in accordance with generally accepted accounting principles consistently applied as of a date not more than ninety (90) days prior to the date of such application, which shall demonstrate compliance with the net capital requirement for a registered investment adviser in the state in which the applicant maintains its principal place of business. For purposes of this subpart (3)(b)4.(i), “principal place of business” means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser; or

(ii) For any applicant which has or will have custody of client funds or securities, or which requires or will require prepayment of more than five hundred dollars ($500) in advisory fees six (6) or more months in advance, an audited balance sheet prepared in accordance with part (4)(a)2. of Rule 0780-04-03-.02. If such applicant has not yet had an audit performed pursuant to its first fiscal year of existence, it may submit an unaudited balance sheet in such detail as will disclose the nature and amount of assets and liabilities and the net worth and net capital of the applicant. Such financial statement shall be prepared as of a date within thirty (30) days of the filing date and shall be certified as to its correctness by the sole proprietor, a general partner, or a duly authorized executive officer of the applicant, and shall be accompanied by a designation of accountant to be executed by the accountant so designated to perform the applicant’s first annual audit;

5. Satisfaction of the investment adviser representative examination requirements under paragraph (10) of Rule 0780-04-03-.01 by appropriate executive officers or principals of the applicant;

6. Such other information as the Division may request of a particular applicant to determine eligibility for registration; and

7. Evidence of a temporary exemption or, prior to December 31, 2003, evidence of a continuing hardship exemption as issued by the Division or another state securities administrator, which exempts the applicant from the requirements to

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

make electronic filings through the IARD as required by subparagraphs (3)(a) and (3)(e) of this Rule and by subparagraph (4)(d) of Rule 0780-04-03-.02.

(c) Hardship Exemptions. This subparagraph provides two "hardship exemptions" from the requirements to make electronic filings through the IARD as required by the subparagraphs (3)(a) and (3)(e) of this Rule and by subparagraph (4)(d) of Rule 0780-04-03-.02.

1. Temporary Hardship Exemption.

(i) Investment advisers registered or required to be registered under the Act who experience unanticipated technical difficulties that prevent submission of an electronic filing to the IARD may request a temporary hardship exemption from the requirements to file electronically.

(ii) To request a temporary hardship exemption, the investment adviser must:

(I) File Form ADV-H in paper format with the state securities administrator where the investment adviser's principal place of business is located, or the Division if appropriate, no later than one (1) business day after the filing (that is the subject of the Form ADV-H) was due; and

(II) Submit the filing that is the subject of the Form ADV-H in electronic format to the IARD no later than seven (7) business days after the filing was due.

(iii) Effective Date Upon Filing. The temporary hardship exemption will be deemed effective by the commissioner upon receipt of the complete Form ADV-H by the state securities administrator where the investment adviser’s principal place of business is located or with the Division if such other state securities administrator does not routinely process applications for temporary hardship exemptions. Multiple temporary hardship exemption requests within the same calendar year may be allowed or disallowed at the discretion of the commissioner.

2. Continuing Hardship Exemption.

(i) Criteria for Exemption. A continuing hardship exemption will be granted only if the investment adviser is able to demonstrate to the satisfaction of the commissioner that the electronic filing requirements of these Rules are prohibitively burdensome.

(ii) To apply for a continuing hardship exemption, the investment adviser must:

(I) File Form ADV-H in paper format with the appropriate state securities administrator, or the Division if appropriate, at least twenty (20) business days before a filing is due; and

(II) If a filing is due to more than one (1) state securities administrator, the Form ADV-H must be filed with the state securities administrator where the investment adviser's principal place of business is located or with the Division if such state securities administrator does not routinely process applications for continuing hardship exemptions. If the Division is the state securities administrator which receives the application for a continuing hardship exemption, the commissioner

will grant or deny the application within ten (10) business days after the filing of Form ADV-H or within ten (10) business days after the receipt of further information or materials requested from the investment adviser by the Division to determine eligibility for such exemption.

(iii) Effective Date Upon Approval. The exemption is effective upon approval by the state securities administrator where the investment adviser's principal place of business is located or by the commissioner, whichever is appropriate. The time period of the exemption may be no longer than one (1) year after the exemption approval date. Upon such approval, the investment adviser must, no later than five (5) business days after the exemption approval date, commence submitting necessary filings to the IARD in paper format (along with the appropriate processing fees), or to the Division, whichever is appropriate, for the period of time for which the exemption is granted.

3. Recognition of Exemption. The decision to grant or deny a request for a hardship exemption will be made by the state securities administrator where the investment adviser's principal place of business is located or the commissioner, whichever is appropriate. Approval of an exemption by an appropriate state securities administrator in another state will be recognized and accepted by the commissioner except that the commissioner will not grant, accept, or recognize any continuing hardship exemption after December 31, 2003.

(d) An application is deemed filed for purposes of T.C.A. § 48-1-110(a)(4) and this Rule when it is complete. An application is deemed to be complete when all information requested by the Division pursuant to subparagraphs (3)(a) or (3)(b) of this Rule is received by the Division.

(e) All investment advisers who are eligible must apply for renewal of registration in Tennessee through the IARD by complying with the requirements of the IARD. Applications for renewal of other investment advisers must be submitted directly to the Division and must contain the following:

1. The appropriate renewal form as prescribed by the Division and all information and exhibits required by such form; and

2. The appropriate fee as set forth in the Act.

(f) The registration of an investment adviser shall be subject to revocation proceedings even though the registrant has filed an application to withdraw its registration, and an application for registration as an investment adviser shall be subject to denial proceedings even though the applicant has filed a written request to withdraw its application. The commissioner may institute a revocation or denial proceeding under T.C.A. § 48-1-112 within thirty (30) days after the filing date of application to withdraw on Form ADV-W by a registrant or a written request to withdraw by an applicant and enter a revocation order as of the last date on which registration was effective or a denial order as of the filing date of the written request to withdraw an application. For purposes of this subparagraph, "filing date" shall mean the date upon which the Form ADV-W or a written request filed on behalf of an applicant through the IARD or through a direct filing with the Division, whichever is appropriate, is actually received by the Division.

(g) Abandonment.

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

1. The Division may determine that an application to register an investment adviser has been abandoned if:

   (i) The application has been on file with the Division for more than one hundred eighty (180) days without the applicant becoming registered and no written communication has been received by the Division in connection with the application during such time period; or

   (ii) A period of one hundred eighty (180) days has elapsed since the date of the Division's receipt of the most recent written communication to the Division from or on behalf of the applicant.

2. Upon the determination that an application has been abandoned, the commissioner shall, by Order of Abandonment, cancel the pending application without prejudice and, within thirty (30) days of such cancellation, mail a copy of the Order of Abandonment to the last known business address of the applicant.

(4) Examination of Agents and Principals of Broker-Dealers.

(a) Agents. Each applicant for initial registration as an agent shall receive a passing grade on:

1. An examination administered by the FINRA, the New York Stock Exchange, or the SEC which tests the applicant's general knowledge of securities principles; and

2. The Uniform Securities Agent State Law Examination (USASLE/Series 63) or the Uniform Combined State Law Examination (UCSLE/Series 66) as either is administered by the FINRA.

(b) Principals. Each applicant for initial registration as a principal or supervisory officer of a broker-dealer must receive a passing grade on an appropriate securities examination for principals administered by the FINRA, the New York Stock Exchange, or the SEC.

(c) The passing grade on a particular examination required for registration in this state shall be the passing grade for that particular examination as set by the agency or organization administering the examination. For purposes of this paragraph (4), a duly granted examination waiver by the FINRA, the New York Stock Exchange, or the SEC shall constitute a passing grade for the examination requirements of part (4)(a)1. and subparagraphs (4)(b) and (4)(d) of this Rule.

(d) Each applicant for initial registration:

1. Shall have received a passing grade on the required examinations within the preceding twenty-four (24) months; or

2. Shall have received a passing grade on the required examinations prior to the preceding twenty-four (24) months and shall have been registered in an appropriate jurisdiction in the capacity for which the applicant is currently seeking registration within the preceding twenty-four (24) months.

(5) Registered Broker-Dealer Net Capital Requirements.

(a) FINRA Broker-Dealers and Exchange Members.

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

1. All broker-dealers, except government securities broker-dealers, who are members of the FINRA or a national exchange, shall have and maintain net capital in such minimum amounts as are prescribed for their activities under SEC Rule 15c3-1 (17 C.F.R. § 240.15c3-1).

2. The aggregate indebtedness of each broker-dealer described in part (5)(a)1. of this Rule to all persons shall not exceed the levels prescribed under SEC Rule 15c3-1 (17 C.F.R. § 240.15c3-1).

3. For purposes of this subparagraph (5)(a), the term "net capital" shall have the same meaning as in SEC Rule 15c3-1 (17 C.F.R. § 240.15c3-1).

(b) Government Securities Broker-Dealer. Each registered government securities broker-dealer shall have and maintain liquid capital in such minimum amounts as are prescribed under SEC Rule 15Ca2-2 (17 C.F.R. § 240.15Ca2-2) and Department of Treasury Rule 402.2 (17 C.F.R. § 402.2).

(c) Other Broker-Dealers.

1. Each registered broker-dealer that does not fall within subparagraphs (5)(a) and (5)(b) of this Rule shall have and maintain a minimum net capital of twenty-five thousand dollars ($25,000). If such broker-dealer has a net capital of less than one hundred thousand dollars ($100,000), it shall post a surety bond of ten thousand dollars ($10,000).

2. For purposes of this subparagraph (5)(c), net capital shall be defined as total assets less total liabilities (net worth) as computed in accordance with generally accepted accounting principles consistently applied.

(6) Investment Adviser Net Capital Requirements.

(a) Except as provided under subparagraph (6)(d) of this Rule, every investment adviser registered or to be registered shall have and maintain a minimum net capital of fifteen thousand dollars ($15,000).

(b) For purposes of this paragraph (6), "net capital" shall be defined as total assets less total liabilities (net worth) as computed in accordance with generally accepted accounting principles consistently applied minus the following non-allowable assets:

1. In the case of an individual: home equity, home furnishings, automobiles, goodwill, and any other personal item not readily marketable;

2. In the case of a corporation: advances or loans to stockholders, officers, or affiliates, and uncollateralized receivables from stockholders, officers, or affiliates;

3. In the case of a partnership: advances or loans to partners or affiliates, and uncollateralized receivables from partners or affiliates; and

4. In the case of a limited liability company: advances or loans to members or affiliates, and uncollateralized receivables from members or affiliates.

(c) The Division may require that a current appraisal be submitted in order to establish the value of any asset.

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

(d) An investment adviser, which has its principal place of business in another state, shall not be subject to the net capital requirements of this paragraph (6) if:

1. The investment adviser is registered as an investment adviser in the state in which it maintains its principal place of business;

2. The investment adviser is in compliance with the applicable net capital requirement in the state in which it maintains its principal place of business; and

3. The investment adviser is in compliance with any bonding requirement in the state in which it maintains its principal place of business.

(e) For purposes of this paragraph (6), "principal place of business" of an investment adviser means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.

(7) Branch Offices and Other Business Locations of Broker-Dealers.

(a) Every broker-dealer registered in Tennessee shall notify the Division of the establishment of any branch office or other business location in Tennessee, as well as its current address and the name or names of the agent or agents currently in charge.

(b) Such notification of establishment, change in address, or change in identity of any agent or agents in charge thereof must be filed with the Division through the CRD System or through a direct filing, whichever is appropriate, within thirty (30) days from the date of establishment or change.

(8) Withdrawal of Applications. An application for registration as a broker-dealer or investment adviser may be withdrawn prior to the effectiveness of registration by following the procedures established by the CRD System and the IARD or, for other broker-dealers and other investment advisers, by filing a written request for withdrawal directly with the Division. An application for registration as an agent or investment adviser representative may be withdrawn prior to the effectiveness of the registration by following the procedures established by the CRD System or IARD or, for other agents and other investment adviser representatives, by filing a written request for withdrawal directly with the Division.

(9) Investment Adviser Representative Registration.

(a) IARD and CRD System Eligible Investment Adviser Representative Applicants.

1. All investment adviser representative applicants who are eligible must apply for initial registration in Tennessee through the IARD and CRD System by complying with the application procedures required by the IARD and CRD System. The application filed through the IARD and CRD System shall contain the following:

(i) A Form U4 and all information and exhibits required by such Form;

(ii) The appropriate application fee as set forth in the Act; and

(iii) Satisfactory evidence of a passing score by the applicant on the appropriate examinations.

2. Investment adviser representatives applying for registration through the IARD and CRD System shall also provide directly to the Division such other information

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

as the Division may request from a particular applicant to determine eligibility for registration.

(b) Other Investment Adviser Representative Applicants. All applications for registration as an investment adviser representative other than those specified in subparagraph (9)(a) of this Rule shall be submitted directly to the Division and shall contain the following information:

1. A Form U4 and all information and exhibits required by such Form;

2. The appropriate application fee as set forth in the Act;

3. Satisfactory evidence of a passing score by the applicant on the appropriate examinations; and

4. Such other information as the Division may request of a particular applicant to determine eligibility for registration.

(c) An application is deemed filed for purposes of T.C.A. § 48-1-110(a)(4) and this Rule when it is complete. An application is deemed to be complete when all information requested by the Division pursuant to subparagraph (9)(a) and parts (9)(b)1.-4. of this Rule is received by the Division.

(d) All investment adviser representatives who are eligible must apply for renewal of registration in Tennessee through the IARD and CRD System by complying with the requirements of the IARD and CRD System. Applications for renewal of all other investment adviser representatives must be submitted directly to the Division and must contain the following:

1. The appropriate renewal form as received from the Division and all information and exhibits required by such form; and

2. The appropriate fee as set forth in the Act.

(e) The registration of an investment adviser representative shall be subject to revocation proceedings even though the registrant has filed an application to terminate his or her registration, and an application for registration as an investment adviser representative shall be subject to denial proceedings even though the applicant has filed to withdraw his or her application. The commissioner may institute a revocation or denial proceeding under T.C.A. § 48-1-112 within thirty (30) days after the filing date of an application to terminate or withdraw on Form U5 by a registrant or an applicant and enter a revocation order as of the last date on which registration was effective or a denial order as of the filing date of the request to withdraw an application. For purposes of this subparagraph, “filing date” shall mean the date upon which notice of the Form U5 filed on behalf of a registrant or an applicant is actually received by the Division through the IARD and CRD System, or for non-IARD and CRD System investment adviser representatives, the date upon which the Form U5 is received directly by the Division.

(f) There is no provision under the Act to transfer an individual investment adviser representative’s registration. When an investment adviser representative terminates his relationship with an investment adviser with whom he is registered and commences a new relationship with another investment adviser, a termination of registration shall be effected by the investment adviser with which the individual investment adviser representative had the prior relationship and an application for initial registration shall be filed by the investment adviser with which the individual investment adviser

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representative proposes to have the new relationship. The termination of registration shall be effected by the investment adviser by submitting a Form U5 through the IARD and CRD System or directly with the Division, whichever is appropriate, within thirty (30) days of the date of termination. The filings prescribed in this subparagraph (9)(f) are not required in the event of a mass transfer of investment adviser representative registrations pursuant to IARD and CRD System operational procedures and are not required in the event of a succession as permitted in T.C.A. § 48-1-110(c).

