Department of State
Division of Publications
312 Rosa L. Parks Ave., 8th Floor
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tnsos.gov

For Department of State Use Only

Sequence Number: 04-10-25
Notice ID(s): 4006-4010
File Date: 4/4/2025

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Tennessee Department of Commerce and Insurance
Division:	Securities Division
Contact Person:	Jacob R. Strait
Address:	500 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	615-253-0646
Email:	jacob.strait@tn.gov

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Don Coleman
Address:	500 James Robertson Parkway, Nashville, TN 37243
Phone:	615-741-6500
Email:	don.coleman@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	500 James Robertson Parkway		
Address 2:	Room 1C		
City:	Nashville		
Zip:	37243		
Hearing Date:	06/11/2025		
Hearing Time:	10:00 AM	_X__CST/CDT ___EST/EDT	

Additional Hearing Information:

Revision Type (check all that apply):
X Amendment
X New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	**Chapter Title**
0780-04-03	Broker-Dealer Regulation
Rule Number	**Rule Title**
0780-04-03-.01	Broker-Dealer Registration
0780-04-03-.02	Exclusions and Exemptions from Broker-Dealer Registration
0780-04-03-.03	Branch Office and Other Business Locations of Broker-Dealers

0780-04-03-.04	Registered Broker-Dealer Net Capital Requirements
0780-04-03-.05	Broker-Dealer Required Records
0780-04-03-.06	Broker-Dealer Reporting Requirements
0780-04-03-.07	Rules of Conduct for Broker-Dealers
0780-04-03-.08	Prohibited Business Practices
0780-04-03-.09	Cybersecurity

Chapter Number	**Chapter Title**
0780-04-04	Broker-Dealer Agent Registration
Rule Number	**Rule Title**
0780-04-04-.01	Agent Registration
0780-04-04-.02	Exemptions from Agent Definition
0780-04-04-.03	Examinations of Agents and Principals
0780-04-04-.04	Agent Reporting Requirements
0780-04-04-.05	Prohibited Business Practices

Chapter Number	**Chapter Title**
0780-04-05	Investment Adviser Regulation
Rule Number	**Rule Title**
0780-04-05-.01	Investment Adviser Registration
0780-04-05-.02	Investment Adviser Notice Filing
0780-04-05-.03	Exemption from Investment Adviser Registration
0780-04-05-.04	Investment Adviser Net Capital Requirements
0780-04-05-.05	Written Policies and Procedures
0780-04-05-.06	Required Records
0780-04-05-.07	Reporting Requirements
0780-04-05-.08	Brochure Requirements
0780-04-05-.09	Prohibited Business Practices
0780-04-05-.10	Investment Adviser Conduct Which Operates as a Fraud or Deceit in Violation of T.C.A. § 48-1-121
0780-04-05-.11	Cybersecurity

Chapter Number	**Chapter Title**
0780-04-06	Investment Adviser Representative Regulation
Rule Number	**Rule Title**
0780-04-06-.01	Investment Adviser Representative Registration
0780-04-06-.02	Exemption from Investment Adviser Representative Registration
0780-04-06-.03	Examinations of Investment Adviser Representatives
0780-04-06-.04	Investment Adviser Representative Reporting Requirements
0780-04-06-.05	Prohibited Business Practices
0780-04-06-.06	Investment Adviser Representative Conduct Which Operates as a Fraud or Deceit in Violation of T.C.A. § 48-1-121
0780-04-06-.07	Continuing Education

Chapter Number	**Chapter Title**
0780-04-07	Oil and Gas Issuer-Dealers
Rule Number	**Rule Title**
0780-04-07-.01	Oil and Gas Issuer-Dealers

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to https://sos.tn.gov/publications/services/rulemaking-guidelines.

Chapter 0780-04-03 is amended by deleting the text of the Chapter in its entirety and substituting the following instead so that, as amended, the Chapter shall read:

CHAPTER 0780-04-03
BROKER-DEALER REGULATION

TABLE OF CONTENTS

0780-04-03-.01	**Broker-Dealer Registration**
0780-04-03-.02	**Exclusions and Exemptions from Broker-Dealer Registration**
0780-04-03-.03	**Branch Office and Other Business Locations of Broker-Dealers**
0780-04-03-.04	**Registered Broker-Dealer Net Capital Requirements**
0780-04-03-.05	**Broker-Dealer Required Records**
0780-04-03-.06	**Broker-Dealer Reporting Requirements**
0780-04-03-.07	**Rules of Conduct for Broker-Dealers**
0780-04-03-.08	**Prohibited Business Practices of Broker-Dealers**
0780-04-03-.09	**Cybersecurity**

0780-04-03-.01 BROKER-DEALER REGISTRATION

(1) CRD System Eligible Broker-Dealer Applicants.

(a) 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.

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

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

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

(b) 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:

1.

(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 subpart (1)(b)1.(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 subparts (1)(b)1.(i)-(ii) of this Rule shall demonstrate compliance with the appropriate net capital requirement for a registered broker-dealer;

2. A copy of the applicant's FINRA membership agreement; and

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

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

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

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

(c)

1. 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

2. If the applicant has not yet had an audit performed in its first year of existence, in lieu of complying with part (2)(c)1. 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;

3. The financial reports required by parts (2)(c)1. and 2. of this Rule shall demonstrate compliance with the appropriate net capital requirement for a registered broker-dealer;

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

(e) A copy of the applicant's membership agreement with each self-regulatory organization of which the applicant is a member; and

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

(3) 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 paragraphs (1) or (2) of this Rule is received by the Division.

(4) Renewals.

(a) 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; and

(b) 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.

(5) 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.

(6) 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.

(7) Abandonment.

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

1. 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

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 applicant.

(b) 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.

(c) Upon the determination that an application pursuant to paragraph (2) of this Rule has been abandoned, the Division shall cancel the pending application without prejudice and, within thirty (30) days of such cancellation, mail a notification of the abandonment to the last known business address of the applicant.

(8) Withdrawal of Applications. An application for registration as a broker-dealer may be withdrawn prior to the effectiveness of registration by following the procedures established by the CRD System or, for non-CRD System broker-dealer applicants, by filing a written request for withdrawal directly with the Division.

(9) Revocation or Denial. 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 paragraph, "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.

***Authority**: T.C.A. §§ 48-1-102, 48-1-109, 48-1-110, 48-1-111, 48-1-114, 48-1-112, 48-1-115, 48-1-116, 17 C.F.R. § 240.15c3-1, 17 C.F.R. § 240.17a-5, and 17 C.F.R. § 402.2.*

0780-04-03-.02 EXCLUSIONS AND EXEMPTIONS FROM BROKER-DEALER REGISTRATION.

(1) Exclusions.

(a) Associated Persons of an Issuer.

1. 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:

(i) 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;

(ii) 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;

(iii) Is not at the time of his participation an associated person of a broker-dealer; and

(iv) Meets the conditions of any one of the following subparts (1)(a)1.(iv)(I), (1)(a)1.(iv)(II), or (1)(a)1.(iv)(III) of this Rule:

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

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)(10), 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)(1), (b)(9), or (b)(10); or

III. That are excluded from the definition of sale pursuant to T.C.A. § 48-1-102(19)(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 except 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 items (1)(a)1.(iv)(I) or (1)(a)1.(iv)(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.

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

3. Definitions. When used in this Rule:

(i) 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.

(ii) 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.

(b) 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 personalty, 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.

(2) Exemptions.

(a) 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:

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

(I) 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;

(II) Evidence of membership in an appropriate Canadian self-regulatory organization, stock exchange, or association of broker-dealers;

(III) Evidence of broker-dealer registration in the provincial or territorial jurisdiction in which the main office of the Canadian broker-dealer is located;

(IV) 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;

(V) 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;

(VI) Evidence of registration in the appropriate Canadian provincial or territorial jurisdiction for each individual identified pursuant to item (2)(a)1.(i)(V) of this Rule;

(VII) Form U-2 Uniform Consent to Service of Process;

(VIII) The appropriate nonrefundable fee as set forth in the Act; and

(IX) 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.

(i) Each exemption notice filing expires each December 31 unless timely renewed.

(ii) An exemption notice filing is timely renewed for the next calendar year if English language versions of the following exhibits are received by the Division on or after November 1 and before the current notice filing expires.

(I) 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;

(II) 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;

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

(IV) 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).

(iii) An exemption notice filing shall expire on December 31 even if an incomplete renewal filing has been made.

3. Abandonment.

(i) The Division may determine that an incomplete initial exemption notice filing has been abandoned if 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 or on behalf of the filer in connection with the filing during such period.

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

4. Termination and Withdrawal.

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

(ii) 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.

(iii) 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 subparts (2)(a)4.(i) or (2)(a)4.(iii) of this Rule.

5. The filings required in paragraph (2) of the Rule shall constitute filings with the commissioner subject to T.C.A. § 48-1-121(c).

(3) The exclusions and exemptions 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(a), 48-1-109, 48-1-112, 48-1-115, 48-1-116, 48-1-121, 48-1-124(e), and 17 C.F.R. § 230.415*

0780-04-03-.03 BRANCH OFFICE AND OTHER BUSINESS LOCATIONS OF BROKER-DEALERS.

(1) Every broker-dealer registered in this state shall notify the Division of the establishment of any branch office or other business location in this state, as well as its current address and the name or names of the agent or agents currently in charge, by filing Form BR through the CRD System or through direct filing, whichever is appropriate, within thirty (30) days from the date of establishment or change.

(2) 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.

***Authority**: T.C.A. §§ 48-1-102, 48-1-109, 48-1-110, 48-1-111, 48-1-112, 48-1-115, 48-1-116, 17 C.F.R. § 240.15c3-1, 17 C.F.R. § 240.17a-5, and 17 C.F.R. § 402.2.*

0780-04-03-.04 REGISTERED BROKER-DEALER NET CAPITAL REQUIREMENTS.

(1) FINRA Broker-Dealers and Exchange Members.

(a) 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).

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

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

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

(3) Other Broker-Dealers.

(a) Each registered broker-dealer that does not fall within paragraphs (1) and (2) of this Rule shall have and maintain a minimum net capital of one hundred thousand dollars ($100,000).

(b) For purposes of this paragraph (3), net capital shall be defined as total assets less total liabilities (net worth) as computed in accordance with generally accepted accounting principles consistently applied.

***Authority**: T.C.A. §§ 48-1-102, 48-1-109, 48-1-110, 48-1-111, 48-1-112, 48-1-115, 48-1-116, 17 C.F.R. § 240.15c3-1, 17 C.F.R. § 240.17a-5, and 17 C.F.R. § 402.2.*

0780-04-03-.05 BROKER DEALER REQUIRED RECORDS.

(1) 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:

(a) 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;

(b) Ledgers reflecting all assets and liabilities, income and expenses, and capital accounts;

(c) 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.

(d) Ledgers (or other records) reflecting the following:

1. Securities in transfer;

2. Dividends and interest received;

3. Securities borrowed and securities loaned;

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

5. Securities failed to receive and failed to deliver; and

6. 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;

(e) 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;

(f) 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;

(g) 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;

(h) 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;

(i) Copies of all communications, correspondence, and other records relating to securities transactions with customers;

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

(k) 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;

(l) 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;

(m) A record of the proof of money balances of all ledger accounts in the form of trial balances. Such trial balances shall be current and prepared at least once a month;

(n) 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;

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

(p) A computation made quarterly (on a calendar year basis) of its net capital and ratio of its aggregate indebtedness to its capital on Form X-17A-5, as adopted by the SEC (FOCUS Report), if the broker-dealer is a broker-dealer described in paragraph (1) of Rule 0780-04-03-.04. Otherwise, a computation made quarterly (on a calendar year basis) of its net capital in the manner prescribed paragraphs (1)-(3) of Rule 0780-04-03-.04;

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

(r) 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).; and

(s) A complete set of the procedures required by SEC Rule 17a-3 (17 C.F.R. § 240.17a-3) and the systems for applying those procedures shall be kept and maintained at every branch office.

(2) All records required to be kept by paragraph (1) 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.

(3) All broker-dealers who act as investment advisers shall also maintain the records required by Rule 0780-04-04-.05.

***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, 48-1-121(a)(2), 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-9T through 17 C.F.R. §240.17a-11, 17 C.F.R. §240.17f-2, and the FINRA Rules of Fair Conduct.*

0780-04-03-.06 BROKER-DEALER REPORTING REQUIREMENTS.

(1) Financial Reports.

(a) Upon request by the Division, each registered broker-dealer shall 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. This report shall be prepared and filed in accordance with the following requirements:

1. The report shall be certified by an independent certified public accountant or independent public accountant;

2. 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;

3. 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

4. The report shall include as a supporting schedule a computation of net capital as required by paragraphs (1) – (3) of Rule 0780-04-03-.04.

(b) In the Division's discretion, the Division may waive the requirements of subparagraph (1)(a) of this Rule by allowing the broker-dealer to file the annual financial report required by SEC Rule 17a-5 (17 C.F.R. § 240.17a-5). This 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.

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

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

1. 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;

2. 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

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 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.

(b) 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 parts (2)(a)1.-3. of this Rule.

(c) 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 parts (2)(a)1.-3. of this Rule.

(d) Nothing in paragraph (2) 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.

(3) Transfer of Control or Change of Name.

(a) 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.

(b) 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.

(c) 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).

(d) 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.

(4) 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.

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

(a) Electronic notice within three (3) business days 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

(b) 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.

(c) Electronic notice within three (3) business days 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.

***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, 48-1-121(a)(2), 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-9T through 17 C.F.R. §240.17a-11, 17 C.F.R. § 240.17f-2, and the FINRA Rules of Fair Conduct.*

0780-04-03-.07 RULES OF CONDUCT FOR BROKER-DEALERS.

(1) Confirmations.

(a) 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:

1. 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;

2. 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;

3. 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;

4. Whether the transaction was unsolicited; and

5. The name of the agent that effected the transaction.

(b) Compliance with SEC Rule 10b-10 (17 C.F.R. § 240.10b-10) or with Rule 2232 of the FINRA Rules of Fair Practice shall be deemed compliance with this Rule.

(2) 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 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.

(3) 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.

***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, 48-1-121(a)(2), 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-9T through 17 C.F.R. § 240.17a-11, 17 C.F.R. §240.17f-2, and the FINRA Rules of Fair Conduct*

0780-04-03-.08 PROHIBITED BUSINESS PRACTICES OF BROKER-DEALERS.

(1) 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:

(a) Causing any unreasonable delay in the delivery of securities purchased or in the remittance of funds necessary to complete the transaction within the time frame customary in the trade;

(b) 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;

(c) Recommending to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that the transaction or 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;

(d) Executing a transaction on behalf of a customer without authority to do so;

(e) 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;

(f) Executing any transaction in a margin account without obtaining from the customer an executed written margin agreement prior to settlement date for the initial transaction in the account;

(g) Failing to segregate customers' free securities or securities in safekeeping;

(h) Hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by Rules of the SEC;

(i) Entering into a transaction with or for a customer at a price not reasonably related to the current market price;

(j) Failing to furnish to a customer purchasing securities in an offering, no later than the due date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus;

(k) Charging an undisclosed or unreasonable and inequitable fee for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;

(l) Offering to buy from or sell to any person any security at a stated price unless such broker-dealer is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell;

(m) Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless the broker-dealer knows or has reasonable grounds to believe that a market

for the security exists other than that made, created or controlled by the broker-dealer, or by any person for whom the broker-dealer is acting or with whom the broker-dealer is associated in the distribution, or any person controlled by, controlling or under common control with the broker-dealer;

(n) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include, but are not limited to, the following:

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

2. Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; provided, however, nothing in this subparagraph shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers;

3. Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others;

(o) Guaranteeing a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer;

(p) Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or sale or such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona fide bid for, or offer of, such security;

(q) Using any advertising or sales presentation in such a fashion as to be deceptive or misleading;

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

(s) Failing to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member;

(t) Failing or refusing to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written demand or complaint;

(u) Failing to pay and fully satisfy any final judgment or arbitration award, resulting from an investment-related, customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the customer and the broker-dealer or broker-dealer agent, in writing, and the broker-dealer or broker-dealer agent complies with the terms of the alternative payment arrangement;

(v) Attempting to avoid payment of any final judgment or arbitration award resulting from an investment-related, customer-initiated arbitration or court proceeding, unless alternative payment

arrangements are agreed to between the customer and the broker-dealer or broker-dealer agent, in writing, and the broker-dealer or broker-dealer agent complies with the terms of the alternative payment arrangements;

(w) Failing to pay and fully satisfy any fine, civil penalty, order of restitution, order of disgorgement, or similar monetary payment obligation imposed upon the broker-dealer or agent by the SEC, the securities or other financial services regulator of any state or province, or any self-regulatory organization;

(x) Establishing or maintaining an account containing fictitious or disguised information;

(y) Borrowing or unauthorized use of customers' funds or securities;

(z) Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer; or without notice to the customer dividing or otherwise splitting the broker-dealer's commission, profits or other compensation from the purchase or sale of securities;

(aa) Placing an order to purchase or sell a security for the account of a client without authority to do so;

(bb) 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;

(cc) 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;

(dd) Entering into a transaction for its own account with a customer in which a commission is charged;

(ee) 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;

(ff) Causing any unreasonable delay in the execution of a transaction on behalf of a customer;

(gg) 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;

(hh) 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, in writing, to such clients their rights to use any broker-dealer for trade execution;

(ii) Dishonest use of certifications, professional designations, senior-specific certifications, or senior-specific professional designations, as determined by the Division based on the following nonexclusive criteria and guidelines:

1. The use of a certification, professional designation, senior-specific certification or senior-specific professional 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 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 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 subpart (1)(ii)(1.)(iv) of this Rule when the organization has been accredited by:

(i) The American National Standards Institute;

(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," like words, or analogous words identifying other affinity groups, 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.

4. For purposes of part (1)(ii)1. 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.

As used herein, 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.

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

(jj) Failing to promptly provide information requested by the Division pursuant to the Act or these Rules promulgated thereunder;

(kk) Failing to comply with any applicable provision of conduct rules, any applicable fair practice or ethical standard, or any other applicable law or rule related to conducting business involving securities promulgated by the SEC or any self-regulatory organization;

(ll) The unfair, misleading or unethical practices set forth above are not exclusive of other activities, such as forgery, embezzlement, non-disclosure or misstatement of material facts, manipulations and various deceptions, all of which shall be considered grounds for suspension or revocation, and the commissioner may suspend or revoke a registration when necessary or appropriate in the public interest.

***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, 48-1-121, 17 C.F.R. § 240.10b-1 through 17 C.F.R. § 240.10b-21, and the FINRA Rules of Fair Conduct.*

0780-04-03-.09 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 the 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;

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.

(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:

(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 (a)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.

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*.

Chapter 0780-04-04 is amended by deleting the text of the Chapter in its entirety and substituting the following instead so that, as amended, the Chapter shall read:

CHAPTER 0780-04-04
BROKER-DEALER AGENT REGULATION

TABLE OF CONTENTS

0780-04-04-.01 Agent Registration
0780-04-04-.02 Exemptions from Agent Definition
0780-04-04-.03 Examinations of Agents and Principals
0780-04-04-.04 Agent Reporting Requirements
0780-04-04-.05 Prohibited Business Practices

0780-04-04-.01 AGENT REGISTRATION.

(1) CRD System Eligible Agent Applicants.

(a) All agent 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:

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

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

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

(b) 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.

(2) Non-CRD System Agent Applicants. All applications for registration as an agent other than those specified in paragraph (1) of this Rule shall be submitted directly to the Division and shall contain the following information:

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

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

(c) Satisfactory evidence of a passing score by the applicant on the appropriate examinations; and

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

(3) 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 paragraph (1) or paragraph (2) of this Rule is received by the Division.

(4) Expiration. All agent registrations shall automatically expire on December 31 of each year without notification by the commissioner, unless the registration has been properly renewed, or is withdrawn or terminated.

(5) Renewals. All CRD system registered agents 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 non-CRD System agents must be submitted directly to the Division and must contain the following:

(a) The appropriate renewal form and all information and exhibits required by such form; and

(b) The appropriate fee as set forth in the Act.