(g) All investment adviser representative applicants who have voluntarily terminated registration with an investment adviser and who are eligible under the rules established by the IARD and CRD System may apply for temporary registration with another investment adviser through the IARD and CRD System by complying with the procedure required by the IARD and CRD System. In the case of all other voluntary terminations of a non-IARD and CRD System eligible investment adviser representative's registration with a particular investment adviser pursuant to subparagraph (9)(f) of this Rule, the Division may, in its discretion, allow the investment adviser representative to be temporarily registered with the investment adviser with whom the investment adviser representative is seeking permanent registration. Such temporary registration will not be granted until the Form U4 is received by the Division, and a written request is made by such other investment adviser. Any such temporary registration shall expire upon the grant or denial of the application for permanent registration, and in no event shall last more than thirty (30) days.

(h) Abandonment.

1. The Division may determine that an application to register an investment adviser representative has been abandoned if:

(i) The application has been on file with the Division for more than one hundred eighty (180) days without becoming registered and no written communication has been received by the Division in connection with the application during such time period; or

(ii) A period of one hundred eighty (180) days has elapsed since the date of the Division's receipt of the most recent written communication to the Division from or on behalf of the applicant.

2. Upon the determination that an application through the IARD and CRD System has been abandoned, the Division shall, as provided through the routine operation of the IARD and CRD System, cancel such application without prejudice.

3. Upon determination that an application submitted directly to the Division has been abandoned, the Division shall, by Order of Abandonment, cancel the pending application without prejudice and, within thirty (30) days of such cancellation, mail a copy of the Order of Abandonment to the last known business address of the applicant.

(i) An investment adviser representative who is associated with an investment adviser which has filed a completed investment adviser notice filing pursuant to T.C.A. § 48-1-109(c)(2), and who has no place of business located within this state, is not required to register as an investment adviser representative of such investment adviser in this state.

(j) An investment adviser representative who is associated with an investment adviser which has filed a completed investment adviser notice filing pursuant to T.C.A. § 48-1-

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109(c)(2), and who is not included in the definition of "investment adviser representative" which appears in SEC Rule 203A-3 (17 C.F.R. § 275.203A-3), is not required to register as an investment adviser representative of such investment adviser in this state.

(k) An individual who solicits, offers, or negotiates for sale of or sells investment advisory services, but who is not compensated directly or indirectly for such activities, is not required to register as an investment adviser representative in this state.

(10) Examination of Investment Adviser Representatives.

(a) Each applicant for initial registration as an investment adviser representative:

1. Shall receive a passing grade on the Uniform Investment Adviser Law Examination (UIALE/Series 65) as administered by the FINRA;

2. Shall receive passing grades on the General Securities Representative Examination (Series 7) and the Uniform Combined State Law Examination (UCSLE/Series 66) as administered by the FINRA;

3. Shall have been registered as an investment adviser representative in any state within the preceding twenty-four (24) months; or

4. Shall currently hold one (1) of the following professional designations:

(i) Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.;

(ii) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, PA;

(iii) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;

(iv) Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts; or

(v) Chartered Investment Counselor (CIC) awarded by the Investment Adviser Association, Inc.

(b) The passing grade on a particular examination required for registration in this state shall be the passing grade for that particular examination as set by the agency or organization administering the examination. For purposes of this paragraph (10), a duly granted examination waiver by the FINRA, the New York Stock Exchange, or the SEC shall constitute a passing grade for the General Securities Representative Examination (Series 7) requirement of part (10)(a)2. and subparagraph (10)(c) of this Rule.

(c) Each applicant who demonstrates eligibility for initial registration by receiving a passing grade on the examinations delineated in parts (10)(a)1.-2. of this Rule:

1. Shall have received a passing grade on the required examinations within the preceding twenty-four (24) months; or

2. Shall have received a passing grade on the required examinations prior to the preceding twenty-four (24) months and shall have been registered in an

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appropriate jurisdiction in the capacity appropriate to the required examination within the preceding twenty-four (24) months.

(d) The requirements of this paragraph (10) shall apply to all applications for investment adviser registration and investment adviser representative registration filed with the Division on or after April 1, 2004.

Authority: *T.C.A. §§ 48-1-102, 48-1-109, 48-1-110, 48-1-111, 48-1-112, 48-1-115, and 48-1-116, Public Acts of 2001, Chapter 61, § 222 of the Investment Advisers Act of 1940, as amended by § 304(c) of the National Securities Markets Improvement Act of 1996, 17 C.F.R. § 240.15c3-1, 17 C.F.R. § 240.15Ca2-2, 17 C.F.R. § 240.17a-5, 17 C.F.R. § 275.203A-3, and 17 C.F.R. § 402.2.* ***Administrative History:*** *Original rule filed September 9, 1980; effective October 24, 1980. Amendment filed January 13, 1983; effective February 14, 1983. 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, 2004. Repeal and new rule filed March 16, 2015; effective June 14, 2015.*

0780-04-03-.02 POST REGISTRATION.

(1) Broker-Dealer Required Records.

(a) Every broker-dealer registered in this state shall make and keep current the following books and records relating to its business, unless waived by order of the commissioner:

1. Blotters (or other records of original entry) setting forth an itemized daily record of all purchases and sales of securities (including certificate number), all receipts and disbursements of cash, and all other debits and credits. The record shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, the settlement date, the name or other designation of the person from whom purchased or received or to whom sold or delivered, and some identification of the agent effecting the transaction;

2. Ledgers reflecting all assets and liabilities, income and expenses, and capital accounts;

3. Ledgers (or other records) itemizing separately as to each cash and margin account of every customer and of the broker-dealer and partners or principals thereof, all purchases, sales, receipts, and deliveries of securities and commodities for such accounts, and all other debits and credits to such accounts.

4. Ledgers (or other records) reflecting the following:

(i) Securities in transfer;

(ii) Dividends and interest received;

(iii) Securities borrowed and securities loaned;

(iv) Monies borrowed and monies loaned (together with a record of the collateral thereof and any substitutions in such collateral);

(v) Securities failed to receive and failed to deliver; and

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(vi) A record of all puts, calls, spreads, and straddles and other options in which the broker-dealer has any direct or indirect interest or which it has granted or guaranteed, containing at least identification of the security and the number of units involved;

5. A memorandum of each order (order ticket) and of any other instruction given or received for the purchase or sale of securities, whether executed or unexecuted. The memorandum shall show the terms and conditions of the order or instruction, any modification or cancellation thereof, the account for which entered, whether the transaction was unsolicited, the time of entry, the price at which executed, and, to the extent feasible, the time of execution or cancellation. Orders entered pursuant to the exercise of discretionary power by the broker-dealer or any employee thereof shall be so designated. The term “time of entry” shall mean the time when the broker-dealer transmits the order instructions for execution, or, if it is not so transmitted, the time when it is received;

6. A memorandum (order ticket) of each purchase and sale of securities for the account of the broker-dealer showing the price and, to the extent feasible, the time of execution;

7. Copies of confirmations of all purchases and sales of securities, whether the confirmations are issued by the broker-dealer or the issuer of the security involved, and copies of notices of all other debits and credits for securities, cash, and other items for the account of customers and partners or principals of the broker-dealer;

8. A securities record or ledger reflecting separately for each security as of the clearance dates all “long” or “short” positions (including securities in safekeeping) carried by such broker-dealer for its account or for the account of its customers, partners, or principals showing the location of all securities long and the offsetting position to all securities short, and in all cases the name or designation of the account in which each position is carried;

9. Copies of all communications, correspondence, and other records relating to securities transactions with customers;

10. A separate file containing all written complaints made or submitted by customers to the broker-dealer or agents relating to securities transactions;

11. A customer information form (new account information worksheet) for each customer. If recommendations are to be made to the customer, the form shall include such information as is necessary to determine suitability;

12. For each cash or margin account established and maintained with the broker-dealer, copies of all guarantees of accounts and all powers of attorney and other evidence of the granting of any discretionary authority with respect to the account, the name and address of the beneficial owner of each account, and all margin and lending agreements; provided that in the case of a joint account, or of an account of a corporation, the records are required only as to persons authorized to transact business for the account;

13. A record of the proof of money balances of all ledger accounts in the form of trial balances. Such trial balances shall be prepared currently at least once a month;

(Rule 0780-04-03-.02, continued)

14. All partnership certificates and agreements or, in the case of a corporation, all articles of incorporation, bylaws, minute books, and stock certificate books of the broker-dealer;

15. A separate file containing copies of all advertising circulated by the broker-dealer in the conduct of its securities business;

16. A computation made quarterly (on a calendar year basis) of its net capital and ratio of its aggregate indebtedness to its capital on Form C-17A-5, as adopted by the SEC (FOCUS Report), if the broker-dealer is a broker-dealer described in subparagraph (5)(a) of Rule 0780-04-03-.01. Otherwise, a computation made quarterly (on a calendar year basis) of its net capital in the manner prescribed paragraph (5) of Rule 0780-04-03-.01;

17. All records required under SEC Rule 17a-3 (17 C.F.R. § 240.17a-3) not otherwise delineated in this paragraph (1); and

18. All records made and kept pursuant to Section 17(f)(2) of the 1934 Act and SEC Rule 17f-2 (17 C.F.R. § 240.17f-2).

(b) All records required to be kept by subparagraph (1)(a) of this Rule shall be kept for a period of five (5) years, or for the period of time such records are required to be maintained by SEC Rule 17a-4 (17 C.F.R. § 240.17a-4), whichever is shorter. For the first two (2) years, such records shall be kept in an easily accessible place.

(c) All broker-dealers who act as investment advisers shall maintain the records required by subparagraph (3)(a) of this Rule.

(2) Broker-Dealer Reporting Requirements.

(a) Financial Reports.

1. Upon request by the Division, each registered broker-dealer shall immediately file with the Division a report of its financial condition as of and for each requested fiscal year, including a balance sheet and income statement for such period. Such annual report shall be prepared and filed in accordance with the following requirements:

(i) The report shall be certified by an independent certified public accountant or independent public accountant;

(ii) The audit shall be made in accordance with generally accepted auditing standards. The examination shall include a review of the accounting system and the internal accounting controls and procedures for the safeguarding of securities and funds, including appropriate tests thereof since the prior examination;

(iii) The report shall be accompanied by an opinion of the accountant as to the broker-dealer's financial condition which is unqualified except as to matters which would not have a substantial effect on the financial condition of the broker-dealer. In addition, the accountant shall submit, as a supplementary opinion, any comments, based upon the audit, as to any material inadequacies found to exist in the accounting system, the internal accounting controls and procedures for safeguarding securities, and shall indicate any corrective action taken or proposed; and

(Rule 0780-04-03-.02, continued)

(iv) The annual report shall include as a supporting schedule a computation of net capital as required by paragraph (5) of Rule 0780-04-03-.01.

2. In lieu of complying with part (2)(a)1. of this Rule, an applicant may file with the Division a copy of the annual financial report required to be filed by SEC Rule 17a-5 (17 C.F.R. § 240.17a-5). Any such report shall be filed in the form specified in SEC Rule 17a-5, and shall be accompanied by a copy of any comments made by the independent accountant as to material inadequacies in accordance with SEC Rule 17a-5.

(b) Criminal, Civil, Administrative, or Self-Regulatory Actions.

1. Upon request by the Division, each broker-dealer registered in this state shall file with the Division a copy of:

(i) Any indictment or information filed in any court of competent jurisdiction naming the broker-dealer, any affiliate, partner, officer, or director of the broker-dealer, or any person occupying a similar status with or performing similar functions for the broker-dealer, alleging the commission of any felony regardless of subject matter, or of any misdemeanor involving a security or any aspect of the securities business or any investment-related business;

(ii) Any complaint filed in any court of competent jurisdiction naming the broker-dealer, any affiliate, partner, officer, or director of the broker-dealer, or any person occupying a similar status with or performing similar functions for the broker-dealer, seeking a permanent or temporary injunction enjoining any of such person's conduct or practice involving any aspect of the securities business or any investment-related business; and

(iii) Any complaint or order filed by a federal or state regulatory agency or self-regulatory organization or the United States Post Office naming the broker-dealer, any affiliate, partner, officer, or director of the broker-dealer, or any person occupying a similar status with or performing a similar function for the broker-dealer, related to the broker-dealer's securities business or investment-related business.

2. Upon request by the Division, each broker-dealer registered in this state shall file with the Division a copy of any answer, response, or reply to any complaint, indictment, or information described in subparts (2)(b)1.(i)-(iii) of this Rule.

3. Upon request by the Division, each broker-dealer registered in this state shall file with the Division a copy of any decision, order, or sanction that is made, entered, or imposed with respect to any proceedings described in subparts (2)(b)1.(i)-(iii) of this Rule.

4. Nothing in subparagraph (2)(b) is intended to relieve the registrant from any duty the registrant has to comply with legal process or any reporting requirements elsewhere specified in these Rules or in the Act.

(c) Transfer of Control or Change of Name.

1. Each broker-dealer registered in this state shall file with the Division a notice of transfer of control or change of name not more than thirty (30) days after the date on which the transfer of control or change of name becomes effective.

(Rule 0780-04-03-.02, continued)

2. Such notice of transfer of control or change of name shall be submitted through the CRD System or directly to the Division, whichever is appropriate.

3. Such notice of transfer of control or change of name shall be filed as an amendment to a broker-dealer's existing Form BD or as a complete new Form BD from the successor to a registered broker-dealer as provided under T.C.A. § 48-1-110(c).

4. Each broker-dealer that files a notice of transfer of control or change of name shall furnish, upon request from the Division, any additional information relating to the transfer of control or change of name within fifteen (15) days of receipt of such request. Such additional information, if requested, shall be submitted directly to the Division.

(d) Except as otherwise provided in the Act, or in these Rules, all material changes in the information included in a broker-dealer's most recent application for registration shall be set forth in an amendment to Form BD filed promptly with the Division through the CRD System or by a direct filing, whichever is appropriate.

(e) Every broker-dealer shall file directly with the Division the following reports concerning its net capital, liquid capital, and aggregate indebtedness:

1. Immediate telegraphic, facsimile, or written notice whenever the net capital or liquid capital of the broker-dealer is less than that which is required by these Rules, specifying the respective amounts of its net capital, liquid capital, and aggregate indebtedness on the date of notice; and

2. A copy of every report or notice required to be filed by the broker-dealer pursuant to SEC Rule 17a-11 (17 C.F.R. § 240.17a-11), contemporaneously with the date of filing with the SEC.

(f) Each broker-dealer shall give immediate telegraphic, facsimile, or written notice to the Division of the theft or mysterious disappearance from any office in this state of any securities or funds which might affect the financial stability of the broker-dealer, stating all material facts known to it concerning the theft or disappearance.

(3) Investment Adviser Required Records.

(a) Except as provided in subparagraph (3)(c) of this Rule, every registered investment adviser shall maintain and keep current the following books and records relating to its business, unless waived by order of the commissioner:

1. Ledgers (or other records) reflecting assets and liabilities, income and expenses, and capital accounts;

2. A record showing all payments received, including date of receipt, purpose, and from whom received, and all disbursements, including date paid, purpose, and to whom made;

3. A record showing all receivables and payables;

4. Records showing separately for each client the securities purchased or sold, and to the extent it has been made available to the investment adviser, the date on which, amount of, and price at which the purchases or sales were executed, and the name of the broker-dealer who effected the transaction;

(Rule 0780-04-03-.02, continued)

5. (i) Records showing separately all securities bought or sold by clients insofar as known to the investment adviser and indicating thereon:

(I) Proper identification of the individual account;

(II) The date on which such securities were purchased or sold;

(III) The amount of securities purchased or sold; and

(IV) The price at which such securities were purchased or sold; or

(ii) A record showing:

(I) All securities bought or sold by or for the accounts of all clients of the investment adviser in each month;

(II) The total number of shares bought or sold; and

(III) The lowest and highest price at which such purchases or sales were made during the month;

6. Copies of broker-dealers' confirmations of all transactions placed by the investment adviser for any account, and such other broker-dealers' confirmations as may be supplied to the investment adviser by a client or broker-dealer;

7. Records of all accounts in which the investment adviser is vested with discretionary authority, including powers of attorney and other evidence of discretionary authority;

8. Copies of all agreements entered into by the investment adviser with respect to any account, which agreements shall set forth the fees to be charged and the manner of computation and method of payment thereof, and copies of all communications, correspondence, and other records relating to securities transactions;

9. All partnership certificates and agreements, or all articles of incorporation, bylaws, minute books, and stock certificate books of the investment adviser;

10. A computation made monthly of the investment adviser's net capital; and

11. Copies of all written agreements, acknowledgements, and solicitor disclosure statements required by paragraphs (5)-(6) of Rule 0780-04-03-.13.

(b) All records required by subparagraph (3)(a) of this Rule shall be kept for a period of five (5) years, or for the period of time such records are required to be maintained by SEC Rule 204-2 (17 C.F.R. § 275.204-2), whichever is shorter. For the first two (2) years, such records shall be kept in an easily accessible place.

(c) An investment adviser which has its principal place of business in another state shall not be subject to the books and records requirement of this paragraph (3) if:

1. The investment adviser is registered as an investment adviser in the state in which it maintains its principal place of business;

2. The investment adviser is in compliance with the applicable books and records requirements of the state in which it maintains its principal place of business; and

3. The provisions of this paragraph (3) would require the investment adviser to maintain books or records in addition to those required under the laws of the state in which the investment adviser maintains its principal place of business.

As used herein "principal place of business" of an investment adviser means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.

(4) Investment Adviser Reporting Requirements.

(a) 1. Each investment adviser registered in this state shall file with the Division, within ninety (90) days after the end of its fiscal year, a copy of its annual statement of financial condition (balance sheet) and thereafter, any other related financial statements which the Division may request.

2. For any investment adviser registered in this state which has custody of client funds or securities, or which requires prepayment of more than five hundred dollars ($500) in advisory fees six (6) or more months in advance, such statement of financial condition (balance sheet) shall be:

(i) Certified by an independent certified public accountant or independent public accountant;

(ii) Prepared in accordance with generally accepted accounting principles consistently applied; and

(iii) Accompanied by an opinion of the accountant as to the investment adviser's financial condition which is unqualified, except as to matters which would not have a substantial effect on the financial condition of the investment adviser.

3. Such annual financial statements shall be sent to the Division by certified mail return receipt requested.

(b) 1. Upon request by the Division, each investment adviser registered in this state shall file with the Division a copy of:

(i) Any indictment or information filed in any court of competent jurisdiction naming the investment adviser, any affiliate, partner, officer, or director of the investment adviser, or any person occupying a similar status with or performing similar functions for the investment adviser, alleging the commission of any felony regardless of subject matter, or of any misdemeanor involving a security or any aspect of the securities business or any investment-related business;

(ii) Any complaint filed in any court of competent jurisdiction naming the investment adviser, any affiliate, partner, officer, or director of the investment adviser, or any person occupying a similar status with or performing similar functions for the investment adviser, seeking a permanent or temporary injunction enjoining any of such persons from engaging in or continuing any conduct or practice involving any aspect of the securities business or any investment-related business; and

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(iii) Any complaint or order filed by a federal or state regulatory agency or self-regulatory organization or the United States Post Office naming the investment adviser, any affiliate, partner, officer, or director of the investment adviser, or any person occupying a similar status with or performing similar functions for the investment adviser, related to the investment adviser's securities or investment-related business.

2. Upon request of the Division, each investment adviser registered in this state shall file with the Division a copy of any answer, response, or reply to any complaint, indictment, or information described in subparts (4)(b)1.(i)-(iii) of this Rule.

3. Upon request by the Division, each investment adviser registered in this state shall file with the Division a copy of any decision, order, or sanction that is made, entered, or imposed with respect to any proceeding described in subparts (4)(b)1.(i)-(iii) of this Rule.

4. Nothing in this Rule is intended to relieve the registrant from any duty the registrant has to comply with legal process or any reporting requirements elsewhere specified in these Rules or in the Act.

(c) 1. Each investment adviser, registered in this state, shall file with the Division a notice of transfer of control or change of name not more than thirty (30) days after the date on which the transfer of control or change of name becomes effective.

2. Such notice of transfer of control or change of name shall be submitted directly to the Division or through a central registration depository designated by the Division, whichever is appropriate.

3. Such notice of transfer of control or change of name shall be filed as an amendment to an investment adviser's existing Form ADV or as a complete new Form ADV from the successor to a registered investment adviser as provided under T.C.A. § 48-1-110(c).

4. Each investment adviser, which files a notice of transfer of control or change of name, shall furnish, upon request from the Division, any additional information relating to the transfer of control or change of name within fifteen (15) days of receipt of such request. Such additional information, if requested, shall be submitted directly to the Division.

5. An investment adviser, which has made a notice filing with the Division pursuant to T.C.A. § 48-1-109(c)(2), shall notify the Division of a transfer of control or a change of name by filing an amended Form ADV with the Division within thirty (30) days after the date on which the transfer of control or change of name becomes effective.

(d) Except as otherwise provided in the Act, all material changes in the information included in an investment adviser's most recent application for registration shall be set forth in an amendment to Form ADV, pursuant to the updating instructions on Form ADV, and filed promptly through the IARD or directly with the Division, whichever is appropriate.

(e) Each investment adviser registered in this state shall file with the Division within ninety (90) days after the end of the registrant's fiscal year, an annual updated Form ADV prepared pursuant to the updating instructions on Form ADV. Such annual updating

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amendment to Form ADV shall be filed through the IARD or directly with the Division, whichever is appropriate.

(5) Agent Reporting Requirements.

(a) Upon request by the Division, each agent registered in this state shall file with the Division through his or her broker-dealer a copy of:

1. Any indictment or information filed in any court of competent jurisdiction naming the agent and alleging the commission of any felony regardless of subject matter, or any misdemeanor involving a security or any aspect of the securities business or any investment-related business;

2. Any complaint filed in any court of competent jurisdiction naming the agent and seeking a permanent or temporary injunction enjoining any of such persons from engaging in or continuing any conduct or practice involving any aspect of the securities business or any investment-related business; and

3. Any complaint or order filed by a federal or state regulatory agency or self-regulatory organization or the United States Post Office naming the agent and related to the agent's securities or investment-related business.

(b) Upon request by the Division, each agent registered in this state shall file with the Division through his or her broker-dealer a copy of any answer, response, or reply to any complaint, indictment, or information described in parts (5)(a)1.-3. of this Rule.

(c) Upon request by the Division, each agent registered in this state shall file with the Division through his or her broker-dealer a copy of any decision, order, or sanction that is made, entered, or imposed with respect to any proceeding described in parts (5)(a)1.-3. of this Rule.

(d) Nothing in this Rule is intended to relieve the registrant from any duty the registrant has to comply with legal process or any reporting requirements elsewhere specified in these Rules or in the Act.

(6) Prohibited Business Practices.

(a) The following shall be deemed "dishonest or unethical business practices" by a broker-dealer under T.C.A. § 48-1-112(a)(2)(G), without limiting that term to the practices specified herein:

1. Causing any unreasonable delay in the delivery of securities purchased by any of its customers;

2. Inducing 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. Recommending to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation, and needs, and any other information known by the broker-dealer;

4. Executing a transaction on behalf of a customer without authority to do so;

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5. Exercising 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 and/or price for the execution of orders;

6. Extending, arranging for, or participating in arranging for credit to a customer in violation of the 1934 Act or the regulations of the Federal Reserve Board;

7. Executing any transaction in a margin account without obtaining from its customers a written margin agreement prior to settlement date for the initial transaction in the account;

8. Failing to segregate customers' free securities or securities in safekeeping;

9. Hypothecating a customer's securities without having a lien thereon unless written consent of the customer is first obtained, except as permitted by rules of the SEC;

10. Charging its customers an unreasonable commission or service charge in any transaction executed as agent for the customer;

11. Entering into a transaction for its own account with a customer with an unreasonable mark up or mark down. There shall be a rebuttable presumption that any mark up or mark down in excess of the guidelines set by the FINRA is unreasonable;

12. Entering into a transaction for its own account with a customer in which a commission is charged;

13. Entering into a transaction with or for a customer at a price not reasonably related to the current market price;

14. Executing orders for the purchase or sale of securities which the broker-dealer knew or should have known were not registered under the Act unless the securities or transactions are exempt under the Act;

15. Violating any rule of a national securities exchange or national securities dealers association of which it is a member with respect to any customer, transaction, or business in this state;

16. Requiring investment advisory clients of a broker-dealer or an affiliated investment adviser to use the broker-dealer to execute trades for such client, and failing to disclose to such clients their rights to use any broker-dealer for trade execution;

17. For a registered broker-dealer which shares office space with, or occupies the same business premises as, a person not so registered, failing to disclose clearly, conspicuously, and continuously the relationship, or lack thereof, between it and such other person;

18. Causing any unreasonable delay in the execution of a transaction on behalf of a customer; and

19. Failing to provide information requested by the Division pursuant to the Act or these Rules promulgated thereunder.

(Rule 0780-04-03-.02, continued)

(b) The following are deemed "dishonest or unethical business practices" by an agent under T.C.A. § 48-1-112(a)(2)(G), without limiting those terms to the practices specified herein:

1. Borrowing money or securities from a customer;

2. Acting as a custodian for money, securities, or an executed stock power of a customer;

3. Effecting securities transactions with a customer not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are disclosed to, and authorized in writing by, the broker-dealer prior to execution of the transactions;

4. Operating an account under a fictitious name, unless disclosed to the broker-dealer that the agent represents;

5. Sharing 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;

6. Dividing or otherwise splitting commissions, profits, or other compensation receivable in connection with the purchase or sale of securities in this state with any person not registered as an agent for the same broker-dealer, or for an affiliate of the same broker-dealer;

7. Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

8. Recommending to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation, and needs, and any other information known by the broker-dealer or agent;

9. Executing a transaction on behalf of a customer without authority to do so;

10. Exercising 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 and/or price for the execution of orders;

11. Extending, arranging for, or participating in arranging for credit to a customer in violation of the 1934 Act or the regulations of the Federal Reserve Board;

12. Executing any transaction in a margin account without obtaining from his or her customers a written margin agreement prior to settlement date for the initial transaction in the account;

13. Charging a customer an unreasonable commission or service charge in any transaction executed as agent for the customer;

14. Entering into a transaction for his or her broker-dealer's account with a customer with an unreasonable mark up or mark down. There shall be a rebuttable

(Rule 0780-04-03-.02, continued)

presumption that any mark up or mark down in excess of the guidelines set by the FINRA is unreasonable;

15. Entering into a transaction with or for a customer at a price not reasonably related to the current market price;

16. Executing orders for the purchase or sale of securities which the agent knew or should have known were not registered under the Act unless the securities or transactions are exempt under the Act;

17. Violating any rule of a national securities exchange or national securities dealers association of which the agent is an associated person with respect to any customer, transaction, or business in this state;

18. Causing any unreasonable delay in the execution of a transaction on behalf of a customer; and

19. Failing to provide information requested by the Division pursuant to the Act or these Rules.

(c) The following are deemed "dishonest or unethical business practices" by an investment adviser or an investment adviser representative under T.C.A. § 48-1-112(a)(2)(G), to the extent permitted under Section 203A of the Investment Advisers Act, without limiting those terms to the practices specified herein:

1. Exercising any discretionary power in placing an order for the purchase or sale of securities for the account of a customer without first obtaining written discretionary authority from the customer;

2. Placing an order for the purchase or sale of a security pursuant to discretionary authority if the purchase or sale is in violation of the Act or these Rules;

3. Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

4. Recommending to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation, and needs, and any other information known by the investment adviser;

5. Executing a transaction on behalf of a customer without authority to do so;

6. Extending, arranging for, or participating in arranging for credit to a customer in violation of the 1934 Act or the regulations of the Federal Reserve Board;

7. Failing to segregate customers' free securities or securities in safekeeping;

8. Hypothecating a customer's securities without having a lien thereon unless written consent of the customer is first obtained, except as permitted by rules of the SEC;

9. Entering into a transaction for the investment adviser's own account with a customer with an unreasonable mark up or mark down. There shall be a rebuttable presumption that any mark up or mark down in excess of the guidelines set by the FINRA is unreasonable;

(Rule 0780-04-03-.02, continued)

10. 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 trading authorization from the client;

11. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omitting 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;

12. Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact (This prohibition does not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service.);

13. Charging a client an unreasonable advisory fee;

14. Failing to disclose to clients, in writing, before any advice is rendered, any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

    (i) Compensation agreements connected with advisory services to clients, which are in addition to compensation from such clients for such services; and

    (ii) 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 adviser or its employees;

15. Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered;

16. Publishing, circulating, or distributing any advertisement which does not comply with Rule 0780-04-03-.09 under the Act;

17. Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client;

18. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the requirements of Rule 0780-04-03-.07 under the Act;

19. Entering into, extending, or renewing any investment advisory contract, unless such contract is in writing and, in substance, discloses:

    (i) The services to be provided;

    (ii) The term of the contract;

    (iii) The advisory fee;

(iv) The formula for computing the fee;

(v) The amount of prepaid fee to be returned in the event of contract termination or non-performance;

(vi) Whether the contract grants discretionary power to the adviser; and

(vii) That no assignments of such contract shall be made by the investment adviser without the consent of the other party to the contract;

20. Failing to establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such investment adviser's business, to prevent the misuse in violation of the Investment Advisers Act or the 1934 Act, or the rules or regulations promulgated thereunder, of material, non-public information by such investment adviser or any person associated with such investment adviser;

21. Entering into, extending, or renewing any advisory contract which would violate Section 205 of the Investment Advisers Act;

22. Indicating, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of the Act or of the Investment Advisers Act, or any other practice that would violate Section 215 of the Investment Advisers Act;

23. Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the Act or these Rules;

24. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds;

25. Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser; and

26. Failing to provide information requested by the Division pursuant to the Act or these Rules.

(d) Use of Senior-Specific Certifications and Professional Designations.

1. The following shall be deemed "dishonest or unethical business practices" by a broker-dealer, agent of a broker-dealer, an investment adviser or an investment adviser representative under T.C.A. § 48-1-112(a)(2)(G):

(i) The use of a senior-specific certification or designation by any person in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person shall be a dishonest and unethical practice within the meaning of T.C.A. § 48-1-112(a)(2)(G). The prohibited use of such

(Rule 0780-04-03-.02, continued)

certifications or professional designation includes, but is not limited to, the following:

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

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

(III) 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; and

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

I. Is primarily engaged in the business of instruction in sales and/or marketing;

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

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

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

2. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subitem 1.(i)(IV) of this subparagraph (d) above when the organization has been accredited by:

(i) The American National Standards Institute; or

(ii) The National Commission for Certifying Agencies; or

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

3. 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:

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

(ii) The manner in which those words are combined.