(6) Transfer. There is no provision under the Act to transfer an individual agent's registration. When an agent terminates his or her relationship with a broker-dealer with whom he or she 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 paragraph (7) 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).

(7) Temporary Registration. 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 voluntary terminations of a non-CRD system 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. Temporary registration for non-CRD system agents will not be granted until the Form U4 is received by the Division, and a written request is made by non-CRD system broker-dealer. Any temporary registration for non-CRD system agents shall expire upon the grant or denial of the application for permanent registration, and in no event shall last more than thirty (30) days.

(8) Abandonment.

(a) The Division may determine that an application to register an agent has been abandoned if:

1. 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

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 applicant.

(b) 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.

(c) Upon determination that an application submitted pursuant to paragraph (2) has been abandoned, the Division shall cancel the pending application without prejudice and, within thirty (30) days of such cancellation, mail a notification of the abandonment to the last known business address of the applicant.

(9) Withdrawal of Applications. An application for registration as an agent may be withdrawn prior to the effectiveness of registration by following the procedures established by the CRD system, or for non-CRD system applicants, by filing a written request for withdrawal directly with the Division.

(10) Revocation or Denial. The registration of an agent shall be subject to revocation proceedings even though the registrant has filed a Form U5 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 a Form U5 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 the 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 Form U5. For purposes of this paragraph (10), "filing date" shall mean the date upon which the Form U5 is filed on behalf of a registrant or an applicant through the CRD System, or for non-CRD System agents, the date upon which the Form U5 is actually received by the Division.

Authority: *T.C.A. §§ 48-1-102, 48-1-109, 48-1-110, 48-1-111, 48-1-114, 48-1-112, 48-1-114, 48-1-115, 48-1-116, 48-1-121, 48-1-124(e), 17 C.F.R. § 240.17f-2.*

0780-04-04-.02 EXEMPTIONS FROM AGENT REGISTRATION.

(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, 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.*

0780-04-04-.03 EXAMINATIONS OF AGENTS AND PRINCIPALS.

(1) Examination of Agents of Broker-Dealers.

(a) Each applicant for initial registration as an agent of a broker-dealer shall, unless covered by subparagraph (1)(b) or (1)(c) or otherwise waived by the commissioner, have passed within two years of the date of application:

1. the Series 63/Uniform Securities Agent State Law Examination ("Series 63 Examination") or the Series 66/Uniform Combined State Law Examination ("Series 66 Examination"); and

2. all relevant examinations required by the FINRA and accepted by the Division.

(b) Any individual who has been registered as an agent in any state within twenty-four (24) months from the date of filing an application for registration shall not be required to retake the examinations in subparagraph (1)(a) to be eligible for registration.

(c) Any individual who is not registered as an agent in any state for more than two years but less than five years, who was registered as an agent in at least one jurisdiction for at least one year immediately preceding the termination of the agent registration, who has elected to participate in the FINRA Maintaining Qualifications Program pursuant to FINRA Rule 1240(c), and whose appropriate FINRA qualifying examinations remain valid pursuant to effective participation in the MQP program shall be deemed in compliance with the examination requirements of part (1)(a)1. as long as the individual elects to participate in the NASAA Examination Validity Extension Program within two years of agent registration termination.

(d) Any individual who has not been registered as an agent in any state for more than two years but less than five years, who has elected to participate in the FINRA Maintaining Qualifications Program pursuant to FINRA Rule 1240(c), and whose appropriate FINRA qualifying examinations remain valid pursuant to effective participation in the FINRA Maintaining Qualifications Program shall be deemed in compliance with the examination requirements of part (1)(a)2.

(e) Successful participation in the FINRA Maintaining Qualifications Program shall not extend the Series 66 Examination for purposes of investment adviser representative registration.

(2) Examination of Principals of Broker-Dealers.

(a) 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.

(3) Waiver.

(a) The commissioner may, upon petition and good cause shown by the applicant, waive any or all of the examination requirements set forth above.

(b) For purposes of this Rule, 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 (1)(a)1. and subparagraph (2)(a) of this Rule.

Authority: *T.C.A. §§ 48-1-102, 48-1-109, 48-1-110, 48-1-111, 48-1-114, 48-1-112, 48-1-114, 48-1-115, 48-1-116, 48-1-121, and 48-1-124(e).*

0780-04-04-.04 AGENT REPORTING REQUIREMENTS.

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

(a) 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;

(b) 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

(c) 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.

(2) Upon request by the Division, each agent registered in this state shall file with the Division through the agent's broker-dealer a copy of any answer, response, or reply to any complaint, indictment, or information described in subparagraphs (1)(a)-(c). of this Rule.

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

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, 48-1-121(a)(2), 17 C.F.R. § 240.17f-2, 17 C.F.R. § 240.17a-3 through 17 C.F.R. § 240.17a-5, 17 C.F.R. § 240.17a-9T through 17 C.F.R. § 240.17a-11, and the FINRA Rules of Fair Conduct.*

0780-04-04-.05 PROHIBITED BUSINESS PRACTICES.

(1) 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:

(a) Engaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities, or an executed stock power of a customer;

(b) Effecting securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction;

(c) Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited;

(d) 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;

(e) Dividing or otherwise splitting the agent's 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 affiliated firm of the same broker-dealer;

(f) 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;

(g) Recommending to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that such transaction or 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;

(h) Executing a transaction on behalf of a customer without authority to do so;

(i) 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;

(j) 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;

(k) Executing any transaction in a margin account without obtaining from the customer an executed written margin agreement prior to settlement date for the initial transaction in the account;

(l) Charging a customer an undisclosed or unreasonable commission or service charge in any transaction executed as agent for the customer;

(m) Failing to segregate customers' free securities or securities held in safekeeping;

(n) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive, or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:

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

2. Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; provided, however, nothing in this subsection shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers;

3. Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others;

(o) Guaranteeing a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer;

(p) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;

(q) Failing to furnish to a customer purchasing securities in an offering, no later than the due date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus;

(q) 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;

(r) Using any advertising or sales presentation in such a fashion as to be deceptive or misleading;

(s) 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;

(t) Causing any unreasonable delay in the execution of a transaction on behalf of a customer;

(u) Failing to provide information requested by the Division pursuant to the Act or these Rules;

(v) Failing to pay and fully satisfy any final judgment or arbitration award, resulting from an investment-related, customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the customer and the broker-dealer or broker-dealer agent, in writing, and the broker-dealer or broker-dealer agent complies with the terms of the alternative payment arrangement;

(w) Attempting to avoid payment of any final judgment or arbitration award resulting from an investment-related, customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the customer and the broker-dealer or broker-dealer agent, in writing, and the broker-dealer or broker-dealer agent complies with the terms of the alternative payment arrangements;

(x) Failing to pay and fully satisfy any fine, civil penalty, order of restitution, order of disgorgement, or similar monetary payment obligation imposed upon the broker-dealer or agent by the Securities and Exchange Commission, the securities or other financial services regulator of any state or province, or any self-regulatory organization;

(y) Dishonest use of certifications, professional designations, senior-specific certifications, or senior-specific professional designations, as determined by the Division based on the following nonexclusive criteria and guidelines:

1. The use of a certification, professional designation, senior-specific certification or senior-specific professional 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 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 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 subpart (1)(y)1.(iv) of this Rule when the organization has been accredited by:

(i) The American National Standards Institute;

(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.

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.

As used herein, 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.

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

(z) Failing to comply with any applicable provision of conduct rules, any applicable fair practice or ethical standard, or any other applicable law or rule related to conducting business involving securities promulgated by the SEC or any self-regulatory organization.

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, 48-1-121, 17 C.F.R. § 240.10b-1 through 17 C.F.R. § 240.10b-21, and the FINRA Rules of Fair Conduct.*

CHAPTER 0780-04-05
INVESTMENT ADVISER REGULATION

NEW RULES

TABLE OF CONTENTS

0780-04-05-.01	**Investment Adviser Registration**
0780-04-05-.02	**Investment Adviser Notice Filing**
0780-04-05-.03	**Exemption from Investment Adviser Registration**
0780-04-05-.04	**Investment Adviser Net Capital Requirements**
0780-04-05-.05	**Written Policies and Procedures**
0780-04-05-.06	**Required Records**
0780-04-05-.07	**Reporting Requirements**
0780-04-05-.08	**Brochure Requirements**
0780-04-05-.09	**Prohibited Business Practices**
0780-04-05-.10	**Investment Adviser Conduct Which Operates as a Fraud or Deceit in violation of T. C. A. § 48-1-121**
0780-04-05-.11	**Cybersecurity**

0780-04-05-.01 INVESTMENT ADVISER REGISTRATION.

(1) Investment Advisers

(a) All investment advisers must apply for initial registration in Tennessee through the IARD by complying with the electronic application procedures required by the IARD. The application filed through the IARD shall contain the following, 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; and

3. Satisfaction of the investment adviser representative examination requirements under Rule 0780-04-06-.01 by appropriate executive officers or principals of the applicant.

(b) 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:

1.

(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;

2.

(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 (1)(b)2.(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 one thousand two hundred dollars ($1,200) in investment advisory fees from any client, six (6) or more months in advance, an audited balance sheet shall be prepared in accordance with subparagraph (1)(m) of Rule 0780-04-05-.06. 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 balance sheet 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.

(2) 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 paragraph (1) of this Rule is received by the Division.

(3) All investment advisers must apply for renewal of registration in Tennessee through the IARD by complying with the requirements of the IARD.

(4) Abandonment.

(a) The Division may determine that an application to register as an investment adviser has been abandoned if:

1. 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

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 applicant.

(b) Upon the determination that an application through the IARD has been abandoned, the Division shall, as provided through the routine operation of the IARD, cancel such application without prejudice.

(5) Withdrawal of Applications. An application may be withdrawn prior to the effectiveness of registration by following the procedures established by the IARD.

(6) Revocation or Denial. The registration of an investment adviser shall be subject to revocation proceedings even though the registrant has filed the Form ADV-W 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 the Form ADV-W 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 receipt of the Form ADV-W by a registrant or 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 Form ADV-W. For purposes of this paragraph, the Division shall be deemed to be in receipt of the Form ADV-W filed on behalf of a registrant or an applicant when the Form ADV-W is actually received by the Division through the IARD and, in the instance of a registrant, a termination examination of the investment adviser pursuant to T.C.A. § 48-1-111(d) is completed to the satisfaction of the assistant commissioner for securities.

Authority: *T.C.A. §§ 48-1-102, 48-1-109, 48-1-110, 48-1-111, 48-1-112, 48-1-114, 48-1-115, 48-1-116, 48-1-117, § 222 of the Investment Advisers Act of 1940, 17 C.F.R. § 275.0-3 - .0-6, 17 C.F.R. § 275.203-1 – 3.*

0780-04-05-.02 INVESTMENT ADVISER NOTICE FILING.

(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(13) 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, but no later than thirty (30) days after the material change, with the Division through the IARD.

(2) The filings required herein 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.

(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 Form ADV-W 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 through the IARD, the Division shall cancel the incomplete notice filing in the IARD without prejudice.

Authority: *T.C.A. §§ 48-1-102, 48-1-109, 48-1-115, 48-1-116, 48-1-121, and § 203 of the Investment Advisers Act of 1940*.

0780-04-05-.03 EXEMPTION 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(13)(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;

(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; or

(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;

(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;

(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.

(4) "Client of an Investment Adviser"

(a) General. For purposes of T.C.A. §§ 48-1-102(13)(E)(ii) and subparagraph 1(b), the following are deemed a single client:

1. A natural person, and:

(i) Any minor child of the natural person;

(ii) Any relative, spouse, or relative of the spouse of the natural person who has the same principal residence;

(iii) All accounts of which the natural person and/or the persons referred to in this part (4)(a)1. are the only primary beneficiaries; or

(iv) All trusts of which the natural person and/or the persons referred to in this part (4)(a)1. are the only primary beneficiaries.

2.

(i) A corporation general partnership, limited partnership, limited liability company, trust (other than a trust referred to in subpart (4)(a)1(iv) of paragraph (4), or other legal organization (any of which are referred to hereinafter as a "legal organization") to which investment advice is provided based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners, members, or beneficiaries (any of which are referred to hereinafter as an "owner"); and

(ii) Two (2) or more legal organizations referred to in subpart (4)(a)2(i) that have identical owners.

(b) Special Rules. For purposes of this paragraph (4):

1. 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, however, the determination that an owner is a client will not affect the applicability of this part (4)(b)1 with regard to any other owner;

2. 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;

3. A limited partnership or limited liability company is a client of any general partner, managing member or other person acting as investment adviser to the partnership or limited liability company;

4. Any person for whom an investment adviser provides investment advisory services without compensation need not be counted as a client;

5. An investment adviser that has its principal office and place of business outside of Tennessee 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;

6. An investment adviser may not rely on subpart (4)(a)2(i) with respect to any company that would be an investment company under section 3(a) of the Investment Company Act, 15 U.S.C. 80a-3(a), but for the exception from that definition by either section 3(c)(1) or 3(c)(7) of such Act, 15 U.S.C. 80a-3(c)(1) or (7); and

7. For purposes of part (4)(b)5., a client who is an owner of a private fund is a resident of the place at which the client resides at the time of the client's investment in the fund.

(c) Holding Out. Any investment adviser relying on this paragraph (4) shall not be deemed to be holding itself out generally to the public as an investment adviser, within the meaning of subparagraph (1)(b), 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, 48-1-109, 48-1-115, 48-1-116, and 48-1-121*.

0780-04-05-.04 INVESTMENT ADVISER NET CAPITAL REQUIREMENTS.

(1) Except as provided under paragraph (4) of this Rule, every investment adviser registered or required to be registered shall have and maintain a readily marketable minimum net capital of twenty thousand dollars ($20,000) unless the investment adviser has custody of client funds, in which case the amount shall be thirty-five thousand dollars ($35,000).

(2) For purposes of this Rule, "net capital" shall be defined as total assets less total liabilities (net worth) as computed in accordance with generally accepted accounting principles, consistently applied, but shall not include as assets: prepaid expenses (except as to items properly classified assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature, home, home furnishings, automobiles, and the following :

(a) In the case of an individual: home equity, and any other personal items not readily marketable;

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

(c) In the case of a partnership: advances or loans to partners or affiliates, and uncollateralized receivables from partners or affiliates; and

(d) In the case of a limited liability company: advances or loans to members or affiliates, personal items not readily marketable, and uncollateralized receivables from members or affiliates.

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

(4) An investment adviser, which has its principal place of business in another state, shall not be subject to the net capital requirements of paragraph (1) if:

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

(b) 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

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

(5) For purposes of this Rule:

(a) "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; and

(b) "Readily marketable" means assets that can be sold or converted to cash within a short period of time, usually within one (1) week, and can include, but is not limited to, publicly traded securities, money market instruments, and certificates of deposit.

Authority: *T.C.A. §§ 48-1-102, 48-1-109, 48-1-110, 48-1-111, 48-1-112, 48-1-115, 48-1-116, 48-1-117, and 48-1-121, and § 222 of the Investment Advisers Act of 1940, and 17 C.F.R. § 275.203a-3*.

0780-04-05-.05 WRITTEN POLICIES AND PROCEDURES.

(1) It is unlawful for an investment adviser registered or required to be registered pursuant to T.C.A. § 48-1-109 to provide investment advice to clients unless the investment adviser establishes, maintains, and enforces written policies and procedures tailored to the investment adviser's business model, taking into account the size of the firm, type(s) of service(s) provided, and the number of locations of the investment adviser. The written policies and procedures must provide for at least the following:

(a) Compliance Policies and Procedures. The investment adviser must establish, maintain, and enforce written compliance policies and procedures reasonably designed to prevent violations by the investment adviser of the Act and the Rules that the commissioner has adopted under the Act;

(b) Supervisory Policies and Procedures. The investment adviser must establish, maintain, and enforce written supervisory policies and procedures reasonably designed to prevent violations by the investment adviser's supervised persons of the Act and the Rules that the commissioner has adopted under the Act;

(c) Proxy Voting Policies and Procedures.

1. If the investment adviser has the authority to vote client securities:

(i) The investment adviser must establish, maintain, and enforce written proxy voting policies and procedures that are reasonably designed to ensure that the investment adviser votes client securities in the best interest of clients. These procedures must include how the investment adviser addresses material conflicts that may arise between its interests and those of the investment adviser's clients;

(ii) Disclose to clients how they may obtain information from the investment adviser about how it voted with respect to their securities; and

(iii) Describe to clients the investment adviser's proxy voting policies and procedures and, upon request, furnish a copy of the policies and procedures to the requesting client.

2. If the investment adviser does not have the authority to vote client securities then this information must be disclosed to clients.

(d) Physical Security and Cybersecurity Policies and Procedures. The investment adviser must establish, implement, update, and enforce written physical security policies and procedures reasonably designed to ensure the confidentiality, integrity, and availability of physical and electronic records and information. The policies and procedures must be tailored to the investment adviser's business model, taking into account the size of the firm, type(s) of service(s) provided, and the number of locations of the investment adviser. The policies and procedures for cybersecurity must be in conformance with requirements of Rule 0780-04-05-.11.

1. The physical security policies and procedures must:

   (i) Protect against reasonably anticipated threats or hazards to the security or integrity of client records and information;

   (ii) Ensure that the investment adviser safeguards confidential client records and information; and

   (iii) Protect any records and information the release of which could result in harm or inconvenience to any client.

2. The physical security policies and procedures must cover at least five (5) functions:

   (i) Identify. Develop the organizational understanding to manage information security risk to systems, assets, data, and capabilities.

   (ii) Protect. Develop and implement the appropriate safeguards to ensure delivery of critical infrastructure services.

   (iii) Detect. Develop and implement the appropriate activities to identify the occurrence of an information security event;

   (iv) Respond. Develop and implement the appropriate activities to take action regarding a detected information security event; and

   (v) Recover. Develop and implement the appropriate activities to maintain plans for resilience and to restore any capabilities or services that were impaired due to an information security event.

3. Privacy Policy. The investment adviser must deliver upon the investment adviser's engagement by a client, and on an annual basis thereafter, a privacy policy to each client that is reasonably designed to aid in the client's understanding of how the investment adviser collects and shares, to the extent permitted by state and federal law, non-public personal information. The investment adviser must promptly update and deliver to each client an amended privacy policy if any of the information in the policy becomes inaccurate.

(e) Code of Ethics.

1. The investment adviser must establish, maintain, and enforce a written code of ethics that, at a minimum, includes:

   (i) A standard (or standards) of business conduct that the investment adviser requires of its supervised persons, which must reflect the investment adviser's fiduciary obligations and those of its supervised persons;

   (ii) Provisions requiring the investment adviser's supervised persons to comply with applicable state and federal securities laws;

   (iii) Provisions requiring all of the investment adviser's access persons to report, and the investment adviser to review, their personal securities transactions and holdings periodically as provided below;

   (iv) Provisions requiring supervised persons to report any violations of the investment adviser's code of ethics promptly to its chief compliance officer or, provided the investment adviser's chief compliance officer also receives reports of all violations, to other persons designated in the investment adviser's code of ethics; and

   (v) Provisions requiring the investment adviser to provide each of its supervised persons with a copy of the investment adviser's code of ethics and any amendments, and requiring the investment adviser's supervised persons to

provide it with a written acknowledgment of their receipt of the code and any amendments.

2. Reporting Requirements.

(i) Holdings reports. The code of ethics must require the investment adviser's access persons to submit to its chief compliance officer or other persons designated in the investment adviser's code of ethics a report of the access person's current securities holdings that meets the following requirements:

(I) Content of holdings reports. Each holdings report must contain, at a minimum:

I. The title and type of security, and as applicable the exchange ticker symbol or CUSIP number, number of shares, and principal amount of each reportable security in which the access person has any direct or indirect beneficial ownership;

II. The name of any broker, dealer, or bank with which the access person maintains an account in which any securities are held for the access person's direct or indirect benefit; and

III. The date the access person submits the report.

(II) Timing of holdings reports. The investment adviser's access persons must each submit a holdings report:

I. No later than ten (10) days after the person becomes an access person, and the information must be current as of a date no more than forty-five (45) days prior to the date the person becomes an access person.

II. At least once each twelve (12)-month period thereafter on a date selected by the investment adviser, and the information must be current as of a date no more than forty-five (45) days prior to the date the report was submitted.

(ii) Transaction reports. The code of ethics must require access persons to submit to the investment adviser's chief compliance officer or other persons designated in the investment adviser's code of ethics quarterly securities transactions reports that meet the following requirements:

(I) Content of transaction reports. Each transaction report must contain, at minimum, the following information about each transaction involving a reportable security in which the access person had, or as a result of the transaction acquired, any direct or indirect beneficial ownership:

I. The date of the transaction, the title, and as applicable the exchange ticker symbol or CUSIP number, interest rate and maturity date, number of shares, and principal amount of each reportable security involved;

II. The nature of the transaction (i.e., purchase, sale, or any other type of acquisition or disposition);

III. The price of the security at which the transaction was effected;

IV. The name of the broker, dealer, or bank with or through which the transaction was effected; and

V. The date the access person submits the report.

(II) Timing of transaction reports. Each access person must submit a transaction report no later than thirty (30) days after the end of each calendar quarter, which report must cover, at a minimum, all transactions during the quarter.

(iii) Exceptions from reporting requirements. The investment adviser's code of ethics need not require an access person to submit:

(I) Any report with respect to securities held in accounts over which the access person had no direct or indirect influence or control;

(II) A transaction report with respect to transactions effected pursuant to an automatic investment plan in which regular periodic purchases or withdrawals are made automatically in or from investment accounts in accordance with a predetermined schedule and allocation, including a dividend reinvestment plan; or

(III) A transaction report if the report would duplicate information contained in broker trade confirmations or account statements that the investment adviser holds in its records so long as the investment adviser receives the confirmations or statements no later than 30 days after the end of the applicable calendar quarter.

(iv) Pre-approval of certain investments. The investment adviser's code of ethics must require its access persons to obtain the investment adviser's approval before they directly or indirectly acquire beneficial ownership in any security in an initial public offering or in a limited offering.

(v) Small investment advisers. If the investment adviser has only one access person, it is not required to submit reports to itself or to obtain its own approval for investments in any security in an initial public offering or in a limited offering, if the investment adviser maintains records of all of its holdings and transactions that this section would otherwise require the investment adviser to report.

(vi) Material Non-Public Information Policy and Procedures. The investment adviser must establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by the investment adviser or any person associated with the investment adviser.

(vii) Business Continuity and Succession Plan. The investment adviser must establish, maintain, and enforce written policies and procedures relating to a business continuity and succession plan. The plan must provide for at least the following:

(I) The protection, backup, and recovery of books and records;

(II) Alternate means of communications with clients, key personnel, employees, vendors, service providers (including third-party custodians), and regulators, including, but not limited to, providing notice of a significant business interruption or the death or unavailability of key personnel or other disruptions or cessation of business activities;

(III) Office relocation in the event of temporary or permanent loss of a principal place of business;

(IV) Assignment of duties to qualified responsible persons in the event of the death or unavailability of key personnel; and

(V) Otherwise minimizing service disruptions and client harm that could result from a sudden significant business interruption.

(2) Annual review. The investment adviser must review, no less frequently than annually, the adequacy of the policies and procedures established pursuant to this section and the effectiveness of their implementation.

(3) Chief Compliance Officer. The investment adviser must designate a supervised person as the chief compliance officer responsible for administering the investment adviser's policies and procedures.

(4) Definitions. For the purposes of the Rule:

(a) "Supervised person" means any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser. The definition includes investment adviser representatives, employees, independent contractors, or other associated persons and supervised personnel, or other person acting on the behalf of the investment adviser.

(b) "Chief compliance officer" means a supervised person with the authority and resources to develop and enforce the investment adviser's policies and procedures. The individual designated to serve as chief compliance officer must be registered as an investment adviser representative and must have the background and skills appropriate for fulfilling the responsibilities of the position.

(c) "Access person" means:

1. Any of the investment adviser's supervised person:

(i) Who has access to non-public information regarding any client's purchase or sale of securities, or non-public information regarding the portfolio holdings of any reportable fund, or

(ii) Who is involved in making securities recommendations to clients, or who has access to such recommendations that are non-public.

2. If providing investment advice is the investment adviser's primary business, all of its directors, officers, and partners are presumed to be access persons.

(d) "Beneficial ownership" is interpreted in the same manner as it would be under 17 C.F.R. § 240.16a-1 in determining whether a person has beneficial ownership of a security for purposes of section 16 of the 1934 Act (15 U.S.C. 78p) and the rules and regulations thereunder. Any report required by 17 C.F.R. 275.204A-1(b) may contain a statement that the report will not be construed as an admission that the person making the report has any direct or indirect beneficial ownership in the security to which the report relates.

(e) "Federal securities laws" means the 1933 Act (15 U.S.C. 77a-aa), the 1934 Act (15 U.S.C. 78a-mm), the Investment Company Act (15 U.S.C. 80a), the Investment Advisers Act (15 U.S.C. 80b), title V of the Gramm-Leach-Bliley Act (Pub. L. 106-102, 113 Stat. 1338 (1999), the Sarbanes-Oxley Act of 2002 (Pub. L. 107-204, 116 Stat. 745 (2002)), any rules adopted by the SEC under any of these statutes, the Bank Secrecy Act (31 U.S.C. 5311-5314; 5316-5332) as it applies to funds and investment advisers, and any rules adopted thereunder by the SEC or the U.S. Department of the Treasury.

(f) "Fund" means an investment company registered under the Investment Company Act.

(g) "Initial public offering" means an offering of securities registered under the 1933 Act (15 U.S.C. 77a), the issuer of which, immediately before the registration, was not subject to the reporting requirements of sections 13 or 15(d) of the 1934 Act (15 U.S.C. 78m or 78o(d)).

(h) "Limited offering" means an offering that is exempt from registration under the 1933 Act pursuant to section 4(2) or section 4(5) (15 U.S.C. 77d(2) or 77d(5)) or pursuant to §§ 230.504 or 230.506 of this chapter.

(i) "Purchase or sale of a security" includes, among other things, the writing of an option to purchase or sell a security.

(j) "Reportable security" means a security as defined in Rule 0780-04-01-.03(1)(m), except that it does not include:

1. Direct obligations of the Government of the United States;

2. Bankers' acceptances, bank certificates of deposit, commercial paper, and high- quality short-term debt instruments, including repurchase agreements;

3. Shares issued by money market funds;

4. Shares issued by open-end funds other than reportable funds; and

5. Shares issued by unit investment trusts that are invested exclusively in one or more open-end funds, none of which are reportable funds.

(k) "State securities laws" means all applicable state securities statutes, rules, and regulations, including, without limitation, the registration, permit or qualification requirements thereunder.

Authority: *T.C.A. §§ 48-1-102, 48-1-109, 48-1-110, 48-1-111, 48-1-112, 48-1-115, 48-1-116, 48-1-117, and 48-1-121, and §§ 203A, 205, and 222 of the Investment Advisers Act of 1940, ,17 C.F.R. § 275.203-204.*

0780-04-05-.06 REQUIRED RECORDS.

(1) Except as provided in paragraph (4) of this Rule, every registered investment adviser shall maintain and keep true, accurate, and current the following books and records, including but not limited to, originals or electronic copies sent or received by such investment adviser relating to its business, unless waived by the commissioner, and make those books and records available to the commissioner upon request:

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

(b) Originals of all written communications received and copies of all written communications sent by the investment adviser relating to

1. any recommendation made or proposed to be made and any advice given or proposed to be given;

2. any receipt, disbursement or delivery of funds or securities; or

3. the placing or execution of any order to purchase or sell any security, provided, however

(i) that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, and

(ii) that if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication, or other investment advisory service to more than ten (10) persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if the notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular or advertisement a memorandum describing the list and its source;

(c) A record showing all receivables and payables;

(d) A memorandum of each order given by the investment adviser for the purchase or sale of any security; of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt, or delivery of a particular security; and of any modification or cancellation of any such order or instruction. The memoranda shall show the terms and conditions of the order, instruction, modification, or cancellation; shall identify the person connected with the investment

adviser who recommended the transaction to the client and the person who placed the order; and shall show the account for which the order was entered, the date of entry, and the bank or broker-dealer by or through whom the order was executed, where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated;

(e)

1. 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

2. 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 shares bought or sold; and

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

(f) A list or other record of all accounts which identifies the accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client;

(g) A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser;

(h) Copies of all communications, correspondence, and other records relating to securities transactions, and copies of all agreements entered into by the investment adviser with respect to any account, that set forth the fees to be charged and the manner of computation and method of payment thereof. The contracts shall be fair and reasonable and indicate the client's risk tolerance, investment objectives, annual income, net worth, and liquid net worth, and shall be signed and dated by all persons having an interest in the account;

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

(j) A computation, made monthly, of the investment adviser's net capital;

(k) Copies of all written agreements, acknowledgments, and solicitor disclosure statements required by Rule 0780-04-05-.10(1);

(l) All checkbooks, bank statements, canceled checks, and cash reconciliations of the investment adviser;

(m) All trial balances, financial statements, and internal audit working papers relating to the business of the investment adviser. For purposes of this Rule, "financial statements" shall mean a balance sheet prepared in accordance with generally accepted accounting principles, an income statement, a cash flow statement, and a net worth computation as required by Rule 0780-04-05-.04;

(n) A record of every transaction in a security in which the investment adviser or any investment advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership. The record shall state the title and

amount of the security involved; the date and nature of the transaction (i.e. purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or investment advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten (10) days after the end of the calendar quarter in which the transaction was effected. The records required by this subsection shall not include the following:

1. Transactions effected in any account over which neither the investment adviser nor any investment advisory representative of the investment adviser has any direct or indirect influence or control; and

2. Transaction securities which are direct obligations of the United States;

(o) All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all management accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including, but not limited to, electronic media that the investment adviser circulates or distributes, directly or indirectly, to two (2) or more persons (other than persons connected with the investment adviser); provided, however, that with respect to the performance of management accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this paragraph;

(p) A file containing a copy of all written communications received or sent regarding any litigation involving the investment adviser, any investment adviser representative, or employee, and regarding any written customer or client complaint;

(q) Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to the client;

(r) A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self-regulatory organization and that pertains to the registrant or its investment adviser representatives, of which should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence;

(s) Where the investment adviser inadvertently held or obtained a client's securities or funds and returned them to the client within three (3) business days of receiving them, or has forwarded checks drawn by clients and made payable to third parties within three (3) business days of receipt, the investment adviser shall keep a ledger or other listing of all securities or funds held or obtained including the following information:

1. Issuer;

2. Type of security and series;

3. Date of issue;

4. For debt instruments, the denomination, interest rate, and maturity date;

5. Certificate number, including alphabetical prefix or suffix;

6. Name in which registered;

7. Date given to the investment adviser;

8. Date sent to client, sender, or third party;

9. Form of delivery to client, sender, or third party, or a copy of the form of delivery to client, sender, or third party;

10. Mail confirmation number, if applicable, or confirmation by client, sender, or third party of the funds' or security's return; and

11. Date each check was received by the investment adviser;

(t) If an investment adviser obtains possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving any public offering that comply with the exception from custody under Rule 0780-04-05-.10(3), the investment adviser shall keep the following records:

1. A record showing the issuer or current transfer agent's name, address, phone number, and other applicable contract information pertaining to the party responsible for recording client interests in the securities; and
2. A copy of any legend, shareholder agreement, or other agreement showing that those securities that are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer;

(u) For an investment adviser that has custody of a client's funds or securities, all records and evidence of compliance required by Rule 0780-04-05-.10(3)(a);

(v) A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of the investment adviser in accordance with the provisions of the Brochure Requirement found in 0780-04-05-.08, and a record of the dates that each written statement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client;

(w) If an investment adviser has custody solely as a consequence of its authority to make withdrawals from client accounts to pay its investment advisory fee and complies with the terms described under Rule 0780-04-05-.10(3)(c)3., the records required to be made and kept shall include the following:

1. A copy of any and all documents executed by the client, including a limited power of attorney, under which the investment adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the investment adviser's instruction to the custodian;

2. A journal or other record showing all purchases, sales receipts and deliveries of securities, including certificate numbers, for the accounts and all other debits and credits to the accounts;

3. A separate ledger account for each client showing all purchases, sales, receipts, and deliveries of securities, the date and price of each purchase and sale, and all debits and credits;

4. Copies of confirmations of all transactions effected by or for the account of any client;

5. A record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount of interest of each client, and the location of each security;

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

7. If applicable to the investment adviser's situation, a copy of the special examination report verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination;

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

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

(x) If an investment adviser has custody because it advises a pooled investment vehicle as defined in Rule 0780-04-05-.10(3)(e)2.(i)(III), the adviser shall also keep the following records:

1. True, accurate, and current account statements;

2. Where the investment adviser complies with Rule 0780-04-05-.10(3)(a), the records required to be made and kept shall include the following:

(i) The date(s) of the audit;

(ii) A copy of the audited financial statement; and

(iii) Evidence of the mailing of the audited financial statements to all limited partners, members, or other beneficial owners within one hundred twenty (120) days of the end of its fiscal year;

(y) Every investment adviser subject to Rule 0780-04-05-.10(3)(a) who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate, and current:

1. Records showing separately for each client the securities purchased and sold, and the date, amount and price of each purchase and sale; and

2. For each security in which any client has a current position, information from which the investment adviser can promptly furnish the name of each client, and the current amount or interest of the client;

(z) An investment adviser subject to 0780-04-05-.10(3)(a), of this Rule, before ceasing to conduct or discontinuing business as an investment adviser shall arrange for and be responsible for the preservation for the books and records required to be maintained and preserved under this Rule for the remainder of the period specified in this Rule, and shall notify the Division in writing of the exact address where the books and records will be maintained during the period:

1. Pursuant to Rule 0780-04-05-.06 the records required to be maintained and preserved may be immediately produced or reproduced, and maintained and preserved for the required time, by an investment adviser on:

(i) Paper or hard copy form, as those records are kept in their original form;

(ii) Micrographic media, including microfilm, or any similar medium; or

(iii) Electronic storage media, including any digital storage medium or system that meets the terms of this section.

2. The investment adviser must:

(i) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

(ii) Provide promptly any of the following that the Division may request:

(I) A legible, true, and complete copy of the record in the medium and format in which it is stored;

(II) A legible, true, and complete printout of the record; or

(III) Means to access, view, and print records; and

(iii) Separately store for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section;

(aa) Any book or other record made, kept, maintained, and preserved in compliance with Rule 12 C.F.R. § 275.204-2 under the Investment Advisers Act, which is substantially the same as the book or other record required to be made, kept, maintained, and preserved under this Rule, shall be deemed to be made, kept, maintained, and preserved in compliance with this Rule;

(bb) All payroll records, corporate charters, certificates of incorporation, partnership articles, minute books, and other records routinely kept in the course of operating a business;

(cc) A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication recommending the purchase or sale of a specific security, which the investment adviser circulates or distributes, directly or indirectly, to two (2) or more persons (other than persons connected with the investment adviser), and if the communication does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons therefore; and

(dd) For each client that was obtained by the investment adviser by means of a referral from a third party to whom a cash fee was paid by the adviser, the following is required:

1. Evidence of a written agreement, to which the investment adviser is a party, related to the payment of the fee;

2. A signed and dated acknowledgement of receipt from the client evidencing the client's receipt of the investment adviser's disclosure statement; and

3. A copy of a written disclosure statement from the referring party to the investor.

(2) When an investment adviser that is registered in this state is engaged in more than one (1) enterprise or activity, it shall maintain separate books of accounts and records relating to its securities business and the assets shall not be commingled with those of other businesses, and there shall be a clearly defined division with respect to income and expenses.

(3) All records required by paragraph (1) 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.

(4) 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 Rule if:

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

(b) 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;

(c) The investment adviser makes copies of the books and records available to the commissioner upon request; and

(d) The provisions of paragraph (4) 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.

(5) Definitions. For the purposes of this Rule:

(a) "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; and

(b) "Discretionary power" shall not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

Authority: *T.C.A. §§ 48-1-102, 48-1-109, 48-1-110, 48-1-111, 48-1-112, 48-1-115, 48-1-116, 48-1-117, and 48-1-121, and § 222 of the Investment Advisers Act of 1940, and 17 C.F.R. § 275.204-1.*

0780-04-05-.07 REPORTING REQUIREMENTS.

(1)

(a) 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.

(b) For any investment adviser registered in this state which has custody of client funds or securities, or which requires prepayment of more than one thousand dollars ($1,000) in investment advisory fees from any client, six (6) or more months in advance, such statement of financial condition (balance sheet) shall be:

1. Certified by an independent certified public accountant or independent public accountant;

2. Prepared in accordance with generally accepted accounting principles consistently applied; and

3. 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.

(2)

(a) Upon request by the Division, each investment adviser registered in this state shall file with the Division a copy of, or any information requested that is related to, the following:

1. 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;

2. 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

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, 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.

(b) Upon request of the Division, each investment adviser registered in this state shall file with the Division a copy of, or any information requested that is related to, any answer, response, or reply to any complaint, indictment, or information described in parts (2)(a)1.-3. of this Rule.

(c) Upon request by the division, each investment adviser registered in this state shall file with the Division a copy of, or any information requested that is related to, any decision, order, or sanction that is made, entered, or imposed with respect to any proceeding described in parts (2)(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.

(3)

(a) Each investment adviser registered in this state, or which has made a notice filing pursuant to T.C.A. § 48-1-109(c)(2), shall file with the Division through the IARD, 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.

(b) 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).

(c) 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.

(4) 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, but no later than thirty (30) days after the material change, through the IARD.

(5) Each investment adviser registered in this state shall file with the Division, through the IARD, 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.

Authority: *T.C.A. §§ 48-1-102, 48-1-109, 48-1-110, 48-1-111, 48-1-112, 48-1-115, 48-1-116, 48-1-117, and 48-1-121, and § 222 of the Investment Advisers Act of 1940, and 17 C.F.R. § 275.204-2.*

0780-04-05-.08 BROCHURE REQUIREMENTS.

(1) General requirements. 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 investment advisory client and prospective investment advisory client with:

(a) A brochure, which may be a copy of Form ADV Part 2A or written documents containing the information required by Form ADV Part 2A;

(b) A copy of its Part 2B brochure supplement for each individual:

1. Providing investment advice and having direct contact with clients in this state; or

2. Exercising discretion over assets of clients in this state, even if no direct contact is involved.

(c) A copy of its Part 2A Appendix 1 wrap fee brochure if the investment adviser sponsors or participates in a wrap fee account;

(d) A summary of material changes, which may be included in Form ADV Part 2 or given as a separate document. For purposes of this subparagraph, fee changes constitute material changes requiring an update to all parts of Form ADV;

(e) The brochure must comply with the language, organizational format, and filing requirements specified in the Instructions to Form ADV Part 2; and

(f) Such other information as the Division may require.

(2) Delivery.

(a) Initial Delivery. An investment adviser, except as provided in subparagraph (2)(c), shall deliver the Part 2A brochure and any brochure supplements required by this section to a prospective investment advisory client:

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

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

(b) Annual Delivery. If material changes have taken place since the last summary and brochure delivery, then investment adviser, except as provided in subparagraph (2)(c), must:

1. Deliver within one hundred twenty (120) days of the end of its fiscal year a free, updated brochure and related brochure supplements which include or are accompanied by a summary of material changes; or

2. Deliver a summary of material changes that includes an offer to provide a copy of the updated brochure and supplements and information on how the client may obtain a copy of the brochures and supplements. Any brochure requested in writing by the investment advisory client pursuant to an offer under this paragraph must be mailed or delivered within seven (7) days of the receipt of the request.

(c) Delivery of the brochure and related brochure supplements required by subparagraphs (2)(a) and (b) need not be made to:

1. Clients who receive only impersonal advice and who pay less than five hundred dollars ($500) in fees per year; or

2. An investment company registered under the Investment Company Act; or

3. A business development company as defined in the Investment Company Act and whose investment advisory contract meets the requirements of section 15c of that Act.