(Rule 0780-04-03-.02, continued)

4. For purposes of this Rule, 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:

(i) Indicates seniority or standing within the organization; or

(ii) Specifies an individual's area of specialization within the organization; unless

(iii) Such job title is used in a way that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees.

For purposes of this subsection, financial services regulatory agency includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

5. Nothing in this Rule shall limit the Commissioner's authority to enforce existing provisions of law.

(7) Rules of Conduct - Broker-Dealers.

(a) Confirmations.

1. Every broker-dealer shall give or send to the customer a written confirmation, promptly after execution of and before completion of, each transaction. The confirmation shall set forth:

(i) A description of the security purchased or sold, the date of the transaction, the price at which the security was purchased or sold, and any commission charged;

(ii) Whether the broker-dealer was acting for its own account, as agent for the customer, as agent for some other person, or as agent for both the customer and some other person;

(iii) When the broker-dealer is acting as agent for the customer, either the name of the person from whom the security was purchased or to whom it was sold, or the fact that the information will be furnished upon the request of the customer, if the information is known to, or with reasonable diligence may be ascertained by, the broker-dealer;

(iv) Whether the transaction was unsolicited; and

(v) The name of the agent that effected the transaction.

2. Compliance with SEC Rule 10b-10 (17 C.F.R. § 240.10b-10) or with Article III, Section 12 of the FINRA Rules of Fair Practice shall be deemed compliance with this Rule.

(b) Every broker-dealer shall establish and keep current a set of written supervisory procedures and a system for applying such procedures, which may be reasonably expected to prevent and detect any violations of the Act, these Rules, and orders thereunder. The procedures shall include the designation by name or title of a number

(Rule 0780-04-03-.02, continued)

of supervisory employees reasonable in relation to the number of its registered agents, offices, and transactions in this state. A complete set of the procedures and systems for applying them shall be kept and maintained at every branch office.

(c) A broker-dealer shall not enter into any contract with a customer if the contract contains any conditions, stipulations, or provisions binding the customer to waive any rights under the Act, these Rules, or order thereunder. Any such condition, stipulation, or provision is void.

(d) Any person receiving a commission, fee, or other remuneration directly or indirectly for soliciting prospective purchasers in this state in connection with any offering for which an exemption is claimed pursuant to Rule 0780-04-02-.08, the Tennessee Uniform Limited Offering Exemption, must be appropriately registered in this state pursuant to the Act and these Rules.

(8) Investment Adviser Representative Reporting Requirements.

(a) Upon request by the Division, each investment adviser representative registered in this state shall file with the Division through his or her investment adviser, if registered, or directly if his or her investment adviser has filed a completed investment adviser notice filing pursuant to T.C.A. § 48-1-109(c)(2), a copy of:

1. Any indictment or information filed in any court of competent jurisdiction naming the investment adviser representative and alleging the commission of any felony regardless of subject matter, or any misdemeanor involving a security or any aspect of the securities business or any investment-related business;

2. Any complaint filed in any court of competent jurisdiction naming the investment adviser representative and seeking a permanent or temporary injunction enjoining any of such persons from engaging in or continuing any conduct or practice involving any aspect of the securities business or any investment-related business; and

3. Any complaint or order filed by a federal or state regulatory agency or self-regulatory organization or the United States Post Office naming the investment adviser representative and related to the investment adviser representative's securities or investment-related business.

(b) Upon request by the Division, each investment adviser representative registered in this state shall file with the Division through his or her investment adviser, if registered, or directly if his or her investment adviser has filed a completed investment adviser notice filing pursuant to T.C.A. § 48-1-109(c)(2), a copy of any answer, response, or reply to any complaint, indictment, or information described in parts (8)(a)1.-3. of this Rule.

(c) Upon request by the Division, each investment adviser representative registered in this state shall file with the Division through his or her investment adviser, if registered, or directly if his or her investment adviser has filed a completed investment adviser notice filing pursuant to T.C.A. § 48-1-109(c)(2), a copy of any decision, order, or sanction that is made, entered, or imposed with respect to any proceeding described in parts (8)(a)1.-3. of this Rule.

(d) Nothing in this Rule is intended to relieve the registrant from any duty the registrant has to comply with legal process or any reporting requirements elsewhere specified in these Rules or in the Act.

(Rule 0780-04-03-.02, continued)

Authority: *T.C.A. §§ 48-1-102, 48-1-107, 48-1-109, 48-1-110, 48-1-111, 48-1-112, 48-1-113, 48-1-115, 48-1-116, 48-1-118, and 48-1-121(a)(2), Public Acts of 2001, Chapter 61, § 222 of the Investment Advisers Act of 1940, as amended by § 304(a) of the National Securities Markets Improvement Act of 1996, §§ 203A, 205, and 215 of the Investment Advisers Act of 1940, § 17(f)(2) of the Securities Exchange Act of 1934, 17 C.F.R. § 240.10b-10, 17 C.F.R. § 240.17a-3 through 17 C.F.R. § 240.17a-5, 17 C.F.R. § 240.17a-11, 17 C.F.R. § 240.17f-2, 17 C.F.R. § 275.204-2, and the FINRA Rules of Fair Conduct.*

Administrative History: *Original rule filed September 9, 1980; effective October 24, 1980. Amendment filed January 13, 1983; effective February 14, 1983. 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, 2004. Amendment filed December 31, 2008; effective March 16, 2009. Repeal and new rule filed March 16, 2015; effective June 14, 2015. Amendments filed October 11, 2016; effective January 9, 2017.*

0780-04-03-.03 OIL AND GAS ISSUER-DEALERS.

(1) Oil and Gas Issuer-Dealer Registration.

(a) All applications for initial registration as an oil and gas issuer-dealer shall contain the following unless waived by order of the commissioner:

1. Form IN-0911, Application for Registration as an Oil and Gas Issuer-Dealer, containing all information and exhibits required by that Form;

2. A Consent to Service of Process and, if applicable, a Uniform Form of Corporate Resolution. Forms U-2 and U-2A are acceptable;

3. A nonrefundable filing fee of one hundred dollars ($100) by check made payable to the Tennessee Department of Commerce and Insurance; and

4. Such other information as the Division may request from a particular applicant to determine eligibility for registration.

(b) All applications for registration must be filed with the Division at its current published address.

(c) All applications become effective by operation of law thirty (30) days after the date stamped on the Form IN-0911 by the Division or, in the event the application is incomplete, thirty (30) days after the date the application becomes complete, unless a proceeding has been initiated by the Division to suspend or deny the application pursuant to T.C.A § 48-1-110(f)(4) or the thirty (30) day period is waived in writing by the applicant.

(d) Abandonment.

1. The Division may determine that an application to register an oil and gas issuer-dealer has been abandoned if:

(i) The application has been on file with the Division for more than one hundred eighty (180) days without becoming registered and no written communication has been received by the Division in connection with the application during such time period; or

(ii) A period of one hundred eighty (180) days has elapsed since the date of the Division's receipt of the most recent written communication to the Division from or on behalf of the applicant.

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

2. Upon determination that an application has been abandoned, the Division shall, by Order of Abandonment, cancel the pending application without prejudice and, within thirty (30) days of such cancellation, mail a copy of the Order of Abandonment to the last known business address of the applicant.

(2) Renewal of Registration.

(a) All registrations expire at midnight on December 31 of each year and must be renewed no later than ten (10) days prior to that date.

(b) All renewals shall contain the following:

1. The renewal form provided by the Division with all information and exhibits required by the form; and

2. A nonrefundable renewal fee of fifty dollars ($50) by check to the Tennessee Department of Commerce and Insurance.

(3) Amendments.

(a) The applicant shall notify the Division in writing of any changes in the information provided in the application within ten (10) days of occurrence.

Authority: *T.C.A. §§ 48-1-102, 48-1-107, 48-1-110, 48-1-111, 48-1-112, 48-1-113, 48-1-115, 48-1-116, and 48-1-118, Public Acts of 2001, Chapter 61, § 222 of the Investment Advisers Act of 1940, as amended by § 304(a) of the National Securities Markets Improvement Act of 1996, and §§ 201A, 205, and 215 of the Investment Advisers Act of 1940.* ***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 January 12, 1989; effective February 26, 1989. Repeal and new rule filed September 28, 1990; effective November 12, 1990. Amendment filed May 15, 2002; effective July 29, 2002. Repeal and new rule filed March 16, 2015; effective June 14, 2015.*

0780-04-03-.04 PERSONS DEEMED NOT TO BE BROKER-DEALERS.

(1) Associated Persons of an Issuer.

(a) An associated person of an issuer of securities shall not be deemed to be a broker-dealer by reason of his participation in the offer, sale, or transfer of the securities of such issuer if the associated person:

1. Is not subject to a statutory disqualification, as the term is defined in Section 3(a)(39) of the 1934 Act, at the time of his participation;

2. Is not compensated in connection with his participation by the payment of commissions or other remuneration based either directly or indirectly on transactions in securities;

3. Is not at the time of his participation an associated person of a broker-dealer; and

4. Meets the conditions of any one of the following subparts (1)(a)4.(i), (1)(a)4.(ii), or (1)(a)4.(iii) of this Rule:

(i) The associated person restricts his participation to transactions involving offers, sales, or transfers of securities.

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

(I) To a registered broker-dealer or an institutional investor;

(II) That are exempted from the registration requirements of the Act under T.C.A. § 48-1-103(a)(11), or that are offered, sold, or transferred pursuant to transactions that are exempt from the registration requirements of the Act under T.C.A. §§ 48-1-103(b)(2), (b)(9), or (b)(10); or

(III) That are made pursuant to any of the events described in T.C.A. § 48-1-102(15)(F).

(ii) The associated person meets all of the following conditions:

(I) The associated person primarily performs, or is intended primarily to perform at the end of the offering, substantial duties for or on behalf of the issuer otherwise than in connection with transactions in securities;

(II) The associated person was not a broker-dealer, or an associated person of a broker-dealer, within the preceding twelve (12) months; and

(III) The associated person does not participate in selling an offering of securities for any issuer more than once every twelve (12) months other than in reliance on subparts (1)(a)4.(i) or (1)(a)4.(iii) of this Rule, except that for securities issued pursuant to SEC Rule 415 (17 C.F.R. § 230.415), the twelve (12) months shall begin with the last sale of any security included within one (1) SEC Rule 415 registration.

(iii) The associated person restricts his participation to any one (1) or more of the following activities:

(I) Preparing any written communication or delivering such communication through the mail or other means that does not involve oral solicitation by the associated person of a potential purchaser; provided, however, that the content of such communication is approved by a partner, officer, or director of the issuer;

(II) Responding to inquiries of a potential purchaser in a communication initiated by the potential purchaser; provided, however, that the content of such responses are limited to information contained in a registration statement filed under the Act or other offering document; or

(III) Performing ministerial and clerical work involved in effecting any transaction.

(b) No presumption shall arise that an associated person of an issuer has violated T.C.A. § 48-1-109 solely by reason of his participation in the offer, sale, or transfer of securities of the issuer if he does not meet the conditions specified in this Rule.

(c) Definitions. When used in this Rule:

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

1. The term "associated person of an issuer" means any natural person who is a partner, officer, director, or employee of:

   (i) The issuer;

   (ii) A corporate general partner of a limited partnership that is the issuer;

   (iii) A company or partnership that controls, is controlled by, or is under common control with, the issuer; or

   (iv) An investment adviser, registered under the Investment Advisers Act to an investment company registered under the Investment Company Act, which is the issuer.

2. The term "associated person of a broker-dealer" means any partner, officer, director, or branch manager of such broker-dealer (or the person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker-dealer, any agent of such broker-dealer, or any employee of such broker-dealer, except that any person associated with a broker-dealer whose functions are solely clerical or ministerial and any person who is required under the laws of any state to register as a broker-dealer in that state solely because such person is an issuer of securities or an associated person of an issuer of securities shall not be included in the meaning of such term for purposes of this Rule.

(2) A retail or financing institution whose dealings in securities are limited to transactions for its own account with institutional investors or other retail or financing institutions in notes or other evidences of indebtedness secured by mortgages, deeds of trust, or agreements for the sale of real estate or personality, will not be deemed a broker-dealer if the entire mortgage, deed of trust, or agreement, together with all notes or other evidences of indebtedness secured thereby, is offered and sold as a unit.

(3) The exclusions set forth herein shall not exempt any person from the operation of the antifraud provisions of the Act.

Authority: *T.C.A. §§ 48-1-102, 48-1-103, 48-1-109, 48-1-110(f), 48-1-115, 48-1-116, and 48-1-121, § 3(a)(39) of the Securities Act of 1933, and 17 C.F.R. § 230.415.* ***Administrative History:*** *Original rule filed September 9, 1980; effective October 24, 1980. Amendment filed January 13, 1983; effective February 14, 1983. 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. Repeal and new rule filed March 16, 2015; effective June 14, 2015.*

0780-04-03-.05 EXEMPTIONS FROM INVESTMENT ADVISER REGISTRATION.

(1) Subject to the conditions, restrictions, and exclusions set forth in this Rule, the following persons shall be exempted from the definition of investment adviser pursuant to T.C.A. § 48-1-102(12)(F) and thereby exempt from the registration requirements for investment advisers set forth in T.C.A. § 48-1-109:

   (a) Any person domiciled in this state whose only investment advisory clients are insurance companies; or

   (b) Any person domiciled in this state who, during the course of the preceding twelve (12) months, has had fewer than fifteen (15) clients and who neither holds himself out generally to the public as an investment adviser nor acts as an investment adviser to any investment company registered under the Investment Company Act.

(c) Any person domiciled in this state who is a private fund adviser and who satisfies all applicable requirements set forth in part (1)(c)2. and 3. of this Rule.

1. Definitions. For purposes of this Rule, the following definitions shall apply:

(i) "Value of primary residence" means the fair market value of a person's primary residence, subtracted by the amount of debt secured by the property up to its fair market value.

(ii) "Private fund adviser" means an investment adviser who provides advice solely to one or more qualifying private funds.

(iii) "Qualifying private fund" means a private fund that meets the definition of a qualifying private fund in SEC Rule 203(m)-1, 17 C.F.R. 275.203(m)-1.

(iv) "3(c)(1) fund" means a qualifying private fund that is eligible for the exclusion from the definition of an investment company under section 3(c)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a-3(c)(1).

(v) "Venture capital fund" means a private fund that meets the definition of a venture capital fund in SEC Rule 203(l)-1, 17 C.F.R. § 275.203(l)-1.

2. Exemption for private fund advisers. Subject to the additional requirements of part (1)(c)3. of this Rule, a private fund adviser shall be exempt from the registration requirements of T.C.A. § 48-1-109 if the private fund adviser satisfies each of the following conditions:

(i) Neither the private fund adviser nor any of its advisory affiliates are subject to an event that would disqualify an issuer under Rule 506(d)(1) of SEC Regulation D, 17 C.F.R. §230.506(d)(1);

(ii) The private fund adviser files with the Division each report and amendment thereto that an exempt reporting adviser is required to file with the Securities and Exchange Commission pursuant to SEC Rule 204-4, 17 C.F.R. § 275.204-4; and

(iii) The private fund adviser pays the following reporting fees to the Division:

(I) An initial reporting fee in an amount of $150.00; and

(II) An annual renewal reporting fee in an amount of $150.00.