(d) Delivery of the brochure and related brochure supplements required by subparagraphs (2)(a) and (b) may be made electronically if the investment adviser:

1. In the case of an initial delivery to a potential client, obtains a verification that a readable copy of the brochure and supplements were received by the client;

2. In the case of other than initial deliveries, obtains each client’s prior consent to provide the brochure and supplements electronically;

3. Prepares the electronically delivered brochure and supplements in the format prescribed in subparagraph (a) and instructions to Form ADV Part 2;

4. Delivers the brochure and supplements in a format that can be retained by the client in either electronic or paper form; and

5. Establishes procedures to supervise personnel transmitting the brochure and supplements, to prevent violations of this Rule.

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

(4) Definitions. For the purpose of this Rule:

(a) "Contract for impersonal investment 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.

(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.

Authority: *T.C.A. §§ 48-1-109, 48-1-112, 48-1-115, 48-1-116, § 222 of the Investment Advisers Act of 1940, and 17 C.F.R. § 275.204-4.*

0780-04-05-.09 PROHIBITED BUSINESS PRACTICES.

(1) A person who is an investment adviser, or a federal covered adviser, is a fiduciary and has a duty to act primarily for the benefit of its clients. The provisions of this subsection shall apply to federal covered investment advisers to the extent that the conduct alleged is fraudulent, deceptive, or as otherwise permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290). The following are deemed "dishonest or unethical business practices" by an investment adviser 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:

(a) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser;

(b) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both;

(c) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives, and character of the account;

(d) Placing an order to purchase or sell a security for the account of a client without authority to do so;

(e) 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;

(f) 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;

(g) 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;

(h) Extending, arranging for, or participating in arranging for credit to a client in violation of the 1934 Act or the regulations of the Federal Reserve Board;

(i) 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 investment advisory services being offered or fees to be charged for such service, or omitting 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;

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

(k) Charging a client an unreasonable advisory fee. Any fee above two percent (2%) of the client's assets under management shall create a rebuttable presumption that the fee is unreasonable;

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

1. Compensation agreements connected with investment advisory services to clients, which are in addition to compensation from such clients for such services; and

2. Charging a client an investment advisory fee for rendering advice when a commission for executing securities transactions, pursuant to such advice, will be received by the investment adviser or its employees;

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

(n) Publishing, circulating, or distributing any advertisement which does not comply with Rule 0780-04-05-.10(5) under the Act;

(o) Disclosing the identity, affairs, or investments of any client or former client unless required by law to do so, or unless consented to in writing by the client;

(p) 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 investment adviser's action is subject to and does not comply with the requirements of this Rule under the Act;

(q) Entering into, extending, or renewing any investment advisory contract, unless such contract is in writing and:

1. 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 investment adviser, to any investment adviser representative(s), or to any combination thereof; and

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

2. Includes acknowledgment by the client that the client was provided with a copy of the brochure at least forty-eight (48) hours prior to entering into any investment advisory contract. If the brochure was not provided at least (forty-eight) 48 hours prior to the client entering into the investment advisory contract, then the client has five (5) days to terminate the contract without penalty;

(r) Entering into, extending, or renewing any advisory contract contrary to the provisions of Section 205 of the Investment Advisers Act. This provision shall apply to all investment advisers registered or required to be registered under this Act, notwithstanding whether such investment adviser would be exempt from federal registration pursuant to Section 203(b) of the Investment Advisers Act;

(s) 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;

(t) 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;

(u) Failing to provide information requested by the Division pursuant to the Act or these Rules;

(v) Failing to establish, maintain, and enforce written policies and procedures reasonably designed, to prevent the misuse of material nonpublic information contrary to the provisions of Section 204A of the Investment Advisers Act;

(w) Possessing or utilizing a client's unique identifying information for access to a client's account held by the registrant or any other party. This includes, but is not limited to usernames and passwords;

(x) Failing to pay and fully satisfy any final judgment or arbitration award resulting from an investment-related, client or customer initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the client and the investment adviser or investment adviser representative or between the customer and the broker-dealer or broker-dealer agent, in writing, and the broker-dealer or broker-dealer agent complies with the terms of the alternative payment arrangement;

(y) Attempting to avoid payment of any final judgment or arbitration award resulting from an investment-related, client or customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the client and the investment adviser or investment adviser representative or between the customer and the broker-dealer or broker-dealer agent, in writing, and the broker-dealer or broker-dealer agent complies with the terms of the alternative payment arrangements;

(z) Failing to pay and fully satisfy any fine, civil penalty, order of restitution, order of disgorgement, or similar monetary payment obligation imposed upon the investment adviser or investment adviser representative by the Securities and Exchange Commission, the securities or other financial services regulator of any state or province, or any self-regulatory organization;

(aa) Dishonest use of certifications, professional designations, senior-specific certifications, or senior-specific professional designations, as determined by the Division based on the following nonexclusive criteria and guidelines:

1. The use of a certification, professional designation, senior-specific certification or senior-specific professional 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 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 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 subpart (1)(ii)(1.)(iv) of this Rule 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," like words, or analogous words identifying other affinity groups, 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.

4. For purposes of subpart (aa)1.(ii) 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.

As used herein, 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.

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

(bb) Failing to establish, maintain, and enforce a required policy or procedure.

(2) Nothing in this Rule shall limit the commissioner's authority to enforce existing provisions of this law.

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), § 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.*

0780-04-05-.10 INVESTMENT ADVISER CONDUCT WHICH OPERATES AS A FRAUD OR DECEIT IN VIOLATION OF T.C.A. § 48-1-121.

(1) Cash Payments for Client Solicitations

(a) 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, for any investment adviser to pay a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities unless:

1. The solicitor is registered as an investment adviser or investment adviser representative or is exempt from registration as provided for in T.C.A. § 48-1-109(c);

2. The solicitor is not a person:

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

(ii) 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);

(iii) 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;

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

(v) Subject to an order, judgment, or decree issued under section 203(f) of the Investment Advisers Act, or (B) convicted within the previous ten years of any felony or misdemeanor involving conduct described in section 203(e)(2)(A) through (D) of the Investment Advisers Act, or (C) who has been found by the SEC to have engaged, or has been convicted of engaging, in any of the conduct specified in paragraphs (1), (5) or (6) of section 203(e) of the Investment Advisers Act, or (D) is subject to an order, judgment or decree described in section 203(e)(4) of the Investment Advisers Act; or

(vi) Subject to an order, judgment, or acceptance, waiver, and consent of any self-regulatory organization that suspends or bars the person from associating with

self-regulatory organization members, associates, or agents or engaging in the securities industry;

3. Such cash fee is paid pursuant to a written agreement to which the investment adviser is a party; and

4. Such cash fee is paid to a solicitor:

(i) With respect to solicitation activities for the provision of impersonal investment advisory services only;

(ii) 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;

(iii) Other than a solicitor specified in subparts (a)4.(i) or (a)4.(ii) of this paragraph (1) if all of the following conditions are met:

(I) The written agreement required by part (1)(a)3. 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 or her 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 brochure required by Rule 0780-04-05-.08 or SEC Rule 204-3 (17 C.F.R. § 275.204-3) as applicable, and a separate written disclosure statement described in subparagraph (b) 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 brochure 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.

(b) The separate written disclosure statement required to be furnished by the solicitor to the client pursuant to subitem (1)(a)4.(iii)(I)III. of this Rule shall contain the following information:

1. The name of the solicitor;

2. The name of the investment adviser;

3. The nature of the relationship, including any affiliation, between the solicitor and the investment adviser;

4. A statement that the solicitor will be compensated for their solicitation services by the investment adviser;

5. The terms of such compensation arrangement, including a description of the compensation paid or to be paid to the solicitor;

6. The amount, if any, the client will be charged for the cost of obtaining their account in addition to the investment advisory fee; and

7. The differential, if any, among clients, with respect to the amount or level of investment 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.

(c) 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 law.

(d) For purposes of this Rule:

1. “Solicitor” means any person who, directly or indirectly, solicits any client for, or refers any client to, an investment adviser.

2. “Client” includes any prospective client.

3. “Impersonal investment 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.

(2) Agency Cross Transactions.

(a) For purposes of this Rule, “agency cross transaction for an advisory client” means a transaction in which a person acts as an investment adviser in relation to a transaction in which the investment adviser, or any person controlling, controlled by, or under common control with such investment adviser, including and investment adviser representative, acts as a broker-dealer for both the advisory client and another person on the other side of the transaction. When acting in such capacity such person is required to be registered as a broker-dealer or broker-dealer agent in this state unless excluded from the definition.

(b) 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, while acting as principal for its own advisory account to knowingly sell any security to or purchase any security from a client, or while acting as broker-dealer for a person other than the client, to knowingly effect any sale or purchase of any security for the account of such client, without disclosing to the client in writing before the completion of the transaction the capacity in which the investment adviser or broker-dealer is acting and obtaining the consent of the client to the transaction. The prohibitions of this subparagraph shall not apply to any transaction with a customer of a broker-dealer if the broker-dealer is not acting as an investment adviser in relation to such transaction.

(c) An investment adviser effecting an agency cross transaction for an advisory client shall be deemed in compliance with T.C.A. § 48-1-121(b)(2) for purposes of this Rule, and with 0780-04-05-.10(2), if the following conditions are met:

1. The advisory client executes a written consent prospectively authorizing the investment adviser to effect agency cross transactions for such client;

2. Before obtaining such written consent from the client, the investment adviser makes full written disclosure to the client that, with respect to agency cross transactions, the investment adviser will act as broker-dealer for, receive commissions from and have a potentially conflicting division of loyalties and responsibilities regarding both parties to the transactions;

3. At or before the completion of each agency cross transaction, the investment adviser or any other person relying on this Rule sends the client a written confirmation. The written confirmation shall include:

(i) A statement of the nature of the transaction;

(ii) The date the transaction took place;

(iii) An offer to furnish, upon request, the time when the transaction took place; and

(iv) The source and amount of any other remuneration the investment adviser received or will receive in connection with the transaction. In the case of a purchase, if the investment adviser was not participating in a distribution, or, in the case of a sale, if the investment adviser was not participating in a tender offer, the written confirmation may state whether the investment adviser has been receiving or will receive any other remuneration and that the investment adviser will furnish the source and amount of such remuneration to the client upon the client's written request;

4. At least annually, and with or as part of any written statement or summary of the account from the investment adviser, the investment adviser or any other person relying on this Rule sends each client a written disclosure statement identifying:

(i) The total number of agency cross transactions during the period for the client since the date of the last such statement or summary; and

(ii) The total amount of all commissions or other remuneration the investment adviser received or will receive in connection with agency cross transactions for the client during the period.

5. Each written disclosure and confirmation required by this Rule must include a conspicuous statement that the client may revoke the written consent required under part (c)1. of this Rule at any time by providing written notice to the investment adviser, and

6. No agency cross transaction may be effected in which the same investment adviser recommended the transaction to both any seller and any purchaser.

(d) Nothing in this Rule shall be construed to relieve an investment adviser or investment adviser representative from acting in the best interests of the client, including fulfillment of duties with respect to the best price and execution for the particular transaction for the client nor shall it relieve any investment adviser or investment adviser representative of any other disclosure obligations imposed by the Act.

(3) Custody or Possession of Funds or Securities of Clients.

(a) 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:

1. The investment adviser notifies the Division promptly in writing that the investment adviser has or may have custody of funds or securities. Such notification is required to be given on Form ADV;

2. A qualified custodian maintains those funds and securities:

   (i) In a separate account for each client under that client's name; or

   (ii) In accounts that contain only the investment adviser's clients' funds and securities, under the investment adviser's name as agent or trustee for the clients, or, in the case of a pooled investment vehicle that the investment adviser manages, in the name of the pooled investment vehicle;

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

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

5. If the investment adviser or a related person is a general partner of a limited partnership, or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle, the account statements required under part (3)(a)4. of this Rule must be sent to each limited partner, or member or other beneficial owner;

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

   (i) File a certificate on Form ADV-E with the Division within one hundred twenty (120) days of the time chosen by the independent certified public accountant in part (3)(a)6. of this Rule, stating that it has examined the funds and securities and describing the nature and extent of the examination;

   (ii) Notify the Division within one (1) business day of the finding of any material discrepancies during the course of the examination, via electronic mail or via first class mail, directed to the attention of the Division and the Director of Registration; and

   (iii) File within four (4) business days of the resignation or dismissal from, or other termination of, the engagement, or removing itself or being removed from consideration for being reappointed, Form ADV-E accompanied by a statement that includes:

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

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

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

(i) The independent certified public accountant the investment adviser retains to perform the independent verification required by part (3)(a)6. of this subparagraph (3)(a) must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules; and

(ii) The investment adviser must obtain, or receive from its related person, within six (6) months of becoming subject to this paragraph, and thereafter no less frequently than once each calendar year, a written internal control report prepared by an independent certified public accountant:

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

(II) The independent certified public accountant must verify that the funds and securities are reconciled to a custodian other than the investment adviser or the investment adviser's related person; and

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

(b) A client may designate in writing an independent representative to receive, on their behalf, notices and account statements as required under parts (a)3. and (a)4. of this Rule.

(c) Exceptions.

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

2. Certain privately offered securities.

(i) The investment adviser is not required to comply with part (a)2. of this paragraph (3) with respect to securities that are:

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

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

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

(ii) Notwithstanding subpart (3)(c)2.(i) of this Rule, the provisions of this part (c)2. are available with respect to securities held for the account of a limited partnership, limited liability company, or other type of pooled investment vehicle, only if the limited partnership is audited and the audited financial statements are distributed, as described in part (c)4. of this Rule and the investment adviser notifies the Division in writing that the investment adviser intends to provide audited financial statements, as described above. Such notification is required to be provided on Form ADV.

3. Notwithstanding part (3)(a)6. of this Rule, an investment adviser is not required to obtain an independent verification of client funds and securities maintained by a qualified custodian if all of the following are met:

(i) The investment adviser has custody of the funds and securities solely as a consequence of its authority to make withdrawals from client accounts to pay its investment advisory fee;

(ii) The investment adviser has written authorization from the client to deduct investment advisory fees from the account held with the qualified custodian;

(iii) Each time a fee is directly deducted from a client account, the investment adviser concurrently:

(I) Sends the qualified custodian an invoice or statement of the amount of the fee to be deducted from the client's account; and

(II) Sends the client an invoice or statement itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee.

(iv) The investment adviser notifies the Division in writing that the investment adviser intends to use the safeguards provided above. Such notification is required to be given on Form ADV.

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

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

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

(II) A listing of all long and short positions on the closing date of the statement in accordance with FASB Rule ASC 946-210-50 and 13F under the Securities Exchange Act of 1934 for investment managers' annual reports; and

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

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

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

(iv) Upon liquidation, the investment adviser distributes the fund's final audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) and the Division promptly after the completion of such audit;

(v) The written agreement with the independent certified public accountant must require the independent certified public accountant to, upon resignation or dismissal from, or other termination of, the engagement, or upon removing itself or being removed from consideration for being reappointed, notify the Division within four (4) business days accompanied by a statement that includes:

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

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

(vi) The investment adviser must also notify the Division in writing that the investment adviser intends to employ the use of the statement delivery and audit safeguards described above. Such notification is required to be given on Form ADV.

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

(d) Sending an account statement under part (3)(a)5. of this Rule or distributing audited financial statements under part (3)(c)4. of this Rule shall not satisfy the requirements of this Rule if such account statements or financial statements are sent solely to limited partners (or members or other beneficial owners) that themselves are limited partnerships (or limited liability companies, or another type of pooled investment vehicle) and are related persons of the investment adviser.

(e) Definitions. For purposes of this Rule:

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

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

(ii) A person is presumed to control a corporation if the person:

(I) Directly or indirectly has the right to vote twenty-five percent (25%) or more of a class of the corporation's voting securities; or

(II) Has the power to sell or direct the sale of twenty-five percent (25%) or more of a class of the corporation's voting securities;

(iii) A person is presumed to control a partnership if the person has the right to receive upon dissolution, or has contributed, twenty-five percent (25%) or more of the capital of the partnership;

(iv) A person is presumed to control a limited liability company if the person:

(I) Directly or indirectly has the right to vote twenty-five percent (25%) or more of a class of the interests of the limited liability company;

(II) Has the right to receive upon dissolution, or has contributed twenty-five percent (25%) or more of the capital of the limited liability company; or

(III) Is an elected manager of the limited liability company; or

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

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

(i) Custody includes:

(I) Possession of client funds or securities unless the investment adviser receives them inadvertently and returns them to the sender promptly, but in any case, within three (3) business days of receiving them;

(II) Any arrangement, including a general partner of attorney, under which the investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser's instruction to the custodian; and

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

(ii) Receipt of checks drawn by clients and made payable to third parties will not meet the definition of custody if forwarded to the third party within three (3) business days of receipt and the investment adviser maintains the records required under Rule 0780-04-05-.06.

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

4. "Independent representative" means a person who:

(i) Acts as agent for an investment advisory client, including in the case of a pooled investment vehicle, for limited partners or a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or contract is obliged to act in the best interest of the investment advisory client or the limited partners, members, or other beneficial owners;

(ii) Does not control, is not controlled by, and is not under common control with investment adviser; and

(iii) Does not have, and has not had within the past two (2) years, a material business relationship with the investment adviser.

5. "Qualified custodian" means the following:

(i) A bank, including a trust company, as defined in section 202 (a)(2) of the Investment Advisers Act, 15 U.S.C. 80b-2 (a)(2), or a savings association as defined in section 3 (b)(1) of the Federal Deposit Insurance Act, 12 U.S.C. 1813 (b)(1), that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act, 12 U.S.C. 1811;

(ii) A broker-dealer registered in this jurisdiction and with the SEC holding the client assets in client accounts;

(iii) A registered futures commission merchant under Section 4f(a) of the Commodity Exchange Act, holding the client assets in client accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and

(iv) A foreign financial institution that customarily holds financial assets for its clients, provided that the foreign financial institution keeps the investment advisory clients' assets in client accounts segregated from its proprietary assets.

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

(4) Financial and Disciplinary Disclosure

(a) 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:

1. A financial condition of the investment adviser that is reasonably likely to impair the ability of the investment adviser to meet contractual commitments to the client, if the investment adviser has discretionary authority (express or implied) or custody over such client's funds or securities, or requires prepayment of investment advisory fees of more than one thousand two hundred dollars ($1,200) from such client, six (6) months or more in advance; or

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

(b) It shall constitute a rebuttable presumption that the following legal or disciplinary events involving the investment adviser or a management person of the investment 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 this part (4)(a)2. for a period of ten (10) years from the time of the event:

1. A criminal or civil action in a court of competent jurisdiction in which the person:

(i) 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;

(ii) Was found to have been involved in a violation of an investment-related statute or regulation; or

(iii) 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.

2. 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:

(i) Was found to have caused an investment-related business to lose its authorization to do business; or

(ii) 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, was the subject of an order in which civil penalties were assessed or otherwise significantly limiting the person's investment-related activities.

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

(i) Was found to have caused an investment-related business to lose its authorization to do business; or

(ii) 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.

(c) The information required to be disclosed by subparagraph (4)(a) of this Rule shall be disclosed in writing to clients promptly, and to prospective clients not less than forty-eight (48) hours prior to entering into any written 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.

(d) For purposes of this Rule:

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

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

3. "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.

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

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

(e) For purposes of calculating the ten (10) year period during which events are presumed to be material under subparagraph 4(b). 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.

(f) Compliance with subparagraph 4(b) of this Rule shall not relieve any investment adviser representative from the disclosure obligations of subparagraph 4(a) of this Rule. Compliance with subparagraph 4(a) 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.

(5) Advertisement.

(a) 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 or its representative, directly or indirectly, to publish, circulate, or distribute any advertisement:

1. 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;

2. 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 or its representative within the immediately preceding period of not less than one (1) year, if such advertisement or list includes both of the following:

(i) 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 most recently available market price of each such security; and

(ii) 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”;

3. 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 their 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;

4. 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;

5. Represents that the department, division, or any of its personnel has approved any advertisement; or

6. Contains any untrue statement of a material fact, or which is otherwise false or misleading.

(b) 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 electronic or paper publication or by radio or television, or by any medium, which offers:

1. 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;

2. 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

3. Any other investment advisory service with regard to securities.

(6) Nothing in this Rule shall limit the commissioner's authority to enforce existing provisions of law.

***Authority**: T.C.A. §§ 48-1-109, 48-1-111, 48-1-115, 48-1-116, and 48-1-121, § 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, 17 C.F.R. § 275.204-3, 17 C.F.R. § 275.206(3)-2, 17 C.F.R. § 275.206(4)-1, and 17 C.F.R. § 275.206(4)-2.*

0780-04-05-.11 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 the 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;

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.

(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:

   (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 (4)(a)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.

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.*

CHAPTER 0780-04-06
INVESTMENT ADVISER REPRESENTATIVE REGULATION

NEW RULES

TABLE OF CONTENTS

0780-04-06-.01	**Investment Adviser Representative Registration**
0780-04-06-.02	**Exemption from Investment Adviser Representative Registration**
0780-04-06-.03	**Examinations of Investment Adviser Representatives**
0780-04-06-.04	**Investment Adviser Representative Reporting Requirements**
0780-04-06-.05	**Prohibited Business Practices**
0780-04-06-.06	**Investment Adviser Representative Conduct Which Operates as a Fraud or Deceit in Violation of T.C.A. § 48-1-121**
0780-04-06-.07	**Continuing Education**

0780-04-06-.01 INVESTMENT ADVISER REPRESENTATIVE REGISTRATION

(1) Investment Adviser Representative

(a) All investment adviser representative applicants 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:

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

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

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

(b) Investment adviser representatives applying for registration through the IARD and 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.

(c) Pursuant to Section 203.A.(b)(1)(A) of the Investment Advisers Act:

1. An investment adviser representative who has no place of business located within this state, and who is associated with an investment adviser that is registered under Section 203 of the Investment Advisers Act, is not required to register as an investment adviser representative of such investment adviser in this state;

2. An investment adviser representative who does have a place of business located within this state, and who is associated with an investment adviser registered under Section 203 of the Investment Advisers Act and which has filed a completed investment adviser notice filing in this state pursuant to T.C.A. § 48-1-109(c)(2), is required to register as an investment adviser representative of such investment adviser in this state.

(2) 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 paragraph (1) of this Rule is received by the Division.

(3) Renewals. All investment adviser representatives 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.

(4) Revocation or Denial. The registration of an investment adviser representative shall be subject to revocation proceedings even though the registrant has filed a Form U5 to terminate the registrant's registration, and an application for registration as an investment adviser representative shall be subject to denial proceedings even though the applicant has filed a Form U5 to withdraw the applicant's 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 the 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 Form U5. For purposes of this paragraph (4), "filing date" shall mean the date upon which the Form U5 is filed on behalf of a registrant or an applicant through the IARD and CRD System.

(5) Transfer. There is no provision under the Act to transfer an individual investment adviser representative's registration. When an investment adviser representative terminates their relationship with an investment adviser with whom the registrant 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 representative proposes to have the new relationship. The termination of registration shall be effected by the investment adviser by submitting a Form U5 within thirty (30) days of the date of termination. The filings prescribed in this paragraph (5) are not required in the event of a mass transfer of investment adviser representative registrations pursuant to IARD operational procedures and are not required in the event of a succession as permitted in T.C.A. § 48-1-110(c).

(6) Temporary Registration. 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 may apply for temporary registration with another investment adviser through the IARD by complying with the procedure required by the IARD. Any 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.

(7) Abandonment.

(a) The Division may determine that an application to register an investment adviser representative has been abandoned if:

1. 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

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 applicant.

(b) 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.

(8) Withdrawal of Applications. An application for registration as an investment adviser representative may be withdrawn prior to the effectiveness of registration by following the procedures established by the IARD and CRD System.

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.*

0780-04-06.02 EXEMPTIONS FROM INVESTMENT ADVISER REPRESENTATIVE REGISTRATION.

(1) An investment adviser representative who is not included in the SEC Rule 203A-3 (17 C.F.R. § 275.203a-3) definition of "investment adviser representative" and who is not associated with an investment adviser which has filed a completed investment adviser notice filing pursuant to T.C.A. § 48-1-109(c)(2), is exempted from the definition of investment adviser representative as defined under T.C.A. § 48-1-102(14).

(2) 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 exempted from the definition of investment adviser representative as defined under T.C.A. § 48-1-102(14).

(3) An individual who is employed by or associated with an investment adviser that is exempt from registration in this state pursuant to 0780-04-05-.03(1)(c) and does not otherwise act as an investment adviser representative is exempted from the registration requirements of T.C.A. § 48-1-109(c).

***Authority**: T.C.A. §§ 48-1-102, 48-1-109, 48-1-115, 48-1-116, and 48-1-121.*

0780-04-06.03 EXAMINATION OF INVESTMENT ADVISER REPRESENTATIVES.

(1) Each applicant for initial registration as an investment adviser representative shall, unless covered by paragraph (2) or (3) or otherwise waived by the Commissioner, have passed:

(a) the Series 65/Uniform Investment Adviser Law Examination ("Series 65 Examination") within twenty-four (24) months of the date of application; or

(b) the Series 66/Uniform Combined State Law Examination ("Series 66 Examination") and the Series 7/General Securities Representative Examination ("Series 7 Examination") within twenty-four (24) months of the date of application; and

(c) the Securities Industry Essential Examination within forty-eight (48) months of the date of application.

(2) Compliance with paragraph (1) is waived if the applicant has been awarded any of the following designations and at the time of filing an application is current and in good standing:

(a) Certified Financial Planner ("CFP") awarded by the Certified Financial Planners Board of Standards;

(b) Chartered Financial Consultant ("ChFC");

(c) Chartered Financial Analyst ("CFA") awarded by the Institute of Chartered Financial Analysts;

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

(e) Any further certificates or credentials that are placed on the NASAA 65 Equivalency List, as maintained and updated by NASAA and the NASAA Exams Advisory Committee.

(3) Any individual who has been registered as an investment adviser representative in any state within two years from the date of filing an application for registration shall not be required to retake the examinations in paragraph (1) to be eligible for registration.

(4) Any individual who is not registered as an investment adviser representative in any state for more than twenty-four (24) months but less than sixty (60) months, who has elected to participate in the FINRA Maintaining Qualifications Program pursuant to FINRA Rule 1240(c), and whose appropriate FINRA qualifying examinations remain valid pursuant to effective participation in the FINRA Maintaining Qualifications Program shall not have to retake the appropriate FINRA qualifying examinations to comply with the examination requirements of paragraph (1); provided, however, that successful participation in the FINRA Maintaining Qualifications Program shall not extend the Series 65 Examination or the Series 66 Examination for purposes of investment adviser representative registration.

(5) Notwithstanding the other provisions of this Rule, an individual who terminates their registration as an investment adviser representative may maintain the validity of their Series 65 Examination or the investment adviser representative portion of the Series 66 Examination, as applicable, without being employed by or associated with an investment adviser or federal covered investment adviser for a maximum of five (5) years following the termination of the effectiveness of the investment adviser representative registration if the individual meets all of the following:

(a) The individual previously took and passed the examination for which they seek to maintain validity under this Rule;

(b) The individual was registered as an investment adviser representative for at least one year immediately preceding the termination of the investment adviser representative registration;

(c) The individual was not subject to a statutory disqualification as defined in Section 3(a)(39) of the Exchange Act while registered as an investment adviser representative or at any period after termination of the registration;

(d) The person elects to participate in the Exam Validity Extension Program ("EVEP") under this paragraph (5) within twenty-four (24) months from the effective date of the termination of the investment adviser representative registration;

(e) The individual does not have a deficiency under the investment adviser representative continuing education program at the time the investment adviser representative registration becomes ineffective;

(f) The person who completes annually on or before December 31 of each calendar year in which the person participates in the IAR EVEP:

1. six (6) Credits of IAR CE Ethics and Professional Responsibility Content offered by an Authorized Provider, including at least three (3) hours covering the topic of ethics, and

2. six (6) Credits of IAR CE Products and Practice Content offered by an Authorized Provider;

(g) An individual who elects to participate in EVEP is required to complete credits required by subparagraph (f) of this Rule for each calendar year that elapses after the individual's investment adviser registration became ineffective regardless of when the individual elects to participate in EVEP; and

(h) An individual who complies with the FINRA Maintaining Qualification Program under FINRA Rule 1240(c) shall be considered in compliance with part (f)2. of this Rule.

(6) For purposes of this Rule, 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 Examination") requirement of subparagraph (1)(b) and paragraph (3) of this Rule.

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

(8) The commissioner may, upon written request and good cause shown by the applicant, waive the twenty-four (24) month examination time requirement. However, good cause may not be shown for any request to extend the twenty-four (24) month examination time requirement more than thirty (30) additional days.

***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, § 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. § 240.17a-5, 17 C.F.R. § 275.203A-3, and 17 C.F.R. § 402.2.*

0780-04-06-.04 INVESTMENT ADVISER REPRESENTATIVE REPORTING REQUIREMENTS.

(1) 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:

(a) 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;

(b) 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

(c) 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.

(2) Upon request by the Division, each investment adviser representative registered in this state shall file with the Division through the registrant's investment adviser, if registered, or directly if the registrant's 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 paragraph (1) of this Rule.

(3) Upon request by the Division, each investment adviser representative registered in this state shall file with the Division through the registrant's investment adviser, if registered, or directly if the registrant's 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 paragraph (1) 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.

Authority*: T.C.A. §§ 48-1-102, 48-1-109, 48-1-110, 48-1-111, 48-1-112, 48-1-115, 48-1-116, 48-1-117, and 48-1-121, and § 222 of the Investment Advisers Act of 1940, and 17 C.F.R. § 275.204.*

0780-04-06-.05 PROHIBITED BUSINESS PRACTICES.

(1) A person who is an investment adviser representative is a fiduciary and has a duty to act primarily for the benefit of his or her clients. The following are deemed "dishonest or unethical business practices" by 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:

(a) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser representative;

(b) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both;

(c) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives, and character of the account;

(d) Placing an order to purchase or sell a security for the account of a client without authority from the client to do so;

(e) 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;

(f) 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;

(g) Loaning money to a client unless the client is an affiliate of the investment adviser;

(h) Extending, arranging for, or participating in arranging for credit to a client in violation of the 1934 Act or the regulations of the Federal Reserve Board;

(i) 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 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;

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

(k) Charging a client an unreasonable advisory fee. Any fee above two percent (2%) shall create a rebuttable presumption that the fee is unreasonable;

(l) 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:

1. Compensation agreements connected with advisory services to clients, which are in addition to compensation from such clients for such services; and

2. 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;

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

(n) Publishing, circulating, or distributing any advertisement which does not comply with Rule 0780-04-04-.10(5) under the Act;

(o) Disclosing the identity, affairs, or investments of any client or former client unless required by law to do so, or unless consented to by the client;

(p) Entering into, extending, or renewing any investment advisory contract, unless such contract is in writing and, in substance, discloses:

1. The services to be provided;

2. The term of the contract;

3. The advisory fee

4. The formula for computing the fee

5. The amount of prepaid fee to be returned in the event of contract termination or non-performance;

6. Whether the contract grants discretionary power to the investment adviser, to any investment adviser representative(s), or to any combination thereof; and

7. That no assignments of such contract shall be made by the investment adviser representative without the consent of the other party to the contract;

(q) Entering into, extending, or renewing any advisory contract contrary to the provisions of Section 205 of the Investment Advisers Act. This provision shall apply to all investment adviser representatives registered or required to be registered under this Act, notwithstanding whether such investment adviser representative would be exempt from federal registration pursuant to Section 203(b) of the Investment Advisers Act;

(r) 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;

(s) 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;

(t) Failing to provide information requested by the Division pursuant to the Act or these Rules;

(u) Possessing or utilizing a client's unique identifying information for access to a client's account held by the registrant or any other party. This includes, but is not limited to usernames and passwords;

(v) Failing to pay and fully satisfy any final judgment or arbitration award resulting from an investment-related, client or customer initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the client and the investment adviser or investment adviser representative or between the customer and the broker-dealer or broker-dealer agent, in writing, and the broker-dealer or broker-dealer agent complies with the terms of the alternative payment arrangement;

(w) Attempting to avoid payment of any final judgment or arbitration award resulting from an investment-related, client or customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the client and the investment adviser or investment adviser representative or between the customer and the broker-dealer or broker-dealer agent, in writing, and the broker-dealer or broker-dealer agent complies with the terms of the alternative payment arrangements;

(x) Failing to pay and fully satisfy any fine, civil penalty, order of restitution, order of disgorgement, or similar monetary payment obligation imposed upon the investment adviser or investment adviser representative by the Securities and Exchange Commission, the securities or other financial services regulator of any state or province, or any self-regulatory organization; or

(y) Dishonest use of certifications, professional designations, senior-specific certifications, or senior-specific professional designations, as determined by the Division based on the following nonexclusive criteria and guidelines:

1. The use of a certification, professional designation, senior-specific certification or senior-specific professional 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 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 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 subpart (1)(y)1.)(iv) of this Rule 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," like words, or analogous words identifying other affinity groups, 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.

4. For purposes of part (1)(y)1. 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.

As used herein, 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.

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

(2) Nothing in this Rule shall limit the commissioner's authority to enforce existing provisions of this law.

***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), § 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*

0780-04-06-.06 INVESTMENT ADVISER REPRESENTATIVE CONDUCT WHICH OPERATES AS A FRAUD OR DECEIT IN VIOLATION OF T.C.A. § 48-1-121.

(1) Cash Payments for Client Solicitations.

(a) 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, for any investment adviser representative to pay a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities unless:

1. The solicitor is registered as an investment adviser or investment adviser representative or is exempt from registration as provided in T.C.A. § 48-1-109(c);

2. The solicitor is not a person:

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

(ii) 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);

(iii) 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;

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

(v) Subject to an order, judgment, or decree issued under section 203(f) of the Investment Advisers Act, or (B) convicted within the previous ten years of any felony or misdemeanor involving conduct described in section 203(e)(2)(A) through (D) of the Investment Advisers Act, or (C) who has been found by the SEC to have engaged, or has been convicted of engaging, in any of the conduct specified in paragraphs (1), (5) or (6) of section 203(e) of the Investment Advisers Act, or (D) is subject to an order, judgment or decree described in section 203(e)(4) of the Investment Advisers Act; ; or

(vi) Subject to an order, judgment, or acceptance, waiver, and consent of any self-regulatory organization that suspends or bars the person from associating with self-regulatory organization member, associates, or agents or engaging in the securities industry;

3. Such cash fee is paid pursuant to a written agreement to which the investment adviser representative is a party;

4. Such cash fee is paid to a solicitor:

(i) With respect to solicitation activities for the provision of impersonal advisory services only;

(ii) Who is:

(I) A partner, officer, director, or employee of such investment adviser representative; 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 representative; provided that the status of such solicitor as a partner, officer, director, or employee of such investment adviser representative or other person, and any affiliation between the investment adviser

representative and such other person, is disclosed to the client at the time of the solicitation or referral;

(iii) Other than a solicitor specified in subparts (a)4.(i) or (a)4.(ii) of this paragraph, if all of the following conditions are met:

(I) The written agreement required by part (1)(a)3. of this Rule:

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

II. Contains an undertaking by the solicitor to perform the solicitor's duties under the agreement in a manner consistent with the instructions of the investment adviser representative, the provisions of the Act, 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 representative, provide the client with a current copy of the investment adviser's brochure required by by Rule 0780-04-05-.08 or SEC Rule 204-3 (17 C.F.R. § 275.204-3) as applicable, and a separate written disclosure statement described in subparagraph (1)(b) of this Rule.

(II) The investment adviser representative 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 representative 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.

(b) The separate written disclosure statement required to be furnished by the solicitor to the client pursuant to subitem (1)(a)4.(iii)(I)III. of this Rule shall contain the following information:

1. The name of the solicitor;

2. The name of the investment adviser representative;

3. The nature of the relationship, including any affiliation, between the solicitor and the investment adviser representative;

4. A statement that the solicitor will be compensated for any solicitation services by the investment adviser representative;

5. The terms of such compensation arrangement, including a description of the compensation paid or to be paid to the solicitor; and

6. The amount, if any, the client will be charged for the cost of obtaining the client's account in addition to the advisory fee; and

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

(c) 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.

(d) For purposes of this Rule:

1. "Solicitor" means any person who, directly or indirectly, solicits any client for, or refers any client to, an investment adviser representative.

2. "Client" includes any prospective client.

3. "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.

(e) The investment adviser representative shall provide a copy of each written agreement required by subparagraph (1)(b) of this Rule to the investment adviser as part of the records required to be kept under T.C.A. § 48-1-111(a) and paragraph (3) of Rule 0780-04-05-.06.

(f) The investment adviser representative shall provide a copy of each acknowledgement and solicitor disclosure document referred to in subpart (1)(c)3.(iv) of this Rule to the investment adviser as part of the records required to be kept under T.C.A. § 48-1-111(a) and paragraph (3) of Rule 0780-04-05-.06.

(f) An investment adviser representative 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 (7) or (8) of this Rule if:

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

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

3. The provisions of paragraphs (7) or (8) of this Rule would require the investment adviser representative to submit records in addition to those required under the laws of the state in which the investment adviser representative maintains its principal place of business.

(2) Agency Cross Transactions.

(a) For purposes of this Rule, "agency cross transaction for an advisory client" means a transaction in which a person acts as an investment adviser in relation to a transaction in which the investment adviser, or any person controlling, controlled by, or under common control with such investment adviser, including an investment adviser representative, acts as a broker-dealer for both the advisory client and another person on the other side of the transaction. When acting in such capacity such person is required to be registered as a broker-dealer or broker-dealer agent in this state unless excluded from the definition.

(b) 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 representative, while acting as principal for its own advisory account to knowingly sell any security to or purchase any security from a client, or while acting as broker-dealer for a person other than the client, to knowingly effect any sale or purchase of any security for the account of such client, without disclosing to the client in writing before the completion of the transaction the capacity in which the investment adviser representative or broker-dealer is acting and obtaining the consent of the client to the transaction. The prohibitions of this subparagraph shall not apply to any transaction with a customer of a broker-dealer if the broker-dealer is not acting as an investment adviser in relation to such transaction.

(c) An investment adviser effecting an agency cross transaction for an advisory client shall be deemed in compliance with T.C.A. § 48-1-121(b)(2) for purposes of this Rule, and with 0780-04-06-.06(2), if the following conditions are met:

1. The advisory client executes a written consent prospectively authorizing the investment adviser to effect agency cross transactions for such client;

2. Before obtaining such written consent from the client, the investment adviser makes full written disclosure to the client that, with respect to agency cross transactions, the investment adviser will act as broker-dealer for, receive commissions from and have a potentially conflicting division of loyalties and responsibilities regarding both parties to the transactions;

3. At or before the completion of each agency cross transaction, the investment adviser or any other person relying on this Rule sends the client a written confirmation. The written confirmation shall include:

(i) A statement of the nature of the transaction;

(ii) The date the transaction took place;

(iii) An offer to furnish, upon request, the time when the transaction took place; and

(iv) The source and amount of any other remuneration the investment adviser received or will receive in connection with the transaction. In the case of a purchase, if the investment adviser was not participating in a distribution, or, in the case of a sale, if the investment adviser was not participating in a tender offer, the written confirmation may state whether the investment adviser has been receiving or will receive any other remuneration and that the investment adviser will furnish the source and amount of such remuneration to the client upon the client's written request;

4. At least annually, and with or as part of any written statement or summary of the account from the investment adviser, the investment adviser or any other person relying on this Rule sends each client a written disclosure statement identifying:

(i) The total number of agency cross transactions during the period for the client since the date of the last such statement or summary; and

(ii) The total amount of all commissions or other remuneration the investment adviser received or will receive in connection with agency cross transactions for the client during the period.

5. Each written disclosure and confirmation required by this Rule must include a conspicuous statement that the client may revoke the written consent required under part (2)(c)1. of this Rule at any time by providing written notice to the investment adviser.

6. No agency cross transaction may be effected in which the same investment adviser recommended the transaction to both any seller and any purchaser.