3. Additional requirements for private fund advisers to certain 3(c)(1) funds. In order to qualify for the exemption described in part (1)(c)2. of this Rule, a private fund adviser who advises at least one (3)(c)(1) fund that is not a venture capital fund shall, in addition to satisfying each of the conditions specified in subparts (1)(c)2.(i)–(iii) of this Rule, comply with the following requirements:

(i) The private fund adviser shall advise only those 3(c)(1) funds (other than venture capital funds) whose outstanding securities (other than short-term paper) are beneficially owned entirely by persons who, after deducting the value of the primary residence from the person's net worth, would each meet the definition of a qualified client in SEC Rule 205-3, 17 C.F.R. § 275.205-3, at the time the securities are purchased from the issuer;

(Rule 0780-04-03-.05, continued)

(ii) At the time of purchase, the private fund adviser shall disclose the following in writing to each beneficial owner of a 3(c)(1) fund that is not a venture capital fund:

(I) All services, if any, to be provided to individual beneficial owners;

(II) All duties, if any, the investment adviser owes to the beneficial owners; and

(III) Any other material information affecting the rights or responsibilities of the beneficial owners.

(iii) The private fund adviser shall obtain on an annual basis audited financial statements of each 3(c)(1) fund that is not a venture capital fund and shall deliver a copy of such audited financial statements to each beneficial owner of the fund.

4. Federal covered investment advisers. If a private fund adviser is registered with the Securities and Exchange Commission, the adviser shall not be eligible for this exemption and shall comply with the state notice filing requirements applicable to federal covered investment advisers in T.C.A. § 48-1-109(c)(2).

5. Investment adviser representatives. A person is exempt from the registration requirements of T.C.A. § 48-1-109(c) if the person is employed by or associated with an investment adviser that is exempt from registration in this state pursuant to subparagraph (1)(c) of this Rule and does not otherwise act as an investment adviser representative.

6. Electronic filing. The report filings described in subpart (1)(c)2.(ii) of this Rule shall be made electronically through the IARD. A report shall be deemed filed when the report and the fee required by subpart (1)(c)2.(iii) of this Rule are filed and accepted by the IARD on the Division's behalf.

7. Transition. An investment adviser who becomes ineligible for the exemption provided by this Rule must comply with all applicable laws and rules requiring registration or notice filing within ninety (90) days from the date the investment adviser’s eligibility for this exemption ceases.

8. Waiver authority with respect to statutory disqualification. Subpart (1)(c)2.(i) of this Rule shall not apply upon a showing of good cause and without prejudice to any other action of the Tennessee Securities Division, if the commissioner or the commissioner’s designee determines that it is not necessary under the circumstances that an exemption be denied.

9. Grandfathering for investment advisers to 3(c)(1) funds with non-qualified clients. An investment adviser to a 3(c)(1) fund (other than a venture capital fund) that has one or more beneficial owners who are not qualified clients as described in subpart (1)(c)3.(i) of this Rule is eligible for the exemption contained in part (1)(c)2. of this Rule if the following conditions are satisfied:

(i) The subject fund existed prior to the effective date of subparagraph (1)(c) of this Rule;

(ii) As of the effective date of subparagraph (1)(c) of this Rule, the subject fund ceases to accept beneficial owners who are not qualified clients, as described in subpart (1)(c)3.(i) of this Rule;

(Rule 0780-04-03-.05, continued)

(iii) The investment adviser discloses in writing the information described in subpart (1)(c)3.(ii) of this Rule to all beneficial owners of the fund; and

(iv) As of the effective date of this regulation, the investment adviser delivers audited financial statements as required by subpart (1)(c)3.(iii) of this Rule.

10. Any person satisfying the requirements of parts (1)(c)2. and 3. of this Rule shall not be subject to the requirements prescribed in Rule 0780-04-03-.07.

(2) (a) No person who is a registered agent or a partner, officer, director, or principal of a registered broker-dealer is eligible for the exemption under paragraph (1) of this Rule.

(b) No person who is a partner, officer, director, contracted representative, or non-clerical, non-ministerial employee of a registered investment adviser is eligible for the exemption under paragraph (1) of this Rule.

(3) This Rule shall not be construed to exempt any person from the operation of the antifraud provisions of the Act.

Authority: *T.C.A. §§ 48-1-102, 48-1-109, 48-1-115, 48-1-116, and 48-1-121.* ***Administrative History:*** *Original rule filed September 9, 1980; effective October 24, 1980. Amendment filed January 13, 1983; effective February 14, 1983. Repeal and new rule filed September 28, 1990; effective November 12, 1990. Amendment filed May 15, 2002; effective July 29, 2002. Repeal and new rule filed March 16, 2015; effective June 14, 2015. Amendments filed September 26, 2023; effective December 25, 2023.*

0780-04-03-.06 INVESTMENT ADVISER NOTICE FILINGS.

(1) A person who is required to register as an investment adviser pursuant to Section 203 of the Investment Advisers Act and who is an investment adviser as defined by T.C.A. § 48-1-102(10) shall make the following filings with the Division through the IARD by complying with the filing procedures of the IARD:

(a) An initial investment adviser notice filing shall be filed ten (10) days prior to acting as an investment adviser and shall contain the following:

1. A Form ADV, and all information and exhibits required by such Form, as submitted to the SEC; and

2. The appropriate notice filing fee as set forth in the Act unless the investment adviser has previously paid the appropriate investment adviser registration filing fee for the current registration period.

(b) A renewal investment adviser notice filing and the appropriate renewal fee as set forth in the Act shall be filed pursuant to the renewal procedures of the IARD for each successive calendar year as is necessary in order to sustain compliance with T.C.A. § 48-1-109(c)(2).

(c) Except as otherwise provided in the Act, all material changes in the information included in an investment adviser's most recent notice filing shall be set forth in an amendment to Form ADV and filed promptly with the Division through the IARD.

(2) The filings herein required shall constitute filings with the commissioner pursuant to T.C.A. § 48-1-121(c) and shall be submitted to the Division through the IARD or submitted to the Division in a manner consistent with the transmittal of such filings to the SEC pursuant to a temporary or continuing hardship exemption as granted by the SEC.

Rule 0780-04-03-.06, continued)

(3) The filings required in subparagraphs (1)(a) and (1)(b) of this Rule are deemed filed for purposes of T.C.A. § 48-1-109(c)(2) and this Rule when they are complete. These filings are deemed to be complete when all required information and fees have been received by the Division.

(4) A complete or incomplete investment adviser notice filing may be withdrawn by the investment adviser by submission of a withdrawal filing through the IARD.

(5) Abandonment of Incomplete Investment Adviser Notice Filings.

(a) The Division may determine that an incomplete notice filing by an investment adviser has been abandoned if:

1. The incomplete notice filing has been on file with the Division for more than one hundred eighty (180) days without becoming complete and no written communication has been received by the Division in connection with the notice filing during such time period; or

2. A period of one hundred eighty (180) days has elapsed since the date of the Division's receipt of the most recent written communication to the Division from or on behalf of the investment adviser.

(b) Upon the determination that an incomplete notice filing has been abandoned, the Division shall, by Order of Abandonment, cancel the incomplete notice filing manually or in the IARD without prejudice and, within thirty (30) days of such Order of Abandonment, send notice of such cancellation to the last known business address of the investment adviser.

Authority: *T.C.A. §§ 48-1-102, 48-1-109, 48-1-115, 48-1-116, and 48-1-121, Public Acts of 2001, Chapter 61, and § 203 of the Investment Advisers Act of 1940, as amended by § 307(a) of the National Securities Markets Improvement Act of 1996.* ***Administrative History:*** *Original rule filed January 13, 1983; effective February 14, 1983. Amendment filed May 6, 1987; effective June 20, 1987. Amendment filed September 18, 1987; effective November 2, 1987. Amendment 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, 2004. Repeal and new rule filed March 16, 2015; effective June 14, 2015.*

0780-04-03-.07 INVESTMENT ADVISER CUSTODY OR POSSESSION OF FUNDS OR SECURITIES OF CLIENTS.

(1) It shall constitute an act, practice, or course of business which operates or would operate as a fraud or deceit upon another person, within the meaning of T.C.A. § 48-1-121(b)(3) of the Act, for any investment adviser in this state who has custody or possession of any funds or securities in which any client has any beneficial interest, to commit an act or take any action, directly or indirectly, with respect to any funds or securities, unless:

(a) All such securities of each such client are segregated, marked to identify the particular client who has the beneficial interest therein, and held in safekeeping in some place reasonably free from risk of destruction or other loss;

(b) 1. All such funds of such clients are deposited in one (1) or more bank accounts which contain only clients' funds;

2. Such account or accounts are maintained in the name of the investment adviser as agent or trustee for such clients; and

3. The investment adviser maintains a separate record for each such account which shows:

(i) The name and address of the bank where such account is maintained;

(ii) The dates and amounts of deposits in and withdrawals from such account; and

(iii) The exact amount of each client's beneficial interest in such account;

(c) Such investment adviser, immediately after accepting custody or possession of such funds or securities from any client, notifies such client in writing of the place and manner in which such funds and securities will be maintained, and thereafter, if and when there is any change in the place or manner in which such funds or securities are being maintained, gives each such client written notice thereof;

(d) Such investment adviser sends to each client, not less frequently than once every three (3) months, an itemized statement showing the funds and securities in the custody or possession of the investment adviser at the end of such period, and all debits, credits, and transactions in such client's account during such period;

(e) Such investment adviser complies with the reporting requirements set forth under part (4)(a)2. of Rule 0780-04-03-.02; and

(f) All such funds and securities of clients are verified by actual examination at least once during each calendar year by an independent public accountant at a time that shall be chosen by such accountant without prior notice to the investment adviser. A certificate of such accountant stating that an examination of such funds and securities has been made, and describing the nature and extent of the examination, shall be attached to a completed Form ADV-E and transmitted to the Division promptly after each examination, unless the investment adviser is not registered with the Division pursuant to T.C.A. § 48-1-109(c)(2).

(2) This Rule shall not apply to an investment adviser also registered as a broker-dealer under Section 15 of the 1934 Act if (a) such broker-dealer is subject to and in compliance with SEC Rule 15c3-1 (17 C.F.R. § 240.15c3-1) or (b) such broker-dealer is a member of an exchange whose members are exempt from SEC Rule 15c3-1 under the provisions of paragraph (b)(2) thereof, and such broker-dealer is in compliance with all rules and settlement practices of such exchange imposing requirements with respect to financial responsibility and the segregation of funds or securities carried for the account of customers.

(3) An investment adviser registered in this state whose principal place of business is located outside this state shall not be subject to the record maintenance requirement of part (1)(b)3. of this Rule if such investment adviser:

(a) Is registered as an investment adviser in the state in which the principal place of business of the investment adviser is located;

(b) Is in compliance with the books and records requirements of the state in which the investment adviser maintains its principal place of business; and

(c) The provisions of part (1)(b)3. of this Rule would require the investment adviser to maintain books or records in addition to those required under the laws of the state in which the investment adviser maintains its principal place of business.

(Rule 0780-04-03-.07, continued)

(4) An investment adviser in this state that fully complies with the conditions set forth under subparagraphs (1)(a)-(f) of this Rule may take or have custody of any funds or securities of any client.

(5) Any investment adviser that is not registered with the Division under T.C.A. § 48-1-109(c)(2) that fully complies with SEC Rule 206(4)-2 (17 C.F.R. § 275.206(4)-2) may take or have custody of any funds or securities of any client.

(6) As used herein "principal place of business" of an investment adviser means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.

Authority: *T.C.A. §§ 48-1-109, 48-1-111, 48-1-115, 48-1-116, and 48-1-121, Public Acts 1997, Chapter 164, § 7, § 222 of the Investment Advisers Act of 1940, as amended by § 304 of the National Securities Markets Improvement Act of 1996, § 15 of the Securities Exchange Act of 1934, 17 C.F.R. § 240.15c3-1, and 17 C.F.R. § 275.206(4)-2.* ***Administrative History:*** *Original rule filed November 6, 1997; effective January 20, 1998. Repeal and new rule filed March 16, 2015; effective June 14, 2015.*

0780-04-03-.08 INVESTMENT ADVISER FINANCIAL AND DISCIPLINARY DISCLOSURE.

(1) It shall constitute an act, practice, or course of business which operates or would operate as a fraud or deceit upon another person within the meaning of T.C.A. § 48-1-121(b)(2) of the Act for any investment adviser to fail to disclose to any client or prospective client all material facts with respect to:

(a) A financial condition of the adviser that is reasonably likely to impair the ability of the adviser to meet contractual commitments to clients, if the adviser has discretionary authority (express or implied) or custody over such client's funds or securities, or requires prepayment of advisory fees of more than five hundred ($500) from such client, six (6) months or more in advance; or

(b) A legal or disciplinary event that is material to an evaluation of the adviser's integrity or ability to meet contractual commitments to clients.

(2) It shall constitute a rebuttable presumption that the following legal or disciplinary events involving the adviser or a management person of the adviser (any of the foregoing being referred to hereafter as "person") that were not resolved in the person's favor or subsequently reversed, suspended, or vacated are material within the meaning of subparagraph (1)(b) of this Rule for a period of ten (10) years from the time of the event.

(a) A criminal or civil action in a court of competent jurisdiction in which the person:

1. Was convicted, pleaded guilty, or nolo contendere ("no contest") to a felony or misdemeanor, or is the named subject of a pending criminal proceeding (any of the foregoing referred to hereafter as "action") and such action involved: an investment-related business; fraud, false statements, or omissions; wrongful taking of property; or bribery, forgery, counterfeiting, or extortion;

2. Was found to have been involved in a violation of an investment-related statute or regulation; or

3. Was the subject of any order, judgment, or decree permanently or temporarily enjoining the person from, or otherwise limiting the person from, engaging in any investment-related activity.

(Rule 0780-04-03-.08, continued)

(b) Administrative proceedings before the SEC, any other federal regulatory agency, or any state agency (any of the foregoing being referred to hereafter as "Agency") in which the person:

1. Was found to have caused an investment-related business to lose its authorization to do business; or

2. Was found to have been involved in a violation of an investment-related statute or regulation and was the subject of an order by the agency denying, suspending, or revoking the authorization of the person to act in, or barring or suspending the person's association with, an investment-related business, or otherwise significantly limiting the person's investment-related activities.

(c) Self-Regulatory Organization (SRO) proceedings in which the person:

1. Was found to have caused an investment-related business to lose its authorization to do business; or

2. Was found to have been involved in a violation of the SRO's rules and was the subject of an order by the SRO barring or suspending the person from membership or from association with other members, or expelling the person from membership; fining the person more than two thousand five hundred dollars ($2,500); or otherwise significantly limiting the person's investment-related activities.

(3) The information required to be disclosed by paragraph (1) of this Rule shall be disclosed to clients promptly, and to prospective clients not less than forty-eight (48) hours prior to entering into any written or oral investment advisory contract, or no later than the time of entering into such contract if the client has the right to terminate the contract without penalty within five (5) business days after entering into the contract.