(d) Nothing in this Rule shall be construed to relieve an investment adviser or investment adviser representative from acting in the best interests of the client, including fulfilling his duty with respect to the best price and execution for the particular transaction for the client nor shall it relieve any investment adviser or investment adviser representative of any other disclosure obligations imposed by the Act.

(3) Custody or Possession of Funds or Securities of Clients.

(a) 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 representative in this state to have custody or possession of any funds or securities in which any client has any beneficial interest.

(4) Financial and Disciplinary Disclosure.

(a) 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 representative to fail to disclose to any client or prospective client all material facts with respect to a legal or disciplinary event that is material to an evaluation of the investment adviser representative's integrity or ability to meet contractual commitments to clients.

(b) It shall constitute a rebuttable presumption that the following legal or disciplinary events involving the investment adviser representative that were not resolved in the person's favor or subsequently reversed, suspended, or vacated are material within the meaning of subparagraph 4(a) of this Rule for a period of ten (10) years from the time of the event.

1. A criminal or civil action in a court of competent jurisdiction in which the person:

(i) Was convicted of, or pleaded guilty or nolo contendere ("no contest") to, any 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;

(ii) Was found to have been involved in a violation of an investment-related statute or regulation; or

(iii) 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.

2. 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:

(i) Was found to have caused an investment-related business to lose its authorization to do business; or

(ii) 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; was the subject of an order in which civil penalties were assessed; or was subject to an order otherwise significantly limiting the person's investment-related activities.

3. Self-Regulatory Organization ("SRO") proceedings in which the person:

(i) Was found to have caused an investment-related business to lose its authorization to do business; or

(ii) 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.

(c) 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 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.

(d) For purposes of this Rule:

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

2. "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.)

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

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

(e) For purposes of calculating the ten (10) year period during which events are presumed to be material under subparagraph (4)(b) 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.

(f) Compliance with subparagraph (4)(b) of this Rule shall not relieve any investment adviser representative from the disclosure obligations of subparagraph (4)(a) of this Rule. Compliance with subparagraph (4)(a) of this Rule shall not relieve any investment adviser representative from any other disclosure requirement under the Act, these Rules, or under any other federal or state law.

(5) Advertisement.

(a) 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 representative, directly or indirectly, to publish, circulate, or distribute any advertisement:

1. 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;

2. Which refers, directly or indirectly, to past specific recommendations of such investment adviser representative, 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 representative within the immediately preceding period of not less than one (1) year, if such advertisement or list, includes both of the following:

(i) 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 most recently available market price of each such security; and

(ii) 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";

3. 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 their 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;

4. 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

5. Represents that the department, division, or any of its personnel has approved any advertisement;

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

(b) 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 electronic or paper publication or by radio or television, or by any medium, 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.

(c) This Rule shall not apply to those investment adviser representatives solely registered with SEC registered investment advisers.

(6) Nothing in this Rule shall limit the commissioner's authority to enforce existing provisions of law.

***Authority**: T.C.A. §§ 48-1-109, 48-1-111, 48-1-115, 48-1-116, and 48-1-121, § 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, 17 C.F.R. § 275.204-3, 17 C.F.R. § 275.206(3)-2, 17 C.F.R. § 275.206(4)-1, and 17 C.F.R. § 275.206(4)-2,*

0780-04-06-.07 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.

(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 0780-04-06.03(2) comply with subparagraphs (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 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 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 Rule 0780-04-06-.03 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.

Authority*: T.C.A. §§ 48-1-102, 48-1-109, 48-1-110, 48-1-112, 48-1-115 and 48-1-116.*

CHAPTER 0780-04-07
OIL AND GAS ISSUER-DEALERS REGULATION

NEW RULES

TABLE OF CONTENTS

0780-04-07-.01 Oil and Gas Issuer-Dealers

0780-04-07-.01 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), 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, including but not limited to, the information listed in T.C.A § 48-1-110(f)(4).

(b) All applications for registration must be submitted directly to the Division.

(c) An application is deemed filed for purposes of T.C.A. § 48-1-110(f) and this Rule when it is complete. An application is deemed to be complete when all information requested by the Division pursuant to subparagraph (1)(a) of this Rule is received by the Division. Registration shall be effective at twelve o'clock (12:00) noon, central time thirty (30) days after receipt of the completed application and the filing fee unless a proceeding has been initiated by the Division to suspend or deny the application pursuant to T.C.A § 48-1-110(f)(5) 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.

2. Upon determination that an application has been abandoned, the Division shall, 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) business 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), payable 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, 48-1-118, § 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.*

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: April 4, 2025

Signature: 

Name of Officer: Jacob R. Strait

Title of Officer: Associate Counsel

Department of State Use Only

Filed with the Department of State on: 4/4/2025

Tre Hargett
Secretary of State

RECEIVED

Apr 04 2025, 3:43 pm

Secretary of State
Division of Publications

CHAPTER 0780-04-03
INDUSTRY
REGULATION

TABLE OF CONTENTS

0780-04-03-.01 Registration
0780-04-03-.02 Post Registration
0780-04-03-.03 Oil and Gas Issuer Dealer
0780-04-03-.04 Person Deemed Not to be Broker-Dealers
0780-04-03-.05 Exemptions from Investment Adviser Registration
0780-04-03-.06 Investment Adviser Notice Filings
0780-04-03-.07 Investment Adviser Custody or Possession of Funds or Securities of Clients
0780-04-03-.08 Investment Adviser Financial and Disciplinary Disclosure
0780-04-03-.09 Advertisement by Investment Advisers
0780-04-03-.10 Written Disclosure Statements by Investment Advisers
0780-04-03-.11 Persons Deemed Not to be "Agents"
0780-04-03-.12 Definition of "Client of an Investment Adviser"
0780-04-03-.13 Cash Payments for Client Solicitations
0780-04-03-.14 Agency Cross Transactions for Investment Advisory Clients
0780-04-03-.15 Exemption from Broker-Dealer Registration for Certain Canadian Broker-Dealers
0780-04-03-.16 Cybersecurity
0780-04-03-.17 Investment Adviser Representative Continuing Education

0780-04-03-.01 REGISTRATION.

(1) Broker-Dealer Registration.

(a) CRD System Eligible Broker-Dealer Applicants.

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 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.

(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 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 make electronic filings through the IARD as required by subparagraphs (3)(a) and (3)(c) 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)(c) 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.

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

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.

(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 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 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. § 48-1-109(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 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.*

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

(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;

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

(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.

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;

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

(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 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;

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.

(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 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;

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 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.

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 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.

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.*

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.

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.*

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.

(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:

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.*

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;

(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;

(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.*

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.

(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.*

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.

(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.*

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.

(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.

(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.*

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.

(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.*

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.

(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.

(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.*

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.*

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

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.*

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:

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 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.

(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.*

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.

(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 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.*

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 DDivision. 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).*

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;

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.

(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:

(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.

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.*

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.

(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 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.~~

~~(j)~~

~~***Authority:*** *T.C.A. §§ 48-1-102, 48-1-109, 48-1-110, 48-1-112, 48-1-115, and 48-1-116.*~~

CHAPTER 0780-04-03
BROKER-DEALER REGULATION

TABLE OF CONTENTS

0780-04-03-.01	Broker-Dealer Registration
0780-04-03-.02	Exclusions and Exemptions from Broker-Dealer Registration
0780-04-03-.03	Branch Office and Other Business Locations of Broker-Dealers
0780-04-03-.04	Registered Broker-Dealer Net Capital Requirements
0780-04-03-.05	Broker-Dealer Required Records
0780-04-03-.06	Broker-Dealer Reporting Requirements
0780-04-03-.07	Rules of Conduct for Broker-Dealers
0780-04-03-.08	Prohibited Business Practices of Broker-Dealers
0780-04-03-.09	Cybersecurity

0780-04-03-.01 BROKER-DEALER REGISTRATION

(1) CRD System Eligible Broker-Dealer Applicants.

(a) 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.

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

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

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

(b) 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:

1.

(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 subpart (1)(b)1.(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 subparts (1)(b)1.(i)-(ii) of this Rule shall demonstrate compliance with the appropriate net capital requirement for a registered broker-dealer;

2. A copy of the applicant's FINRA membership agreement; and

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

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

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

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

(c)

1. 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

2. If the applicant has not yet had an audit performed in its first year of existence, in lieu of complying with part (2)(c)1. 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;

3. The financial reports required by parts (2)(c)1. and 2. of this Rule shall demonstrate compliance with the appropriate net capital requirement for a registered broker-dealer;

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

(e) A copy of the applicant's membership agreement with each self-regulatory organization of which the applicant is a member; and

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

(3) 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 paragraphs (1) or (2) of this Rule is received by the Division.

(4) Renewals.

(a) 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; and

(b) 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.

(5) 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.

(6) 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.

(7) Abandonment.

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

1. 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

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 applicant.

(b) 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.

(c) Upon the determination that an application pursuant to paragraph (2) of this Rule has been abandoned, the Division shall cancel the pending application without prejudice and, within thirty (30) days of such cancellation, mail a notification of the abandonment to the last known business address of the applicant.

(8) Withdrawal of Applications. An application for registration as a broker-dealer may be withdrawn prior to the effectiveness of registration by following the procedures established by the CRD System or, for non-CRD System broker-dealer applicants, by filing a written request for withdrawal directly with the Division.

(9) Revocation or Denial. 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 paragraph, "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.

***Authority**: T.C.A. §§ 48-1-102, 48-1-109, 48-1-110, 48-1-111, 48-1-114, 48-1-112, 48-1-115, 48-1-116, 17 C.F.R. § 240.15c3-1, 17 C.F.R. § 240.17a-5, and 17 C.F.R. § 402.2.*

0780-04-03-.02 EXCLUSIONS AND EXEMPTIONS FROM BROKER-DEALER REGISTRATION.

(1) Exclusions.

(a) Associated Persons of an Issuer.

1. 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:

(i) 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;

(ii) 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;

(iii) Is not at the time of his participation an associated person of a broker-dealer; and

(iv) Meets the conditions of any one of the following subparts (1)(a)1.(iv)(I), (1)(a)1.(iv)(II), or (1)(a)1.(iv)(III) of this Rule:

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

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)(10), 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)(1), (b)(9), or (b)(10); or

III. That are excluded from the definition of sale pursuant to T.C.A. § 48-1-102(19)(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 except 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 items (1)(a)1.(iv)(I) or (1)(a)1.(iv)(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.

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

3. Definitions. When used in this Rule:

(i) 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.

(ii) 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.

(b) 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 personalty, 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.

(2) Exemptions.

(a) 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:

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

(I) 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;

(II) Evidence of membership in an appropriate Canadian self-regulatory organization, stock exchange, or association of broker-dealers;

(III) Evidence of broker-dealer registration in the provincial or territorial jurisdiction in which the main office of the Canadian broker-dealer is located;

(IV) 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;

(V) 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;

(VI) Evidence of registration in the appropriate Canadian provincial or territorial jurisdiction for each individual identified pursuant to item (2)(a)1.(i)(V) of this Rule;

(VII) Form U-2 Uniform Consent to Service of Process;

(VIII) The appropriate nonrefundable fee as set forth in the Act; and

(IX) 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.

(i) Each exemption notice filing expires each December 31 unless timely renewed.

(ii) An exemption notice filing is timely renewed for the next calendar year if English language versions of the following exhibits are received by the Division on or after November 1 and before the current notice filing expires.

(I) 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;

(II) 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;

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

(IV) 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).

(iii) An exemption notice filing shall expire on December 31 even if an incomplete renewal filing has been made.

3. Abandonment.

(i) The Division may determine that an incomplete initial exemption notice filing has been abandoned if 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 or on behalf of the filer in connection with the filing during such period.

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

4. Termination and Withdrawal.

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

(ii) 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.

(iii) 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 subparts (2)(a)4.(i) or (2)(a)4.(iii) of this Rule.

5. The filings required in paragraph (2) of the Rule shall constitute filings with the commissioner subject to T.C.A. § 48-1-121(c).

(3) The exclusions and exemptions 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(a), 48-1-109, 48-1-112, 48-1-115, 48-1-116, 48-1-121, 48-1-124(e), and 17 C.F.R. § 230.415*

0780-04-03-.03 BRANCH OFFICE AND OTHER BUSINESS LOCATIONS OF BROKER-DEALERS.

(1) Every broker-dealer registered in this state shall notify the Division of the establishment of any branch office or other business location in this state, as well as its current address and the name or names of the agent or agents currently in charge, by filing Form BR through the CRD System or through direct filing, whichever is appropriate, within thirty (30) days from the date of establishment or change.

(2) 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.

Authority: *T.C.A. §§ 48-1-102, 48-1-109, 48-1-110, 48-1-111, 48-1-112, 48-1-115, 48-1-116, 17 C.F.R. § 240.15c3-1, 17 C.F.R. § 240.17a-5, and 17 C.F.R. § 402.2.*

0780-04-03-.04 REGISTERED BROKER-DEALER NET CAPITAL REQUIREMENTS.

(1) FINRA Broker-Dealers and Exchange Members.

(a) 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).

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

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

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

(3) Other Broker-Dealers.

(a) Each registered broker-dealer that does not fall within paragraphs (1) and (2) of this Rule shall have and maintain a minimum net capital of one hundred thousand dollars ($100,000).

(b) For purposes of this paragraph (3), net capital shall be defined as total assets less total liabilities (net worth) as computed in accordance with generally accepted accounting principles consistently applied.

***Authority**: T.C.A. §§ 48-1-102, 48-1-109, 48-1-110, 48-1-111, 48-1-112, 48-1-115, 48-1-116, 17 C.F.R. § 240.15c3-1, 17 C.F.R. § 240.17a-5, and 17 C.F.R. § 402.2.*

0780-04-03-.05 BROKER DEALER REQUIRED RECORDS.

(1) 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:

(a) 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;

(b) Ledgers reflecting all assets and liabilities, income and expenses, and capital accounts;

(c) 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.

(d) Ledgers (or other records) reflecting the following:

1. Securities in transfer;

2. Dividends and interest received;

3. Securities borrowed and securities loaned;

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

5. Securities failed to receive and failed to deliver; and

6. 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;

(e) 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;

(f) 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;

(g) 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;

(h) 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;

(i) Copies of all communications, correspondence, and other records relating to securities transactions with customers;

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

(k) 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;

(l) 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;

(m) A record of the proof of money balances of all ledger accounts in the form of trial balances. Such trial balances shall be current and prepared at least once a month;

(n) 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;

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

(p) A computation made quarterly (on a calendar year basis) of its net capital and ratio of its aggregate indebtedness to its capital on Form X-17A-5, as adopted by the SEC (FOCUS Report), if the broker-dealer is a broker-dealer described in paragraph (1) of Rule 0780-04-03-.04. Otherwise, a computation made quarterly (on a calendar year basis) of its net capital in the manner prescribed paragraphs (1)-(3) of Rule 0780-04-03-.04;

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

(r) 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).; and

(s) A complete set of the procedures required by SEC Rule 17a-3 (17 C.F.R. § 240.17a-3) and the systems for applying those procedures shall be kept and maintained at every branch office.

(2) All records required to be kept by paragraph (1) 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.

(3) All broker-dealers who act as investment advisers shall also maintain the records required by Rule 0780-04-04-.05.

***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, 48-1-121(a)(2), 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-9T through 17 C.F.R. §240.17a-11, 17 C.F.R. §240.17f-2, and the FINRA Rules of Fair Conduct.*

0780-04-03-.06 BROKER-DEALER REPORTING REQUIREMENTS.

(1) Financial Reports.

(a) Upon request by the Division, each registered broker-dealer shall 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. This report shall be prepared and filed in accordance with the following requirements:

1. The report shall be certified by an independent certified public accountant or independent public accountant;

2. 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;

3. 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

4. The report shall include as a supporting schedule a computation of net capital as required by paragraphs (1) – (3) of Rule 0780-04-03-.04.

(b) In the Division's discretion, the Division may waive the requirements of subparagraph (1)(a) of this Rule by allowing the broker-dealer to file the annual financial report required by SEC Rule 17a-5 (17 C.F.R. § 240.17a-5). This 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.

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

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

1. 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;

2. 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

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 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.

(b) 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 parts (2)(a)1.-3. of this Rule.

(c) 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 parts (2)(a)1.-3. of this Rule.

(d) Nothing in paragraph (2) 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.

(3) Transfer of Control or Change of Name.

(a) 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.

(b) 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.

(c) 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).

(d) 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.

(4) 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.

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

(a) Electronic notice within three (3) business days 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

(b) 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.

(c) Electronic notice within three (3) business days 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.

***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, 48-1-121(a)(2), 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-9T through 17 C.F.R. §240.17a-11, 17 C.F.R. § 240.17f-2, and the FINRA Rules of Fair Conduct.*

0780-04-03-.07 RULES OF CONDUCT FOR BROKER-DEALERS.

(1) Confirmations.

(a) 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:

1. 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;

2. 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;

3. 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;

4. Whether the transaction was unsolicited; and

5. The name of the agent that effected the transaction.

(b) Compliance with SEC Rule 10b-10 (17 C.F.R. § 240.10b-10) or with Rule 2232 of the FINRA Rules of Fair Practice shall be deemed compliance with this Rule.

(2) 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 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.

(3) 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.

***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, 48-1-121(a)(2), 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-9T through 17 C.F.R. § 240.17a-11, 17 C.F.R. §240.17f-2, and the FINRA Rules of Fair Conduct*

0780-04-03-.08 PROHIBITED BUSINESS PRACTICES OF BROKER-DEALERS.

(1) 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:

(a) Causing any unreasonable delay in the delivery of securities purchased or in the remittance of funds necessary to complete the transaction within the time frame customary in the trade;

(b) 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;

(c) Recommending to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that the transaction or 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;

(d) Executing a transaction on behalf of a customer without authority to do so;

(e) 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;

(f) Executing any transaction in a margin account without obtaining from the customer an executed written margin agreement prior to settlement date for the initial transaction in the account;

(g) Failing to segregate customers' free securities or securities in safekeeping;

(h) Hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by Rules of the SEC;

(i) Entering into a transaction with or for a customer at a price not reasonably related to the current market price;

(j) Failing to furnish to a customer purchasing securities in an offering, no later than the due date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus;

(k) Charging an undisclosed or unreasonable and inequitable fee for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;

(l) Offering to buy from or sell to any person any security at a stated price unless such broker-dealer is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell;

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

(n) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include, but are not limited to, the following:

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

2. Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; provided, however, nothing in this subparagraph shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers;

3. Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others;

(o) Guaranteeing a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer;

(p) Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or sale or such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona fide bid for, or offer of, such security;

(q) Using any advertising or sales presentation in such a fashion as to be deceptive or misleading;

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

(s) Failing to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member;

(t) Failing or refusing to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written demand or complaint;

(u) Failing to pay and fully satisfy any final judgment or arbitration award, resulting from an investment-related, customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the customer and the broker-dealer or broker-dealer agent, in writing, and the broker-dealer or broker-dealer agent complies with the terms of the alternative payment arrangement;

(v) Attempting to avoid payment of any final judgment or arbitration award resulting from an investment-related, customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the customer and the broker-dealer or broker-dealer agent, in writing, and the broker-dealer or broker-dealer agent complies with the terms of the alternative payment arrangements;

(w) Failing to pay and fully satisfy any fine, civil penalty, order of restitution, order of disgorgement, or similar monetary payment obligation imposed upon the broker-dealer or agent by the SEC, the securities or other financial services regulator of any state or province, or any self-regulatory organization;

(x) Establishing or maintaining an account containing fictitious or disguised information;

(y) Borrowing or unauthorized use of customers' funds or securities;

(z) Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer; or without notice to the customer dividing or otherwise splitting the broker-dealer's commission, profits or other compensation from the purchase or sale of securities;

(aa) Placing an order to purchase or sell a security for the account of a client without authority to do so;

(bb) 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;

(cc) 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;

(dd) Entering into a transaction for its own account with a customer in which a commission is charged;

(ee) 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;

(ff) Causing any unreasonable delay in the execution of a transaction on behalf of a customer;

(gg) 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;

(hh) 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, in writing, to such clients their rights to use any broker-dealer for trade execution;

(ii) Dishonest use of certifications, professional designations, senior-specific certifications, or senior-specific professional designations, as determined by the Division based on the following nonexclusive criteria and guidelines:

1. The use of a certification, professional designation, senior-specific certification or senior-specific professional 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 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 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 subpart (1)(ii)(1.)(iv) of this Rule when the organization has been accredited by:

(i) The American National Standards Institute;

(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," like words, or analogous words identifying other affinity groups, 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.

4. For purposes of part (1)(ii)1. 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.

As used herein, 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.

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

(jj) Failing to promptly provide information requested by the Division pursuant to the Act or these Rules promulgated thereunder;

(kk) Failing to comply with any applicable provision of conduct rules, any applicable fair practice or ethical standard, or any other applicable law or rule related to conducting business involving securities promulgated by the SEC or any self-regulatory organization;

(ll) The unfair, misleading or unethical practices set forth above are not exclusive of other activities, such as forgery, embezzlement, non-disclosure or misstatement of material facts, manipulations and various deceptions, all of which shall be considered grounds for suspension or revocation, and the commissioner may suspend or revoke a registration when necessary or appropriate in the public interest.

***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, 48-1-121, 17 C.F.R. § 240.10b-1 through 17 C.F.R. § 240.10b-21, and the FINRA Rules of Fair Conduct.*

0780-04-03-.09 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 the 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;

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.

(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:

(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 (a)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.

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.*

~~CHAPTER 0780-04-04~~
~~REPEALED~~

CHAPTER 0780-04-04
BROKER-DEALER AGENT REGULATION

TABLE OF CONTENTS

0780-04-04-.01 Agent Registration
0780-04-04-.02 Exemptions from Agent Definition
0780-04-04-.03 Examinations of Agents and Principals
0780-04-04-.04 Agent Reporting Requirements
0780-04-04-.05 Prohibited Business Practices

0780-04-04-.01 AGENT REGISTRATION.

(1) CRD System Eligible Agent Applicants.

(a) All agent 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:

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

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

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

(b) 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.

(2) Non-CRD System Agent Applicants. All applications for registration as an agent other than those specified in paragraph (1) of this Rule shall be submitted directly to the Division and shall contain the following information:

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

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

(c) Satisfactory evidence of a passing score by the applicant on the appropriate examinations; and

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

(3) 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 paragraph (1) or paragraph (2) of this Rule is received by the Division.

(4) Expiration. All agent registrations shall automatically expire on December 31 of each year without notification by the commissioner, unless the registration has been properly renewed, or is withdrawn or terminated.

(5) Renewals. All CRD system registered agents 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 non-CRD System agents must be submitted directly to the Division and must contain the following:

(a) The appropriate renewal form and all information and exhibits required by such form; and

(b) The appropriate fee as set forth in the Act.

(6) Transfer. There is no provision under the Act to transfer an individual agent's registration. When an agent terminates his or her relationship with a broker-dealer with whom he or she 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 paragraph (7) 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).

(7) Temporary Registration. 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 voluntary terminations of a non-CRD system 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. Temporary registration for non-CRD system agents will not be granted until the Form U4 is received by the Division, and a written request is made by non-CRD system broker-dealer. Any temporary registration for non-CRD system agents shall expire upon the grant or denial of the application for permanent registration, and in no event shall last more than thirty (30) days.

(8) Abandonment.

(a) The Division may determine that an application to register an agent has been abandoned if:

1. 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

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 applicant.

(b) 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.

(c) Upon determination that an application submitted pursuant to paragraph (2) has been abandoned, the Division shall cancel the pending application without prejudice and, within thirty (30) days of such cancellation, mail a notification of the abandonment to the last known business address of the applicant.

(9) Withdrawal of Applications. An application for registration as an agent may be withdrawn prior to the effectiveness of registration by following the procedures established by the CRD system, or for non-CRD system applicants, by filing a written request for withdrawal directly with the Division.

(10) Revocation or Denial. The registration of an agent shall be subject to revocation proceedings even though the registrant has filed a Form U5 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 a Form U5 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 the 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 Form U5. For purposes of this paragraph (10), "filing date" shall mean the date upon which the Form U5 is filed on behalf of a registrant or an applicant through the CRD System, or for non-CRD System agents, the date upon which the Form U5 is actually received by the Division.

Authority: *T.C.A. §§ 48-1-102, 48-1-109, 48-1-110, 48-1-111, 48-1-114, 48-1-112, 48-1-114, 48-1-115, 48-1-116, 48-1-121, 48-1-124(e), 17 C.F.R. § 240.17f-2.*

0780-04-04-.02 EXEMPTIONS FROM AGENT REGISTRATION.

(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, 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.*

0780-04-04-.03 EXAMINATIONS OF AGENTS AND PRINCIPALS.

(1) Examination of Agents of Broker-Dealers.

(a) Each applicant for initial registration as an agent of a broker-dealer shall, unless covered by subparagraph (1)(b) or (1)(c) or otherwise waived by the commissioner, have passed within two years of the date of application:

1. the Series 63/Uniform Securities Agent State Law Examination ("Series 63 Examination") or the Series 66/Uniform Combined State Law Examination ("Series 66 Examination"); and

2. all relevant examinations required by the FINRA and accepted by the Division.

(b) Any individual who has been registered as an agent in any state within twenty-four (24) months from the date of filing an application for registration shall not be required to retake the examinations in subparagraph (1)(a) to be eligible for registration.

(c) Any individual who is not registered as an agent in any state for more than two years but less than five years, who was registered as an agent in at least one jurisdiction for at least one year immediately preceding the termination of the agent registration, who has elected to participate in the FINRA Maintaining Qualifications Program pursuant to FINRA Rule

1240(c), and whose appropriate FINRA qualifying examinations remain valid pursuant to effective participation in the MQP program shall be deemed in compliance with the examination requirements of part (1)(a)1. as long as the individual elects to participate in the NASAA Examination Validity Extension Program within two years of agent registration termination.

(d) Any individual who has not been registered as an agent in any state for more than two years but less than five years, who has elected to participate in the FINRA Maintaining Qualifications Program pursuant to FINRA Rule 1240(c), and whose appropriate FINRA qualifying examinations remain valid pursuant to effective participation in the FINRA Maintaining Qualifications Program shall be deemed in compliance with the examination requirements of part (1)(a)2.

(e) Successful participation in the FINRA Maintaining Qualifications Program shall not extend the Series 66 Examination for purposes of investment adviser representative registration.

(2) Examination of Principals of Broker-Dealers.

(a) 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.

(3) Waiver.

(a) The commissioner may, upon petition and good cause shown by the applicant, waive any or all of the examination requirements set forth above.

(b) For purposes of this Rule, 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 (1)(a)1. and subparagraph (2)(a) of this Rule.

Authority: *T.C.A. §§ 48-1-102, 48-1-109, 48-1-110, 48-1-111, 48-1-114, 48-1-112, 48-1-114, 48-1-115, 48-1-116, 48-1-121, and 48-1-124(e).*

0780-04-04-.04 AGENT REPORTING REQUIREMENTS.

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

(a) 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;

(b) 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

(c) 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.

(2) Upon request by the Division, each agent registered in this state shall file with the Division through the agent's broker-dealer a copy of any answer, response, or reply to any complaint, indictment, or information described in subparagraphs (1)(a)-(c). of this Rule.

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

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, 48-1-121(a)(2), 17 C.F.R. § 240.17f-2, 17 C.F.R. § 240.17a-3 through 17 C.F.R. § 240.17a-5, 17 C.F.R. § 240.17a-9T through 17 C.F.R. § 240.17a-11, and the FINRA Rules of Fair Conduct.*

0780-04-04-.05 PROHIBITED BUSINESS PRACTICES.

(1) 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:

(a) Engaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities, or an executed stock power of a customer;

(b) Effecting securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction;

(c) Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited;

(d) 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;

(e) Dividing or otherwise splitting the agent's 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 affiliated firm of the same broker-dealer;

(f) 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;

(g) Recommending to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that such transaction or 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;

(h) Executing a transaction on behalf of a customer without authority to do so;

(i) 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;

(j) 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;

(k) Executing any transaction in a margin account without obtaining from the customer an executed written margin agreement prior to settlement date for the initial transaction in the account;

(l) Charging a customer an undisclosed or unreasonable commission or service charge in any transaction executed as agent for the customer;

(m) Failing to segregate customers' free securities or securities held in safekeeping;

(n) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive, or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:

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

2. Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; provided, however, nothing in this subsection shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers;

3. Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others;

(o) Guaranteeing a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer;

(p) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;

(q) Failing to furnish to a customer purchasing securities in an offering, no later than the due date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus;

(q) 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;

(r) Using any advertising or sales presentation in such a fashion as to be deceptive or misleading;

(s) 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;

(t) Causing any unreasonable delay in the execution of a transaction on behalf of a customer;

(u) Failing to provide information requested by the Division pursuant to the Act or these Rules;

(v) Failing to pay and fully satisfy any final judgment or arbitration award, resulting from an investment-related, customer-initiated arbitration or court proceeding, unless alternative

payment arrangements are agreed to between the customer and the broker-dealer or broker-dealer agent, in writing, and the broker-dealer or broker-dealer agent complies with the terms of the alternative payment arrangement;

(w) Attempting to avoid payment of any final judgment or arbitration award resulting from an investment-related, customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the customer and the broker-dealer or broker-dealer agent, in writing, and the broker-dealer or broker-dealer agent complies with the terms of the alternative payment arrangements;

(x) Failing to pay and fully satisfy any fine, civil penalty, order of restitution, order of disgorgement, or similar monetary payment obligation imposed upon the broker-dealer or agent by the Securities and Exchange Commission, the securities or other financial services regulator of any state or province, or any self-regulatory organization;

(y) Dishonest use of certifications, professional designations, senior-specific certifications, or senior-specific professional designations, as determined by the Division based on the following nonexclusive criteria and guidelines:

1. The use of a certification, professional designation, senior-specific certification or senior-specific professional 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 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 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 subpart (1)(y)1.(iv) of this Rule when the organization has been accredited by:

(i) The American National Standards Institute;

(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.

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.

As used herein, 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.

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

(z) Failing to comply with any applicable provision of conduct rules, any applicable fair practice or ethical standard, or any other applicable law or rule related to conducting business involving securities promulgated by the SEC or any self-regulatory organization.

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, 48-1-121, 17 C.F.R. § 240.10b-1 through 17 C.F.R. § 240.10b-21, and the FINRA Rules of Fair Conduct.*

CHAPTER 0780-04-05
INVESTMENT ADVISER REGULATION

TABLE OF CONTENTS

0780-04-05-.01	Investment Adviser Registration
0780-04-05-.02	Investment Adviser Notice Filing
0780-04-05-.03	Exemption from Investment Adviser Registration
0780-04-05-.04	Investment Adviser Net Capital Requirements
0780-04-05-.05	Written Policies and Procedures
0780-04-05-.06	Required Records
0780-04-05-.07	Reporting Requirements
0780-04-05-.08	Brochure Requirements
0780-04-05-.09	Prohibited Business Practices
0780-04-05-.10	Investment Adviser Conduct Which Operates as a Fraud or Deceit in violation of T. C. A. § 48-1-121
0780-04-05-.11	Cybersecurity

0780-04-05-.01 INVESTMENT ADVISER REGISTRATION.

(1) Investment Advisers

(a) All investment advisers must apply for initial registration in Tennessee through the IARD by complying with the electronic application procedures required by the IARD. The application filed through the IARD shall contain the following, 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; and

3. Satisfaction of the investment adviser representative examination requirements under Rule 0780-04-06-.01 by appropriate executive officers or principals of the applicant.

(b) 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:

1.

(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;

2.

(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 (1)(b)2.(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 one thousand two hundred dollars ($1,200) in investment advisory fees from any client, six (6) or more months in advance, an audited balance sheet shall be prepared in accordance with subparagraph (1)(m) of Rule 0780-04-05-.06. 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 balance sheet 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.

(2) 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 paragraph (1) of this Rule is received by the Division.

(3) All investment advisers must apply for renewal of registration in Tennessee through the IARD by complying with the requirements of the IARD.

(4) Abandonment.

(a) The Division may determine that an application to register as an investment adviser has been abandoned if:

1. 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

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 applicant.

(b) Upon the determination that an application through the IARD has been abandoned, the Division shall, as provided through the routine operation of the IARD, cancel such application without prejudice.

(5) Withdrawal of Applications. An application may be withdrawn prior to the effectiveness of registration by following the procedures established by the IARD.

(6) Revocation or Denial. The registration of an investment adviser shall be subject to revocation proceedings even though the registrant has filed the Form ADV-W 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 the Form ADV-W 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 receipt of the Form ADV-W by a registrant or 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 Form ADV-W. For purposes of this paragraph, the Division shall be deemed to be in receipt of the Form ADV-W filed on behalf of a registrant or an applicant when the Form ADV-W is actually received by the Division through the IARD and, in the instance of a registrant, a termination examination of the investment adviser pursuant to T.C.A. § 48-1-111(d) is completed to the satisfaction of the assistant commissioner for securities.

Authority: *T.C.A. §§ 48-1-102, 48-1-109, 48-1-110, 48-1-111, 48-1-112, 48-1-114, 48-1-115, 48-1-116, 48-1-117, § 222 of the Investment Advisers Act of 1940, 17 C.F.R. § 275.0-3 - .0-6, 17 C.F.R. § 275.203-1 – 3.*

0780-04-05-.02 INVESTMENT ADVISER NOTICE FILING.

(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(13) 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, but no later than thirty (30) days after the material change, with the Division through the IARD.

(2) The filings required herein 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.

(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 Form ADV-W 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 through the IARD, the Division shall cancel the incomplete notice filing in the IARD without prejudice.

Authority: *T.C.A. §§ 48-1-102, 48-1-109, 48-1-115, 48-1-116, 48-1-121, and § 203 of the Investment Advisers Act of 1940.*

0780-04-05-.03 EXEMPTION 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(13)(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;

(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; or

(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;

(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;

(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.

(4) "Client of an Investment Adviser"

(a) General. For purposes of T.C.A. §§ 48-1-102(13)(E)(ii) and subparagraph 1(b), the following are deemed a single client:

1. A natural person, and:

(i) Any minor child of the natural person;

(ii) Any relative, spouse, or relative of the spouse of the natural person who has the same principal residence;

(iii) All accounts of which the natural person and/or the persons referred to in this part (4)(a)1. are the only primary beneficiaries; or

(iv) All trusts of which the natural person and/or the persons referred to in this part (4)(a)1. are the only primary beneficiaries.

2.

(i) A corporation general partnership, limited partnership, limited liability company, trust (other than a trust referred to in subpart (4)(a)1(iv) of paragraph (4), or other legal organization (any of which are referred to hereinafter as a "legal organization") to which investment advice is provided based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners, members, or beneficiaries (any of which are referred to hereinafter as an "owner"); and

(ii) Two (2) or more legal organizations referred to in subpart (4)(a)2(i) that have identical owners.

(b) Special Rules. For purposes of this paragraph (4):

1. 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, however, the determination that an owner is a client will not affect the applicability of this part (4)(b)1 with regard to any other owner;

2. 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;

3. A limited partnership or limited liability company is a client of any general partner, managing member or other person acting as investment adviser to the partnership or limited liability company;

4. Any person for whom an investment adviser provides investment advisory services without compensation need not be counted as a client;

5. An investment adviser that has its principal office and place of business outside of Tennessee 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;

6. An investment adviser may not rely on subpart (4)(a)2(i) with respect to any company that would be an investment company under section 3(a) of the Investment Company Act, 15 U.S.C. 80a-3(a), but for the exception from that definition by either section 3(c)(1) or 3(c)(7) of such Act, 15 U.S.C. 80a-3(c)(1) or (7); and

7. For purposes of part (4)(b)5., a client who is an owner of a private fund is a resident of the place at which the client resides at the time of the client's investment in the fund.

(c) Holding Out. Any investment adviser relying on this paragraph (4) shall not be deemed to be holding itself out generally to the public as an investment adviser, within the meaning of subparagraph (1)(b), 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, 48-1-109, 48-1-115, 48-1-116, and 48-1-121.*

0780-04-05-.04 INVESTMENT ADVISER NET CAPITAL REQUIREMENTS.

(1) Except as provided under paragraph (4) of this Rule, every investment adviser registered or required to be registered shall have and maintain a readily marketable minimum net capital of twenty thousand dollars ($20,000) unless the investment adviser has custody of client funds, in which case the amount shall be thirty-five thousand dollars ($35,000).

(2) For purposes of this Rule, "net capital" shall be defined as total assets less total liabilities (net worth) as computed in accordance with generally accepted accounting principles, consistently applied, but shall not include as assets: prepaid expenses (except as to items properly classified assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature, home, home furnishings, automobiles, and the following :

(a) In the case of an individual: home equity, and any other personal items not readily marketable;

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

(c) In the case of a partnership: advances or loans to partners or affiliates, and uncollateralized receivables from partners or affiliates; and

(d) In the case of a limited liability company: advances or loans to members or affiliates, personal items not readily marketable, and uncollateralized receivables from members or affiliates.

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

(4) An investment adviser, which has its principal place of business in another state, shall not be subject to the net capital requirements of paragraph (1) if:

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

(b) 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

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

(5) For purposes of this Rule:

(a) "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; and

(b) "Readily marketable" means assets that can be sold or converted to cash within a short period of time, usually within one (1) week, and can include, but is not limited to, publicly traded securities, money market instruments, and certificates of deposit.

Authority: *T.C.A. §§ 48-1-102, 48-1-109, 48-1-110, 48-1-111, 48-1-112, 48-1-115, 48-1-116, 48-1-117, and 48-1-121, and § 222 of the Investment Advisers Act of 1940, and 17 C.F.R. § 275.203a-3.*

0780-04-05-.05 WRITTEN POLICIES AND PROCEDURES.

(1) It is unlawful for an investment adviser registered or required to be registered pursuant to T.C.A. § 48-1-109 to provide investment advice to clients unless the investment adviser establishes, maintains, and enforces written policies and procedures tailored to the investment adviser's business model, taking into account the size of the firm, type(s) of service(s) provided, and the number of locations of the investment adviser. The written policies and procedures must provide for at least the following:

(a) Compliance Policies and Procedures. The investment adviser must establish, maintain, and enforce written compliance policies and procedures reasonably designed to prevent violations by the investment adviser of the Act and the Rules that the commissioner has adopted under the Act;

(b) Supervisory Policies and Procedures. The investment adviser must establish, maintain, and enforce written supervisory policies and procedures reasonably designed to prevent violations by the investment adviser's supervised persons of the Act and the Rules that the commissioner has adopted under the Act;

(c) Proxy Voting Policies and Procedures.

1. If the investment adviser has the authority to vote client securities:

(i) The investment adviser must establish, maintain, and enforce written proxy voting policies and procedures that are reasonably designed to ensure that the investment adviser votes client securities in the best interest of clients. These procedures must include how the investment adviser addresses material conflicts that may arise between its interests and those of the investment adviser's clients;

(ii) Disclose to clients how they may obtain information from the investment adviser about how it voted with respect to their securities; and

(iii) Describe to clients the investment adviser's proxy voting policies and procedures and, upon request, furnish a copy of the policies and procedures to the requesting client.

2. If the investment adviser does not have the authority to vote client securities then this information must be disclosed to clients.

(d) Physical Security and Cybersecurity Policies and Procedures. The investment adviser must establish, implement, update, and enforce written physical security policies and procedures reasonably designed to ensure the confidentiality, integrity, and availability of physical and electronic records and information. The policies and procedures must be tailored to the investment adviser's business model, taking into account the size of the firm, type(s) of service(s) provided, and the number of locations of the investment adviser. The policies and procedures for cybersecurity must be in conformance with requirements of Rule 0780-04-05-.11.

1. The physical security policies and procedures must:

(i) Protect against reasonably anticipated threats or hazards to the security or integrity of client records and information;

(ii) Ensure that the investment adviser safeguards confidential client records and information; and

(iii) Protect any records and information the release of which could result in harm or inconvenience to any client.

2. The physical security policies and procedures must cover at least five (5) functions:

(i) Identify. Develop the organizational understanding to manage information security risk to systems, assets, data, and capabilities.