(4) For purposes of this Rule:

(a) "Management person" means a person with power to exercise, directly or indirectly, a controlling influence over the management or policies of an adviser which is a company or to determine the general investment advice given to clients.

(b) "Found" means determined or ascertained by adjudication or consent in a final SRO proceeding, administrative proceeding, or court action.

(c) "Investment related" means pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, investment adviser, government securities broker or dealer, municipal securities dealer, bank, savings and loan association, entity or person required to be registered under the Commodity Exchange Act (7 U.S.C. § 1 et seq.) or fiduciary.

(d) "Involved" means acting or aiding, abetting, causing, counseling, commanding, inducing, conspiring with, or failing reasonably to supervise another in doing an act.

(e) "Self-Regulatory Organization" or "SRO" means any national securities or commodities exchange, registered association, or registered clearing agency.

(5) For purposes of calculating the ten (10) year period during which events are presumed to be material under paragraph (2) of this Rule, the date of a reportable event shall be the date on which the final order, judgment, or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees lapsed.

(Rule 0780-04-03-.08, continued)

(6) Compliance with paragraph (2) of this Rule shall not relieve any investment adviser from the disclosure obligations of paragraph (1) of this Rule. Compliance with paragraph (1) of this Rule shall not relieve any investment adviser from any other disclosure requirement under the Act, these Rules, or under any other federal or state law.

Authority: *T.C.A. §§ 48-1-115, 48-1-116, and 48-1-121, § 222 of the Investment Advisers Act of 1940, as amended by § 304(a) of the National Securities Markets Improvement Act of 1996, and 17 C.F.R. § 275.206(4)-4.* ***Administrative History:*** *Original rule filed November 6, 1997; effective January 20, 1998. Repeal and new rule filed March 16, 2015; effective June 14, 2015.*

0780-04-03-.09 ADVERTISEMENT BY INVESTMENT ADVISERS.

(1) It shall constitute an act, practice, or course of business which operates or would operate as a fraud or deceit upon another person within the meaning of T.C.A. § 48-1-121(b)(2) for any investment adviser, directly or indirectly, to publish, circulate, or distribute any advertisement:

(a) Which refers, directly or indirectly, to any testimonial of any kind concerning the investment adviser or concerning any advice, analysis, report, or other service rendered by such investment adviser;

(b) Which refers, directly or indirectly, to past specific recommendations of such investment adviser, which were or would have been profitable to any person; provided, however, that this shall not prohibit an advertisement which sets out or offers to furnish a list of all recommendations made by such investment adviser within the immediately preceding period of not less than one (1) year, if such advertisement and such list, if it is furnished separately:

1. States the name of each such security recommended, the date and nature of each such recommendation (e.g., whether to buy, sell, or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each such security as of the most recent practicable date; and

2. Contains the following cautionary legend on the first page thereof in print or type as large as the largest print or type used in the body or text thereof; “It should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list”;

(c) Which represents, directly or indirectly, that any graph, chart, formula, or other device being offered can in and of itself 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 his own decisions as to which securities to buy and sell, or when to buy and sell them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to its use;

(d) Which contains any statement to the effect that any report, analysis, or other service will be furnished free or without charge, unless such report, analysis, or other service actually is or will be furnished entirely free and without any condition or obligation, directly or indirectly; or

(e) Which contains any untrue statement of a material fact, or which is otherwise false or misleading.

(Rule 0780-04-03-.09, continued)

(2) For the purposes of this Rule, the term "advertisement" shall include any notice, circular, letter, or other written communication addressed to more than one (1) person, or any notice or other announcement in any publication or by radio or television, which offers (a) any analysis, report, or publication concerning securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell, or (b) 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 (c) any other investment advisory service with regard to securities.

Authority: *T.C.A. §§ 48-1-115, 48-1-116, and 48-1-121, Public Acts of 1997, Chapter 164, § 222 of the Investment Advisers Act of 1940, as amended by § 304 of the National Securities Markets Improvement Act of 1996, and 17 C.F.R. § 275.206(4)-1.* ***Administrative History:*** *Original rule filed November 6, 1997; effective January 20, 1998. Repeal and new rule filed March 16, 2015; effective June 14, 2015.*

0780-04-03-.10 WRITTEN DISCLOSURE STATEMENTS BY INVESTMENT ADVISERS.

(1) General requirement. Unless otherwise provided in this Rule, an investment adviser, registered or required to be registered pursuant to T.C.A. § 48-1-109(c) shall, in accordance with the provisions of this Rule, furnish each advisory client and prospective advisory client with a written disclosure statement which may be either a copy of Part 2 of its Form ADV or a written document containing at least the information then so required by Part 2 of Form ADV.

(2) Delivery.

(a) An investment adviser, except as provided in subparagraph (2)(b) of this Rule shall deliver the statement required by this subparagraph (2)(a) to an advisory client or prospective advisory client:

1. Not less than forty-eight (48) hours prior to entering into any written or oral investment advisory contract with such client or prospective client; or

2. At the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five (5) business days after entering into the contract.

(b) Delivery of the statement required by subparagraph (2)(a) of this Rule need not be made in connection with entering into a contract for impersonal advisory services as defined in the Rule.

(3) Offer to deliver.

(a) An investment adviser, except as provided in subparagraph (3)(b) of this Rule, annually shall, without charge, deliver or offer in writing to deliver upon written request to each of its advisory clients the statement required by this Rule.

(b) The delivery or offer required by subparagraph (3)(a) of this Rule need not be made to advisory clients receiving advisory services solely pursuant to a contract for impersonal advisory services requiring a payment of less than two hundred dollars ($200).

(c) With respect to an advisory client entering into a contract or receiving advisory services pursuant to a contract for impersonal advisory services which requires a payment of two hundred dollars ($200) or more, an offer of the type specified in subparagraph (3)(a) of this Rule shall also be made at the time of entering into an advisory contract.

(Rule 0780-04-03-.10, continued)

(d) Any statement requested in writing by an advisory client pursuant to an offer required by paragraph (3) of this Rule must be mailed or delivered within seven (7) days of the receipt of the request.

(4) Omission of inapplicable information. If an investment adviser renders substantially different types of investment advisory services to different advisory clients, any information required by Part 2 of Form ADV may be omitted from the statement furnished to an advisory client or prospective advisory client if such information is applicable only to a type of investment advisory service or fee which is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

(5) Other disclosures. Nothing in this Rule shall relieve any investment adviser from any obligation pursuant to any provision of the Act or these Rules or other federal or state law to disclose any information to its advisory clients or prospective advisory clients not specifically required by this Rule.

(6) Sponsors of wrap fee programs.

(a) An investment adviser, registered or required to be registered pursuant to T.C.A. § 48-1-109(c) of the Act, that is compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding the selection of other investment advisers in the program, shall in lieu of the written disclosure statement required by paragraph (1) of this Rule and in accordance with other provisions of this Rule, furnish each client and prospective client of the wrap fee program with a written disclosure statement containing at least the information required by Part 2A Appendix 1 of Form ADV. Any additional information included in such disclosure should be limited to information concerning wrap fee programs sponsored by the investment adviser.

(b) If the investment adviser is required under this paragraph (6) to furnish disclosure statements to clients or prospective clients of more than one (1) wrap fee program, the investment adviser may omit from the disclosure statement furnished to clients and prospective clients of a wrap fee program or programs any information required by Form ADV Part 2A Appendix 1 that is not applicable to clients or prospective clients of that wrap fee program or programs.

(c) An investment adviser need not furnish the written disclosure statement required by subparagraph (6)(a) of this Rule to clients and prospective clients of a wrap fee program if another investment adviser is required to furnish the written disclosure statement to all clients and prospective clients of the wrap fee program.

(7) Definitions. For purposes of this Rule:

(a) “Contract for impersonal advisory services” means any contract relating solely to the provision of investment advisory services:

1. By means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts;

2. Through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or

3. Any combination of the foregoing services.

(Rule 0780-04-03-.10, continued)

(b) "Entering into", in reference to an investment advisory contract, does not include an extension or renewal without material change of any such contract which is in effect immediately prior to such extension or renewal.

(c) "Wrap fee program" means a program under which any client is charged a specified fee or fees not based directly upon transactions in a client's account for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and execution of client transactions.

(8) An investment adviser that fails to make written disclosure statements as required by this Rule shall be deemed to have engaged in a dishonest and unethical practice in the securities business as provided under T.C.A. § 48-1-112(a)(2)(G).

Authority: *T.C.A. §§ 48-1-109, 48-1-112, 48-1-115, and 48-1-116, § 222 of the Investment Advisers Act of 1940, as amended by § 304 of the National Securities Markets Improvement Act, and 17 C.F.R. § 275.204-4.* ***Administrative History:*** *Original rule filed November 6, 1997; effective January 20, 1998. Repeal and new rule filed March 16, 2015; effective June 14, 2015.*

0780-04-03-.11 PERSONS DEEMED NOT TO BE "AGENTS."

(1) An individual associated person of a broker-dealer shall be exempt from the definition of "agent" as defined under T.C.A. § 48-1-102(3) if such individual associated person effects any of the two (2) types of transactions in securities described in paragraph (2) of this Rule for a customer in this state and satisfies the following conditions:

(a) Such individual associated person is not ineligible to register in this state for any reason other than such a transaction in securities;

(b) Such individual associated person is registered with a securities association registered under the 1934 Act and is also registered in at least one (1) state; and

(c) The broker-dealer with which such individual person is associated is appropriately registered in this state.

(2) For purposes of this Rule, the following are the two (2) types of transactions referred to in paragraph (1):

(a) A transaction that is effected on behalf of a customer who:

1. Maintained an account with the broker-dealer employing the associated person for thirty (30) days prior to the date of the transaction; and

2. Was assigned to such individual associated person for fourteen (14) days prior to the day of the transaction and such individual associated person is registered with the state in which the customer was resident or was present for at least thirty (30) consecutive days during the one (1) year period prior to the day of the securities transaction; or

(b) A transaction that is:

1. Effected on behalf of a customer who maintains an account with the broker-dealer for thirty (30) days prior to the date of the securities transactions; and

2. Effected during the period, beginning on the date on which such individual associated person of a broker-dealer files an application for agent registration in this state and ending on the earlier of:

(i) Sixty (60) days after the date on which the application is filed; or

(ii) The date on which this state notifies the associated person that it has denied the application for registration or has stayed the pendency of the application for cause.

For purposes of part (2)(a)2. of this Rule, each of up to three (3) individuals, who are associated persons of a broker-dealer and who are designated by such broker-dealer to effect securities transactions for a customer in this state during the absence or unavailability of the principal associated person for a customer, may be treated as an associated person to which such customer is assigned.

(3) An exemption from the definition of "agent" claimed on the basis of the transaction set forth in subparagraph (2)(a) of this Rule shall not be effective if the customer is present in this state for thirty (30) or more consecutive days or has permanently changed his or her residence to this state and the associated person of the broker-dealer fails to file an application for agent registration in this state pursuant to T.C.A. §§ 48-1-109 and 48-1-110 not later than ten (10) business days after the later of:

(a) The date of the transaction;

(b) The date of discovery of the customer's presence in this state for thirty (30) or more consecutive days; or

(c) The change in the customer's residence.

(4) The exemptions set forth herein shall not exempt any person from the operation of the antifraud provision of the Act set forth at T.C.A. § 48-1-121.

Authority: *T.C.A. §§ 48-1-102, 48-1-109, 48-1-110, 48-1-115, 48-1-116, and 48-1-121, and § 15 of the Securities and Exchange Act of 1934, as amended by § 103(a) of the National Securities Markets Improvement Act of 1996.* ***Administrative History:*** *Original rule 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, 2004. Repeal and new rule filed March 16, 2015; effective June 14, 2015.*

0780-04-03-.12 DEFINITION OF "CLIENT OF AN INVESTMENT ADVISER."

(1) Preliminary note. This Rule is a safe harbor and is not intended to specify the exclusive method for determining who may be deemed a single client for purposes of T.C.A. §§ 48-1-102(10)(E)(ii) and 48-1-102(10)(F) of the Act.

(2) General. For purposes of T.C.A. §§ 48-1-102(10)(E)(ii) and 48-1-102(10)(F), the following are deemed a single client:

(a) A natural person, and:

1. Any minor child of the natural person;

2. Any relative, spouse, or relative of the spouse of the natural person who has the same principal residence;

3. All accounts of which the natural person and/or the persons referred to in this subparagraph (2)(a) are the only primary beneficiaries; or

(Rule 0780-04-03-.12, continued)

4. All trusts of which the natural person and/or the persons referred to in this subparagraph (2)(a) are the only primary beneficiaries;

(b) 1. A corporation, general partnership, limited liability company, trust (other than a trust referred to in part (2)(a)4. of this Rule), or other legal organization (any of which are referred to hereinafter as a "legal organization") that receives investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partner, members, or beneficiaries (any of which are referred to hereinafter as an "owner"); and

2. Two or more legal organizations referred to in part (2)(b)1. of this Rule that have identical owners.

(3) Special Rules. For purposes of this Rule:

(a) An owner must be counted as a client if the investment adviser provides investment advisory services to the owner separate and apart from the investment advisory services provided to the legal organization; provided, however, that the determination that an owner is a client will not affect the applicability of this subparagraph (3)(a) with regard to any other owner;

(b) An owner need not be counted as a client of an investment adviser solely because the investment adviser, on behalf of the legal organization, offers, promotes, or sells interests in the legal organization to the owner, or reports periodically to the owners as a group solely with respect to the performance of or plans for the legal organization's assets or similar matters;

(c) A limited partnership is a client of any general partner or other person acting as investment adviser to the partnership;

(d) Any person for whom an investment adviser provides investment advisory services without compensation need not be counted as a client; and

(e) An investment adviser that has its principal office and place of business outside of the United States must count only clients that are residents in this state; an investment adviser that has its principal office and place of business in this state must count all clients.

(4) Holding Out. Any investment adviser relying on this Rule shall not be deemed to be holding itself out generally to the public as an investment adviser, within the meaning of subparagraph (1)(b) of Rule 0780-04-03-.05, solely because such investment adviser participates in a non-public offering of interests in a limited partnership under the 1933 Act.

Authority: *T.C.A. §§ 48-1-102, 48-1-115, and 48-1-116, § 222 of the Investment Advisers Act of 1940, as amended by § 304 of the National Securities Markets Improvement Act of 1996, and 17 C.F.R. § 275.203(b)(3)-1.* ***Administrative History:*** *Original rule filed November 6, 1997; effective January 20, 1998. Amendment filed April 5, 2004; effective June 19, 2004. Repeal and new rule filed March 16, 2015; effective June 14, 2015.*

0780-04-03-.13 CASH PAYMENTS FOR CLIENT SOLICITATIONS.

(1) It shall constitute an act, practice, or course of conduct which operates as a fraud or deceit upon a person, as provided under T.C.A. § 48-1-121(b)(2), for any investment adviser to pay a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities unless:

(a) The solicitor is not a person:

(Rule 0780-04-03-.13, continued)

1. Subject to an order issued by the commissioner under T.C.A. § 48-1-112(a) of the Act;

2. Convicted of any felony or any misdemeanor within the previous ten (10) years involving conduct described in T.C.A. § 48-1-112(a)(2)(C);

3. Who has been found by the commissioner to have engaged, or has been convicted of engaging, in any of the conduct specified in T.C.A. §§ 48-1-121, 48-1-112(a)(2)(B), 48-1-112(a)(2)(J), or has materially aided in the action in violation of T.C.A. §§ 48-1-112(a)(2)(B), 48-1-112(a)(2)(J), or 48-1-121;

4. Subject to an order, judgment, or decree described in T.C.A. § 48-1-112(a)(2)(D) of the Act; or

5. Described in SEC Rule 206(4)-3(a)(1)(ii) (17, C.F.R. § 275.206(4)-3(a)(1)(ii));

(b) Such cash fee is paid pursuant to a written agreement to which the adviser is a party;

(c) Such cash fee is paid to a solicitor:

1. With respect to solicitation activities for the provision of impersonal advisory services only;

2. Who is:

(i) A partner, officer, director, or employee of such investment adviser; or

(ii) A partner, officer, director, or employee of a person which controls, is controlled by, or is under common control with such investment adviser; provided that the status of such solicitor as a partner, officer, director, or employee of such investment adviser or other person, and any affiliation between the investment adviser and such other person, is disclosed to the client at the time of the solicitation or referral; or

3. Other than a solicitor specified in parts (1)(c)1. or (1)(c)2. of this Rule if all of the following conditions are met:

(i) The written agreement required by subparagraph (1)(b) of this Rule:

(I) Describes the solicitation activities to be engaged in by the solicitor on behalf of the investment adviser and the compensation to be received thereof;

(II) Contains an undertaking by the solicitor to perform his duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of the Act and these Rules or of the Investment Advisers Act and the rules promulgated thereunder, whichever is applicable; and

(III) Requires that the solicitor, at the time of any solicitation activities for which compensation is paid or to be paid by the investment adviser, provide the client with a current copy of the investment adviser's written disclosure statement required by Rule 0780-04-03-.10 or SEC Rule 204-3 (17 C.F.R. § 275.204-3) as applicable, and a

(Rule 0780-04-03-.13, continued)

separate written disclosure statement described in paragraph (2) of this Rule;

(ii) The investment adviser receives from the client, prior to, or at the time of, entering into any written or oral investment advisory contract with such client, a signed and dated acknowledgment of receipt of the investment adviser's written disclosure statement and the solicitor's written disclosure document; and

(iii) The investment adviser makes a bona fide effort to ascertain whether the solicitor has complied with the agreement, and has a reasonable basis for believing that the solicitor has so complied.

(2) The separate written disclosure statement required to be furnished by the solicitor to the client pursuant to subpart (1)(c)3.(ii) of this Rule shall contain the following information:

(a) The name of the solicitor;

(b) The name of the investment adviser;

(c) The nature of the relationship, including any affiliation, between the solicitor and the investment adviser;

(d) A statement that the solicitor will be compensated for his solicitation services by the investment adviser;

(e) The terms of such compensation arrangement, including a description of the compensation paid or to be paid to the solicitor; and

(f) 1. The amount, if any, the client will be charged for the cost of obtaining his account in addition to the advisory fee; and

2. The differential, if any, among clients, with respect to the amount or level of advisory fees charged by the investment adviser, if such differential is attributable to the existence of any arrangement pursuant to which the investment adviser has agreed to compensate the solicitor for soliciting clients for, or referring clients to, the investment adviser.

(3) Nothing in this Rule shall be deemed to relieve any person of any fiduciary or other obligation to which such person may be subject under any law.

(4) For purposes of this Rule:

(a) "Solicitor" means any person who, directly or indirectly, solicits any client for, or refers any client to, an investment adviser.

(b) "Client" includes any prospective client.

(c) "Impersonal advisory services" means investment advisory services provided solely by means of (i) written materials or oral statements which do not purport to meet the objectives or needs of the specific client, (ii) statistical information containing no expressions of opinions as to the investment merits of particular securities, or (iii) any combination of the foregoing services.

(Rule 0780-04-03-.13, continued)

(5) The investment adviser shall retain a copy of each written agreement required by subparagraph (1)(b) of this Rule as part of the records required to be kept under T.C.A. § 48-1-111(a) and paragraph (3) of Rule 0780-04-03-.02.

(6) The investment adviser shall retain a copy of each acknowledgement and solicitor disclosure document referred to in subpart (1)(c)3.(ii) of this Rule as part of the records required to be kept under T.C.A. § 48-1-111(a) and paragraph (3) of Rule 0780-04-03-.02.

(7) An investment adviser registered in this state whose principal place of business is located outside this state shall not be subject to the record maintenance requirements of paragraphs (5) or (6) of this Rule if such investment adviser:

(a) Is registered as an investment adviser in the state in which it maintains its principal place of business;

(b) Is in compliance with applicable books and records requirements of the state in which it maintains its principal place of business; and

(c) The provisions of paragraphs (5) or (6) of this Rule would require the investment adviser to maintain books or records in addition to those required under the laws of the state in which the investment adviser maintains its principal place of business.

(8) As used herein “principal place of business” of an investment adviser means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, or coordinate the activities of the investment adviser.

Authority: *T.C.A. §§ 48-1-111, 48-1-112, 48-1-115, 48-1-116, and 48-1-121, Public Acts of 1997, Chapter 164, 17 C.F.R. § 275.204-3, and 17 C.F.R. § 275.206(4)-3.* ***Administrative History:*** *Original rule filed November 6, 1997; effective January 20, 1998. Repeal and new rule filed March 16, 2015; effective June 14, 2015.*

0780-04-03-.14 AGENCY CROSS TRANSACTIONS FOR INVESTMENT ADVISORY CLIENTS.

(1) It shall constitute an act, practice, or course of business which operates or would operate as a fraud or deceit upon another person within the meaning of T.C.A. § 48-1-121(b)(2) of the Act for any investment adviser acting as principal for his own account to:

(a) Knowingly sell any security to or to purchase any security from a client without:

1. Disclosing to such client, in writing, before the completion of such transaction, the capacity in which he is acting; and

2. Obtaining the consent of the client to such transaction; or

(b) Knowingly effect any sale or purchase of any security for the account of such client, while acting as broker-dealer for a person other than such client, without:

1. Disclosing to such client, in writing, before the completion of such transaction, the capacity in which he is acting; and

2. Obtaining the consent of the client to such transaction.

The prohibitions of this paragraph (1) shall not apply to any transaction with a customer of a broker-dealer if such broker-dealer is not acting as an investment adviser in relation to such transaction.

(Rule 0780-04-03-.14, continued)

(2) An investment adviser registered under T.C.A. § 48-1-109, or a person registered as a broker-dealer under T.C.A. § 48-1-109 and controlling, controlled by, or under common control with an investment adviser registered under T.C.A. § 48-1-109 shall be deemed not to be in violation of the provisions of this Rule and T.C.A. § 48-1-121(b)(2) in effecting an agency cross transaction for an advisory client, if:

(a) The advisory client has executed a written consent prospectively authorizing the investment adviser, or any other person relying on this Rule, to effect agency cross transactions for such advisory client, provided that such written consent is obtained after full written disclosure with respect to agency cross transactions for which the investment adviser or such other person will act as broker-dealer for, receive commissions from, and have a potentially conflicting division of loyalties and responsibilities regarding, both parties to such transactions;

(b) The investment adviser, or any other person relying on this Rule, sends to each client a written confirmation at or before the completion of each such transaction, which confirmation includes:

1. A statement of the nature of such transaction;

2. The date such transaction took place;

3. An offer to furnish upon request, the time when such transaction took place; and

4. The source and amount of any other remuneration received or to be received by the investment adviser and any other person relying on this paragraph (2) in connection with the transaction;

(c) The investment adviser, or any other person relying on this Rule, sends to each client, at least annually, and with or as part of any written statement or summary of such account form the investment adviser of such other person:

1. A written disclosure statement identifying the total number of such transactions during the period since the date of the last such statement or summary; and

2. The total amount of all commissions or other remuneration received or to be received by the investment adviser or any other person relying on this Rule in connection with such transactions during such period;

(d) Each written disclosure and confirmation required by this Rule includes a conspicuous statement that the written consent referred to in subparagraph (2)(a) of this Rule may be revoked at any time by written notice to the investment adviser, or any other person relying on this paragraph, from the advisory client; and

(e) No such transaction is effected in which the same investment adviser or an investment adviser and any person controlling, controlled by, or under common control with such investment adviser recommended the transaction to both any seller and any purchaser.

(3) For purposes of this Rule, the term “agency cross transaction for an advisory client” shall mean a transaction in which a person acts as an investment adviser in relation to a transaction in which such investment adviser, or any person controlling, controlled by, or under common control with such investment adviser, acts as broker-dealer for both such advisory client and for another person on the other side of the transaction.

(4) For purposes of part (2)(b)4. of this Rule, the written confirmation referred to in such Rule may state whether any other remuneration has been or will be received and that the source

(Rule 0780-04-03-.14, continued)

and amount of such other remuneration will be furnished upon written request of such customer if:

(a) In the case of a purchase, neither the investment adviser nor any other person relying on paragraph (2) was participating in a distribution; or

(b) In the case of a sale, neither the investment adviser nor any other person relying on this paragraph was participating in a tender offer.

(5) This Rule shall not be construed as relieving in any way the investment adviser or another person relying on this Rule from acting in the best interests of the advisory client, including fulfilling the duty with respect to the best price and execution for the particular transaction for the advisory client; nor shall it relieve such person or persons from any disclosure obligation which may imposed by T.C.A. § 48-1-121(b)(2) or by other applicable provisions of the Act.

Authority: *T.C.A. §§ 48-1-109, 48-1-115, 48-1-116, and 48-1-121, Public Acts of 1997, Chapter 164, § 7, § 222 of the Investment Advisers Act of 1940, as amended by § 304 of the National Securities Markets Improvement Act of 1996, and 17 C.F.R. § 275.206(3)-2.* ***Administrative History:*** *Original rule filed November 6, 1997; effective January 20, 1998. Repeal and new rule filed March 16, 2015; effective June 14, 2015.*

0780-04-03-.15 EXEMPTION FROM BROKER-DEALER REGISTRATION FOR CERTAIN CANADIAN BROKER-DEALERS.

(1) Prior to effecting any securities transaction pursuant to the exemption from broker-dealer registration authorized by T.C.A. § 48-1-109(g), a Canadian broker-dealer must receive acknowledgment from the Division of its receipt of English language versions of the following exhibits:

(a) Initial exemption notice filing which contains the following:

1. Completed current application for registration as is required by the provincial or territorial jurisdiction in which the main office of the Canadian broker-dealer is located;

2. Evidence of membership in an appropriate Canadian self-regulatory organization, stock exchange, or association of broker-dealers;

3. Evidence of broker-dealer registration in the provincial or territorial jurisdiction in which the main office of the Canadian broker-dealer is located;

4. Copy of the disclosure which will be made to customers that the Canadian broker-dealer is not subject to the full regulatory requirements of the Act;

5. Full names, and United States Social Security Numbers if any, of all individuals who will represent the Canadian broker-dealer in effecting or attempting to effect purchases or sales of securities in or into this state and all individuals who will receive compensation specifically related to purchases or sales of securities in or into this state;

6. Evidence of registration in the appropriate Canadian provincial or territorial jurisdiction for each individual identified pursuant to part (1)(a)5. of this Rule;

7. Form U-2 Uniform Consent to Service of Process;

8. The appropriate fee as set forth in the Act; and

9. Such other information as the Division may request from a particular Canadian broker-dealer to determine eligibility for exemption from broker-dealer registration pursuant to the provisions of T.C.A. § 48-1-109(g).

(2) Each exemption notice filing expires each December 31 unless timely renewed. An exemption notice filing is timely renewed for the next successive calendar year if English language versions of the following exhibits are received by the Division on or after November 1 and on or before the immediately following December 31:

(a) Renewal exemption notice filing which contains the following:

1. Completed current application for registration as is required by the provincial or territorial jurisdiction in which the main office of the Canadian broker-dealer is located;

2. Full names, and United States Social Security Numbers if any, of all individuals who will represent the Canadian broker-dealer in effecting or attempting to effect purchases or sales of securities in or into this state and all individuals who will receive compensation specifically related to purchases or sales of securities in or into this state;

3. The appropriate fee as set forth in the Act; and

4. Such other information as the Division may request from a particular Canadian broker-dealer to determine continuing eligibility for exemption from broker-dealer registration pursuant to the provisions of T.C.A. § 48-1-109(g).

(b) Exemption notice filings for which incomplete renewal exemption notice filings have been submitted will expire at the relevant December 31 unless completed by the filer on or before that December 31.

(3) Abandonment.

(a) The Division may determine that an incomplete initial exemption notice filing has been abandoned if:

1. An incomplete filing has been on file with the Division for more than one hundred eighty (180) days without becoming completed and no written communication has been received by the Division from the filer in connection with the filing during such period; or

2. A period of one hundred (180) days has elapsed since the date of the Division's receipt of the most recent written communication to the Division from or on behalf of the filer.

(b) Upon the determination that an incomplete initial exemption notice filing has been abandoned, the Division may, by Order of Abandonment, cancel the incomplete filing without prejudice and, within thirty (30) days of such cancellation, mail the Order of Abandonment to the last known business address of the filer.

(4) Termination and Withdrawal.

(a) A Canadian broker-dealer may terminate its initial exemption notice filing or renewal exemption notice filing by filing a written request for termination directly with the

(Rule 0780-04-03-.15, continued)

Division. Annual fees previously received by the Division in conjunction with such terminated exemption notice filings are nonrefundable.

(b) An incomplete initial exemption notice filing, a renewal exemption notice filing, or an incomplete renewal exemption notice filing may be withdrawn by the Canadian broker-dealer by filing a written request for withdrawal directly with the Division. Annual fees previously received by the Division in conjunction with such withdrawn exemption notice filings are nonrefundable.

(c) A Canadian broker-dealer which has filed an initial or renewal exemption notice filing and which has become ineligible for the exemption from broker-dealer registration authorized by T.C.A. § 48-1-109(g) shall immediately notify the Division in writing of the cause of such ineligibility and shall simultaneously, as is appropriate, request a termination or withdrawal pursuant to subparagraphs (4)(a) or (4)(b) of this Rule.

(5) The filings herein required shall constitute filings with the commissioner pursuant to T.C.A. § 48-1-121(c).

Authority: *T.C.A. §§ 48-1-102, 48-1-109(g), 48-1-112, 48-1-115, 48-1-116, 48-1-121, and 48-1-124(e).* ***Administrative History:*** *Original rule filed April 5, 2004; effective June 19, 2004. Repeal and new rule filed March 16, 2015; effective June 14, 2015.*

0780-04-03-.16 CYBERSECURITY.

(1) When used in this Rule:

(a) “Consumer” means an individual who is a Tennessee resident and whose nonpublic information is in a registrant’s possession, custody, or control.

(b) “Cybersecurity event” means an event resulting in unauthorized access to, disruption, or misuse of an information system or any nonpublic information stored on such information system. The term “cybersecurity event” does not include:

1. The unauthorized acquisition of encrypted nonpublic information if the encryption, protective process, or key is not also acquired, released, or used without authorization; or

2. An event regarding which the registrant has determined that the nonpublic information accessed by an unauthorized person has not been used or released and has been returned or destroyed.

(c) “Encrypted” means the transformation of data into a form which results in a low probability of assigning meaning without the use of a protective process or key.

(d) “Information system” means any information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of electronic information, as well as any specialized system such as industrial and process controls systems, telephone switching and private branch exchange systems, and environmental control systems.

(e) “Nonpublic information” means information that is not publicly available information and is:

1. Business-related information of a registrant the tampering with which, or unauthorized disclosure, access, or use of which, would cause a material adverse impact to the business, operations, or security of the registrant;

2. Any information concerning a consumer which, because of name, number, personal mark, or other identifier, can be used to identify such consumer, in combination with any one or more of the following data elements:

(i) Social security number;

(ii) Driver's license number or non-driver identification card number;

(iii) Account, credit card, or debit card number;

(iv) Any security code, access code, or password that would permit access to a consumer's financial account; or

(v) Biometric records that would permit access to a consumer's financial account.

(f) "Publicly available information" means any information that a registrant has a reasonable basis to believe is lawfully made available to the general public from federal, state, or local government records, widely distributed media, or disclosures to the general public that are required to be made by federal, state, or local law. There is a presumption that a registrant has a reasonable basis to believe that information is lawfully made available to the general public if the registrant has taken steps to determine:

1. That the information is of the type that is available to the general public; and

2. Whether a consumer can direct that the information not be made available to the general public and, if so, that such consumer has not done so.

(g) "Registrant" means any broker-dealer, issuer-dealer, or investment adviser registered or required to be registered pursuant to the Tennessee Securities Act of 1980 (the "Act").

(h) "Third-party service provider" means a person or business that contracts with a registrant to maintain, process, or store nonpublic information, or otherwise is permitted to access that information, through its provision of services to the registrant.

(2) Information Security Program.

(a) Implementation. Commensurate with the size and complexity of the registrant, the nature and scope of the registrant's activities, including its use of third-party service providers, and the sensitivity of the nonpublic information used by the registrant or in the registrant's possession, custody, or control, each registrant shall develop, implement, and maintain a comprehensive written information-security program based on the registrant's risk assessment, which shall include written policies and procedures. These written policies and procedures shall contain administrative, technical, physical safeguards, and training for the protection of the registrant's information system, all nonpublic information in its possession, custody, or control, and all nonpublic information provided to any third-party service provider by the registrant.

(b) Objectives. A registrant's information-security program shall be designed to:

1. Protect the confidentiality, integrity, and availability of nonpublic information and the security of the information system;

(Rule 0780-04-03-.16, continued)

2. Protect against any threats or hazards to the confidentiality, integrity, or availability of nonpublic information and the information system;

3. Protect against unauthorized access to or use of nonpublic information and minimize the likelihood of harm to consumers;

4. Define and periodically reevaluate a schedule for retention of nonpublic information and a mechanism for its destruction when no longer needed for legitimate business purposes of the registrant; and

5. Manage risk through the implementation of security measures, such as:

   (i) The placement of access controls on information systems, including controls, like multi-factor authentication, to authenticate and permit access only to authorized individuals to protect against the unauthorized acquisition of nonpublic information;

   (ii) Identification and management of data, personnel, devices, systems, and facilities that enable the organization to achieve business purposes in accordance with its relative importance to business objectives and the organization's risk strategy;

   (iii) Restriction of access at physical locations containing nonpublic information to only authorized individuals;

   (iv) Encryption or other appropriate means of protection of all nonpublic information during transmission over a network, and all nonpublic information stored on mobile computing or storage devices or media;

   (v) Adoption of secure development practices for in-house developed applications utilized by the registrant and procedures for evaluating, assessing, or testing the security of the externally developed application utilized by the registrant;

   (vi) Regular testing and monitoring of systems and procedures to detect actual and attempted attacks on, or intrusions into, information systems;

   (vii) Incorporation of audit trails within the information security program designed to detect and respond to cybersecurity events and designed to reconstruct material financial transactions sufficient to support normal operations and obligations of the registrant;

   (viii) Implementation of measures to protect against loss, destruction, or damage of nonpublic information due to environmental hazards, such as fire and water damage or other catastrophes or technological failures;

   (ix) Development, implementation, and maintenance of procedures for the secure disposal of nonpublic information;

   (x) Providing personnel with regular cybersecurity awareness training;

   (xi) Reviewing data policies of third-party vendors; or

   (xii) Any other such measure as may be appropriate for the protection of nonpublic information.

(Rule 0780-04-03-.16, continued)

(c) Maintenance. The registrant must review, no less frequently than annually, and modify, as needed, its cybersecurity policies and procedures to ensure the adequacy of the security measures and the effectiveness of their implementation.

(3) Investigation of a Cybersecurity Event.

(a) If the registrant learns or has reason to believe that a cybersecurity event has or may have occurred, the registrant, or an outside service provider designated to act on behalf of the registrant, shall conduct a prompt investigation.

(b) The registrant or outside service provider designated to act on behalf of the registrant shall, at a minimum, determine to the fullest extent possible:

1. Whether a cybersecurity event has occurred;

2. The nature and scope of the cybersecurity event; and

3. Any nonpublic information that may have been involved in the cybersecurity event.

(c) If the registrant determines that a cybersecurity event has occurred, the registrant shall perform or oversee reasonable measures to restore the security of the information systems compromised in the cybersecurity event in order to prevent further unauthorized acquisition, release, or use of nonpublic information in the registrant's possession, custody, or control.

(d) If the registrant learns that a cybersecurity event has or may have occurred involving its third-party service provider, the registrant shall complete the requirements of this paragraph (3) or confirm and document in writing that the third-party service provider has completed such requirements.

(e) The registrant shall maintain records concerning all cybersecurity events for a period of at least three (3) years from the date of the cybersecurity event and shall produce those records upon request by the Division.

(4) Notification of a Cybersecurity Event.

(a) Notification to the Division.

1. Each registrant shall provide the Division with initial notice as promptly as possible, but in no event later than three (3) business days from a determination that a cybersecurity event has occurred, if:

(i) The registrant maintains its principal office and place of business in this state;

(ii) The cybersecurity event affected, or the registrant has reason to believe the cybersecurity event affected, nonpublic information possessed, maintained, or controlled by the registrant; or

(iii) The registrant is required to provide notice to any government agency, self-regulatory organization, or any other supervisory body pursuant to any state or federal law.

2. The initial notice to the Division shall include, in general terms:

(Rule 0780-04-03-.16, continued)

(i) The date of the cybersecurity event; and

(ii) The name and contact information of a person who is both familiar with the cybersecurity event and authorized to act on behalf of the registrant.

3. Based on the initial notice provided to the Division pursuant to part 1. above, the Division may commence a private investigation into the cybersecurity event pursuant to T.C.A. § 48-1-118. If a private investigation is initiated, then the Division may request the following information:

(i) A description of how the information was exposed, lost, stolen, or breached, including the specific roles and responsibilities of third-party service providers, if applicable;

(ii) How the cybersecurity event was discovered;

(iii) Communication logs for the period beginning with the occurrence of the cybersecurity event, discovery of the cybersecurity event, and the registrant's response;

(iv) Whether any lost, stolen, or breached information has been recovered, and if so, how the recovery was achieved;

(v) The identity of the source of the cybersecurity event;

(vi) Whether the registrant has filed a police report or notified any regulatory, government, or law enforcement agencies, and if so, when such notification was provided;

(vii) A description of the specific types of information acquired without authorization;

(viii) The date(s) that the registrant acquired, and thereafter maintained, possession, custody, or control of the nonpublic information affected by the cybersecurity event;

(ix) The period during which the information system was compromised by the cybersecurity event;

(x) The aggregate number of consumers affected by the cybersecurity event;

(xi) The results of any internal review identifying a lapse in either automated controls or internal procedures, or confirming that all automated controls or internal procedures were followed;

(xii) A description of efforts being undertaken to remediate the situation which allowed the cybersecurity event to occur;

(xiii) A copy of the registrant's privacy policy and a statement outlining the steps the registrant will take to investigate and notify consumers affected by the cybersecurity event; and

(xiv) Any other such information as the Division may request.

(b) Notification to Consumers.

(Rule 0780-04-03-.16, continued)

1. Notification to consumers of a cybersecurity event shall be provided in accordance with the methods and timeframes set forth in T.C.A. § 47-18-2107 and any other applicable laws.

(c) Notification Regarding Cybersecurity Events of Third-Party Service Providers.

1. In the case of a cybersecurity event involving a registrant's third-party service provider of which the registrant has become aware, the registrant shall treat such event as it would under subparagraph (4)(a).

2. The computation of time shall begin on the first business day following the third-party service provider's notification to the registrant that a cybersecurity event has occurred, or the registrant otherwise acquires actual knowledge of the cybersecurity event.

3. Nothing in this Rule shall prevent or abrogate an agreement between a registrant and another registrant, a third-party service provider, or any other party to fulfill any of the investigation requirements imposed under paragraph (2) or notice requirements imposed under paragraph (3).

(5) Record Keeping. Every registrant shall maintain the following records and information:

(a) A copy of each version of the written information security program implemented by the registrant pursuant to this Rule;

(b) All records documenting the registrant's compliance with this Rule, including, but not limited to, documentation of the registrant's compliance with the notification requirements of paragraph (4) of this Rule and its annual review of its information security program required by subparagraph (c) of paragraph (2) of this Rule; and

(c) These records must be maintained for a period of no less than three (3) years and shall be provided to the Department upon request.

(6) Noncompliance with this Rule. Any failure by a registrant to comply with the requirements of this Rule shall constitute a dishonest and unethical practice in the securities business in violation of T.C.A. § 48-1-112(a)(2)(G).

Authority: *T.C.A. §§ 48-1-102, 48-1-107, 48-1-109, 48-1-111, 48-1-112(a)(2)(G), 48-1-116, and 48-1-118.* ***Administrative History:*** *New rule filed April 6, 2023; effective July 5, 2023.*

0780-04-03-.17 INVESTMENT ADVISER REPRESENTATIVE CONTINUING EDUCATION.

(1) Investment Adviser Representative Continuing Education. Every investment adviser representative registered under Tenn. Code Ann. § 48-1-109 must complete the following investment adviser representative continuing education requirements each reporting period:

(a) Investment Adviser Representative Ethics and Professional Responsibility Requirement. An investment adviser representative must complete six (6) credits of investment adviser representative regulatory and ethics content offered by an authorized provider, with at least three (3) hours covering the topic of ethics; and

(b) Investment Adviser Representative Products and Practice Requirement. An investment adviser representative must complete six (6) credits of investment adviser representative products and practice content offered by an authorized provider.

(Rule 0780-04-03-.17, continued)

(2) Agent of FINRA-Registered Broker-Dealer Compliance. An investment adviser representative who is also registered as an agent of a FINRA member broker-dealer and who complies with FINRA's continuing education requirements is considered to be in compliance with subparagraph (1)(b) of this Rule for each applicable reporting period so long as FINRA continuing education content meets all of the following baseline criteria as determined by NASAA:

(a) The continuing education content focuses on compliance, regulatory, ethical, and sales practices standards;

(b) The continuing education content is derived from state and federal investment advisory statutes, rules and regulations, securities industry rules and regulations, and accepted standards and practices in the financial services industry; and

(c) The continuing education content requires that its participants demonstrate proficiency in the subject matter of the educational materials.

(3) Credentialing Organization Continuing Education Compliance. Credits of continuing education completed by an investment adviser representative who was awarded and currently holds a credential that qualifies for an examination waiver under subparagraph (10)(a) of Rule 0780-04-03-.01 comply with subparagraph (1)(a) and (1)(b) of this Rule provided all of the following are true:

(a) The investment adviser representative completes the credits of continuing education as a condition of maintaining the credential for the relevant reporting period;

(b) The credits of continuing education completed during the relevant reporting period by the investment adviser representative are mandatory to maintain the credential; and

(c) The continuing education content provided by the credentialing organization during the relevant reporting period is approved investment adviser representative continuing education content.

(4) Investment Adviser Representative Continuing Education Reporting. Every investment adviser representative is responsible for ensuring that the authorized provider reports to NASAA or its designee the investment adviser representative's completion of the applicable investment adviser representative continuing education requirements.

(5) No Carry-Forward. An investment adviser representative who completes credits of continuing education in excess of the amount required for the reporting period may not carry forward excess credits to a subsequent reporting period.

(6) Failure to Complete or Report. An investment adviser representative who fails to comply with this Rule by the end of a reporting period will renew as "CE Inactive" at the close of the calendar year in this state until the investment adviser representative completes and reports to NASAA or its designee all required investment adviser representative continuing education credits for all reporting periods as required by this Rule. An investment adviser representative who is CE Inactive at the close of the next calendar year is not eligible for investment adviser representative registration or renewal of an investment adviser representative registration.

(7) Discretionary Waiver by the Commissioner. The commissioner may, in its discretion, waive any requirements of this Rule.

(8) Home State. An investment adviser representative registered or required to be registered in this state who is registered as an investment adviser representative in the individual's home

(Rule 0780-04-03-.17, continued)

state is considered to be in compliance with this rule provided that both of the following are true:

(a) The investment adviser representative's home state has continuing education requirements that are at least as stringent as this rule; and

(b) The investment adviser representative is in compliance with the home state's investment adviser representative continuing education requirements.

(9) Unregistered Periods. An investment adviser representative who was previously registered under the Act and became unregistered must complete investment adviser representative continuing education for all reporting periods that occurred between the time that the investment adviser representative became unregistered and when the person became registered again under the Act unless the investment adviser representative takes and passes the examination or receives an examination waiver as required by paragraph (10) of Rule 0780-04-03-.01 in connection with the subsequent application for registration.

(10) Definitions. As used in this Rule, the following terms mean:

(a) "Approved investment adviser representative continuing education content" means the materials, written, oral, or otherwise that have been approved by NASAA or its designee and which make up the educational program provided to an investment adviser representative under this rule.

(b) "Authorized provider" means a person that NASAA or its designee has authorized to provide continuing education content required by this Rule.

(c) "Credit" means a unit that has been designated by NASAA or its designee as at least fifty (50) minutes of educational instruction.

(d) "Home state" means the state in which the investment adviser representative has its principal office and place of business.

(e) "Investment adviser representative ethics and professional responsibility content" means approved investment adviser representative continuing education content that addresses an investment adviser representative's ethical and regulatory obligations.

(f) "Investment adviser representative products and practice content" means approved investment adviser representative continuing education content that addresses an investment adviser representative's continuing skills and knowledge regarding financial products, investment features, and practices in the investment advisory industry.

(g) "Investment adviser representative" means an individual who meets the definition of "investment adviser representative" under the Act and an individual who meets the definition of "investment adviser representative" under T.C.A. § 48-1-102.

(h) "NASAA" means the North American Securities Administrators Association, Inc. or a committee designated by its board of directors.

(i) "Reporting period" means one twelve (12) month period as determined by NASAA and described on the NASAA website, nasaa.org, in the Investment Adviser Representative Continuing Education Frequently Asked Questions. An investment adviser representative's initial reporting period with this state commences the first day of the first full reporting period after the individual is registered or required to be registered with this state.

(Rule 0780-04-03-.17, continued)
Authority: *T.C.A. §§ 48-1-102, 48-1-109, 48-1-110, 48-1-112, 48-1-115, and 48-1-116.* ***Administrative History:*** *New rule filed May 3, 2023; effective August 1, 2023.*