(ii) Protect. Develop and implement the appropriate safeguards to ensure delivery of critical infrastructure services.

(iii) Detect. Develop and implement the appropriate activities to identify the occurrence of an information security event;

(iv) Respond. Develop and implement the appropriate activities to take action regarding a detected information security event; and

(v) Recover. Develop and implement the appropriate activities to maintain plans for resilience and to restore any capabilities or services that were impaired due to an information security event.

3. Privacy Policy. The investment adviser must deliver upon the investment adviser's engagement by a client, and on an annual basis thereafter, a privacy policy to each client that is reasonably designed to aid in the client's understanding of how the investment adviser collects and shares, to the extent permitted by state and federal law, non-public personal information. The investment adviser must promptly update and deliver to each client an amended privacy policy if any of the information in the policy becomes inaccurate.

(e) Code of Ethics.

1. The investment adviser must establish, maintain, and enforce a written code of ethics that, at a minimum, includes:

(i) A standard (or standards) of business conduct that the investment adviser requires of its supervised persons, which must reflect the investment adviser's fiduciary obligations and those of its supervised persons;

(ii) Provisions requiring the investment adviser's supervised persons to comply with applicable state and federal securities laws;

(iii) Provisions requiring all of the investment adviser's access persons to report, and the investment adviser to review, their personal securities transactions and holdings periodically as provided below;

(iv) Provisions requiring supervised persons to report any violations of the investment adviser's code of ethics promptly to its chief compliance officer or, provided the investment adviser's chief compliance officer also receives reports of all violations, to other persons designated in the investment adviser's code of ethics; and

(v) Provisions requiring the investment adviser to provide each of its supervised persons with a copy of the investment adviser's code of ethics and any amendments, and requiring the investment adviser's supervised persons to provide it with a written acknowledgment of their receipt of the code and any amendments.

2. Reporting Requirements.

(i) Holdings reports. The code of ethics must require the investment adviser's access persons to submit to its chief compliance officer or other persons designated in the investment adviser's code of ethics a report of the access person's current securities holdings that meets the following requirements:

(I) Content of holdings reports. Each holdings report must contain, at a minimum:

I. The title and type of security, and as applicable the exchange ticker symbol or CUSIP number, number of shares, and principal amount of each reportable security in which the access person has any direct or indirect beneficial ownership;

II. The name of any broker, dealer, or bank with which the access person maintains an account in which any securities are held for the access person's direct or indirect benefit; and

III. The date the access person submits the report.

(II) Timing of holdings reports. The investment adviser's access persons must each submit a holdings report:

I. No later than ten (10) days after the person becomes an access person, and the information must be current as of a date no more than forty-five (45) days prior to the date the person becomes an access person.

II. At least once each twelve (12)-month period thereafter on a date selected by the investment adviser, and the information must be current as of a date no more than forty-five (45) days prior to the date the report was submitted.

(ii) Transaction reports. The code of ethics must require access persons to submit to the investment adviser's chief compliance officer or other persons designated in the investment adviser's code of ethics quarterly securities transactions reports that meet the following requirements:

(I) Content of transaction reports. Each transaction report must contain, at minimum, the following information about each transaction involving a reportable security in which the access person had, or as a result of the transaction acquired, any direct or indirect beneficial ownership:

I. The date of the transaction, the title, and as applicable the exchange ticker symbol or CUSIP number, interest rate and maturity date, number of shares, and principal amount of each reportable security involved;

II. The nature of the transaction (i.e., purchase, sale, or any other type of acquisition or disposition);

III. The price of the security at which the transaction was effected;

IV. The name of the broker, dealer, or bank with or through which the transaction was effected; and

V. The date the access person submits the report.

(II) Timing of transaction reports. Each access person must submit a transaction report no later than thirty (30) days after the end of each calendar quarter, which report must cover, at a minimum, all transactions during the quarter.

(iii) Exceptions from reporting requirements. The investment adviser's code of ethics need not require an access person to submit:

(I) Any report with respect to securities held in accounts over which the access person had no direct or indirect influence or control;

(II) A transaction report with respect to transactions effected pursuant to an automatic investment plan in which regular periodic purchases or withdrawals are made automatically in or from investment accounts in accordance with a predetermined schedule and allocation, including a dividend reinvestment plan; or

(III) A transaction report if the report would duplicate information contained in broker trade confirmations or account statements that the investment adviser holds in its records so long as the investment adviser receives the confirmations or statements no later than 30 days after the end of the applicable calendar quarter.

(iv) Pre-approval of certain investments. The investment adviser's code of ethics must require its access persons to obtain the investment adviser's approval before they directly or indirectly acquire beneficial ownership in any security in an initial public offering or in a limited offering.

(v) Small investment advisers. If the investment adviser has only one access person, it is not required to submit reports to itself or to obtain its own approval for investments in any security in an initial public offering or in a limited offering, if the investment adviser maintains records of all of its holdings and transactions that this section would otherwise require the investment adviser to report.

(vi) Material Non-Public Information Policy and Procedures. The investment adviser must establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by the investment adviser or any person associated with the investment adviser.

(vii) Business Continuity and Succession Plan. The investment adviser must establish, maintain, and enforce written policies and procedures relating to a business continuity and succession plan. The plan must provide for at least the following:

(I) The protection, backup, and recovery of books and records;

(II) Alternate means of communications with clients, key personnel, employees, vendors, service providers (including third-party custodians), and regulators, including, but not limited to, providing notice of a significant business interruption or the death or unavailability of key personnel or other disruptions or cessation of business activities;

(III) Office relocation in the event of temporary or permanent loss of a principal place of business;

(IV) Assignment of duties to qualified responsible persons in the event of the death or unavailability of key personnel; and

(V) Otherwise minimizing service disruptions and client harm that could result from a sudden significant business interruption.

(2) Annual review. The investment adviser must review, no less frequently than annually, the adequacy of the policies and procedures established pursuant to this section and the effectiveness of their implementation.

(3) Chief Compliance Officer. The investment adviser must designate a supervised person as the chief compliance officer responsible for administering the investment adviser's policies and procedures.

(4) Definitions. For the purposes of the Rule:

(a) "Supervised person" means any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser. The definition includes investment adviser representatives, employees, independent contractors, or other associated persons and supervised personnel, or other person acting on the behalf of the investment adviser.

(b) "Chief compliance officer" means a supervised person with the authority and resources to develop and enforce the investment adviser's policies and procedures. The individual

designated to serve as chief compliance officer must be registered as an investment adviser representative and must have the background and skills appropriate for fulfilling the responsibilities of the position.

(c) "Access person" means:

1. Any of the investment adviser's supervised person:

(i) Who has access to non-public information regarding any client's purchase or sale of securities, or non-public information regarding the portfolio holdings of any reportable fund, or

(ii) Who is involved in making securities recommendations to clients, or who has access to such recommendations that are non-public.

2. If providing investment advice is the investment adviser's primary business, all of its directors, officers, and partners are presumed to be access persons.

(d) "Beneficial ownership" is interpreted in the same manner as it would be under 17 C.F.R. § 240.16a-1 in determining whether a person has beneficial ownership of a security for purposes of section 16 of the 1934 Act (15 U.S.C. 78p) and the rules and regulations thereunder. Any report required by 17 C.F.R. 275.204A-1(b) may contain a statement that the report will not be construed as an admission that the person making the report has any direct or indirect beneficial ownership in the security to which the report relates.

(e) "Federal securities laws" means the 1933 Act (15 U.S.C. 77a-aa), the 1934 Act (15 U.S.C. 78a-mm), the Investment Company Act (15 U.S.C. 80a), the Investment Advisers Act (15 U.S.C. 80b), title V of the Gramm-Leach-Bliley Act (Pub. L. 106-102, 113 Stat. 1338 (1999), the Sarbanes-Oxley Act of 2002 (Pub. L. 107-204, 116 Stat. 745 (2002)), any rules adopted by the SEC under any of these statutes, the Bank Secrecy Act (31 U.S.C. 5311-5314; 5316-5332) as it applies to funds and investment advisers, and any rules adopted thereunder by the SEC or the U.S. Department of the Treasury.

(f) "Fund" means an investment company registered under the Investment Company Act.

(g) "Initial public offering" means an offering of securities registered under the 1933 Act (15 U.S.C. 77a), the issuer of which, immediately before the registration, was not subject to the reporting requirements of sections 13 or 15(d) of the 1934 Act (15 U.S.C. 78m or 78o(d)).

(h) "Limited offering" means an offering that is exempt from registration under the 1933 Act pursuant to section 4(2) or section 4(5) (15 U.S.C. 77d(2) or 77d(5)) or pursuant to §§ 230.504 or 230.506 of this chapter.

(i) "Purchase or sale of a security" includes, among other things, the writing of an option to purchase or sell a security.

(j) "Reportable security" means a security as defined in Rule 0780-04-01-.03(1)(m), except that it does not include:

1. Direct obligations of the Government of the United States;

2. Bankers' acceptances, bank certificates of deposit, commercial paper, and high-quality short-term debt instruments, including repurchase agreements;

3. Shares issued by money market funds;

4. Shares issued by open-end funds other than reportable funds; and

5. Shares issued by unit investment trusts that are invested exclusively in one or more open-end funds, none of which are reportable funds.

(k) "State securities laws" means all applicable state securities statutes, rules, and regulations, including, without limitation, the registration, permit or qualification requirements thereunder.

Authority: *T.C.A. §§ 48-1-102, 48-1-109, 48-1-110, 48-1-111, 48-1-112, 48-1-115, 48-1-116, 48-1-117, and 48-1-121, and §§ 203A, 205, and 222 of the Investment Advisers Act of 1940, ,17 C.F.R. § 275.203-204.*

0780-04-05-.06 REQUIRED RECORDS.

(1) Except as provided in paragraph (4) of this Rule, every registered investment adviser shall maintain and keep true, accurate, and current the following books and records, including but not limited to, originals or electronic copies sent or received by such investment adviser relating to its business, unless waived by the commissioner, and make those books and records available to the commissioner upon request:

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

(b) Originals of all written communications received and copies of all written communications sent by the investment adviser relating to

1. any recommendation made or proposed to be made and any advice given or proposed to be given;

2. any receipt, disbursement or delivery of funds or securities; or

3. the placing or execution of any order to purchase or sell any security, provided, however

(i) that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, and

(ii) that if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication, or other investment advisory service to more than ten (10) persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if the notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular or advertisement a memorandum describing the list and its source;

(c) A record showing all receivables and payables;

(d) A memorandum of each order given by the investment adviser for the purchase or sale of any security; of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt, or delivery of a particular security; and of any modification or cancellation of any such order or instruction. The memoranda shall show the terms and conditions of the order, instruction, modification, or cancellation; shall identify

the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order; and shall show the account for which the order was entered, the date of entry, and the bank or broker-dealer by or through whom the order was executed, where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated;

(e)

1. 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

2. 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 shares bought or sold; and

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

(f) A list or other record of all accounts which identifies the accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client;

(g) A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser;

(h) Copies of all communications, correspondence, and other records relating to securities transactions, and copies of all agreements entered into by the investment adviser with respect to any account, that set forth the fees to be charged and the manner of computation and method of payment thereof. The contracts shall be fair and reasonable and indicate the client's risk tolerance, investment objectives, annual income, net worth, and liquid net worth, and shall be signed and dated by all persons having an interest in the account;

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

(j) A computation, made monthly, of the investment adviser's net capital;

(k) Copies of all written agreements, acknowledgments, and solicitor disclosure statements required by Rule 0780-04-05-.10(1);

(l) All checkbooks, bank statements, canceled checks, and cash reconciliations of the investment adviser;

(m) All trial balances, financial statements, and internal audit working papers relating to the business of the investment adviser. For purposes of this Rule, "financial statements" shall

mean a balance sheet prepared in accordance with generally accepted accounting principles, an income statement, a cash flow statement, and a net worth computation as required by Rule 0780-04-05-.04;

(n) A record of every transaction in a security in which the investment adviser or any investment advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership. The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e. purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or investment advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten (10) days after the end of the calendar quarter in which the transaction was effected. The records required by this subsection shall not include the following:

1. Transactions effected in any account over which neither the investment adviser nor any investment advisory representative of the investment adviser has any direct or indirect influence or control; and

2. Transaction securities which are direct obligations of the United States;

(o) All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all management accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including, but not limited to, electronic media that the investment adviser circulates or distributes, directly or indirectly, to two (2) or more persons (other than persons connected with the investment adviser); provided, however, that with respect to the performance of management accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this paragraph;

(p) A file containing a copy of all written communications received or sent regarding any litigation involving the investment adviser, any investment adviser representative, or employee, and regarding any written customer or client complaint;

(q) Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to the client;

(r) A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self-regulatory organization and that pertains to the registrant or its investment adviser representatives, of which should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence;

(s) Where the investment adviser inadvertently held or obtained a client's securities or funds and returned them to the client within three (3) business days of receiving them, or has forwarded checks drawn by clients and made payable to third parties within three (3) business days of receipt, the investment adviser shall keep a ledger or other listing of all securities or funds held or obtained including the following information:

1. Issuer;

2. Type of security and series;

3. Date of issue;

4. For debt instruments, the denomination, interest rate, and maturity date;

5. Certificate number, including alphabetical prefix or suffix;

6. Name in which registered;

7. Date given to the investment adviser;

8. Date sent to client, sender, or third party;

9. Form of delivery to client, sender, or third party, or a copy of the form of delivery to client, sender, or third party;

10. Mail confirmation number, if applicable, or confirmation by client, sender, or third party of the funds' or security's return; and

11. Date each check was received by the investment adviser;

(t) If an investment adviser obtains possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving any public offering that comply with the exception from custody under Rule 0780-04-05-.10(3), the investment adviser shall keep the following records:

1. A record showing the issuer or current transfer agent's name, address, phone number, and other applicable contract information pertaining to the party responsible for recording client interests in the securities; and
2. A copy of any legend, shareholder agreement, or other agreement showing that those securities that are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer;

(u) For an investment adviser that has custody of a client's funds or securities, all records and evidence of compliance required by Rule 0780-04-05-.10(3)(a);

(v) A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of the investment adviser in accordance with the provisions of the Brochure Requirement found in 0780-04-05-.08, and a record of the dates that each written statement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client;

(w) If an investment adviser has custody solely as a consequence of its authority to make withdrawals from client accounts to pay its investment advisory fee and complies with the terms described under Rule 0780-04-05-.10(3)(c)3., the records required to be made and kept shall include the following:

1. A copy of any and all documents executed by the client, including a limited power of attorney, under which the investment adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the investment adviser's instruction to the custodian;

2. A journal or other record showing all purchases, sales receipts and deliveries of securities, including certificate numbers, for the accounts and all other debits and credits to the accounts;

3. A separate ledger account for each client showing all purchases, sales, receipts, and deliveries of securities, the date and price of each purchase and sale, and all debits and credits;

4. Copies of confirmations of all transactions effected by or for the account of any client;

5. A record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount of interest of each client, and the location of each security;

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

7. If applicable to the investment adviser's situation, a copy of the special examination report verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination;

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

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

(x) If an investment adviser has custody because it advises a pooled investment vehicle as defined in Rule 0780-04-05-.10(3)(e)2.(i)(III), the adviser shall also keep the following records:

1. True, accurate, and current account statements;

2. Where the investment adviser complies with Rule 0780-04-05-.10(3)(a), the records required to be made and kept shall include the following:

(i) The date(s) of the audit;

(ii) A copy of the audited financial statement; and

(iii) Evidence of the mailing of the audited financial statements to all limited partners, members, or other beneficial owners within one hundred twenty (120) days of the end of its fiscal year;

(y) Every investment adviser subject to Rule 0780-04-05-.10(3)(a) who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate, and current:

1. Records showing separately for each client the securities purchased and sold, and the date, amount and price of each purchase and sale; and

2. For each security in which any client has a current position, information from which the investment adviser can promptly furnish the name of each client, and the current amount or interest of the client;

(z) An investment adviser subject to 0780-04-05-.10(3)(a), of this Rule, before ceasing to conduct or discontinuing business as an investment adviser shall arrange for and be responsible for the preservation for the books and records required to be maintained and preserved under this Rule for the remainder of the period specified in this Rule, and shall notify the Division in writing of the exact address where the books and records will be maintained during the period:

1. Pursuant to Rule 0780-04-05-.06 the records required to be maintained and preserved may be immediately produced or reproduced, and maintained and preserved for the required time, by an investment adviser on:

(i) Paper or hard copy form, as those records are kept in their original form;

(ii) Micrographic media, including microfilm, or any similar medium; or

(iii) Electronic storage media, including any digital storage medium or system that meets the terms of this section.

2. The investment adviser must:

(i) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

(ii) Provide promptly any of the following that the Division may request:

(I) A legible, true, and complete copy of the record in the medium and format in which it is stored;

(II) A legible, true, and complete printout of the record; or

(III) Means to access, view, and print records; and

(iii) Separately store for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section;

(aa) Any book or other record made, kept, maintained, and preserved in compliance with Rule 12 C.F.R. § 275.204-2 under the Investment Advisers Act, which is substantially the same as the book or other record required to be made, kept, maintained, and preserved under this Rule, shall be deemed to be made, kept, maintained, and preserved in compliance with this Rule;

(bb) All payroll records, corporate charters, certificates of incorporation, partnership articles, minute books, and other records routinely kept in the course of operating a business;

(cc) A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication recommending the purchase or sale of a specific security, which the investment adviser circulates or distributes, directly or indirectly, to two (2) or more persons (other than persons connected with the investment adviser), and if the communication does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons therefore; and

(dd) For each client that was obtained by the investment adviser by means of a referral from a third party to whom a cash fee was paid by the adviser, the following is required:

1. Evidence of a written agreement, to which the investment adviser is a party, related to the payment of the fee;

2. A signed and dated acknowledgement of receipt from the client evidencing the client's receipt of the investment adviser's disclosure statement; and

3. A copy of a written disclosure statement from the referring party to the investor.

(2) When an investment adviser that is registered in this state is engaged in more than one (1) enterprise or activity, it shall maintain separate books of accounts and records relating to its securities business and the assets shall not be commingled with those of other businesses, and there shall be a clearly defined division with respect to income and expenses.

(3) All records required by paragraph (1) 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.

(4) 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 Rule if:

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

(b) 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;

(c) The investment adviser makes copies of the books and records available to the commissioner upon request; and

(d) The provisions of paragraph (4) 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.

(5) Definitions. For the purposes of this Rule:

(a) "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; and

(b) "Discretionary power" shall not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

Authority: *T.C.A. §§ 48-1-102, 48-1-109, 48-1-110, 48-1-111, 48-1-112, 48-1-115, 48-1-116, 48-1-117, and 48-1-121, and § 222 of the Investment Advisers Act of 1940, and 17 C.F.R. § 275.204-1.*

0780-04-05-.07 REPORTING REQUIREMENTS.

(1)

(a) 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.

(b) For any investment adviser registered in this state which has custody of client funds or securities, or which requires prepayment of more than one thousand dollars ($1,000) in investment advisory fees from any client, six (6) or more months in advance, such statement of financial condition (balance sheet) shall be:

1. Certified by an independent certified public accountant or independent public accountant;

2. Prepared in accordance with generally accepted accounting principles consistently applied; and

3. 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.

(2)

(a) Upon request by the Division, each investment adviser registered in this state shall file with the Division a copy of, or any information requested that is related to, the following:

1. 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;

2. 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

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, 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.

(b) Upon request of the Division, each investment adviser registered in this state shall file with the Division a copy of, or any information requested that is related to, any answer, response, or reply to any complaint, indictment, or information described in parts (2)(a)1.-3. of this Rule.

(c) Upon request by the division, each investment adviser registered in this state shall file with the Division a copy of, or any information requested that is related to, any decision, order, or sanction that is made, entered, or imposed with respect to any proceeding described in parts (2)(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.

(3)

(a) Each investment adviser registered in this state, or which has made a notice filing pursuant to T.C.A. § 48-1-109(c)(2), shall file with the Division through the IARD, 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.

(b) 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).

(c) 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.

(4) 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, but no later than thirty (30) days after the material change, through the IARD.

(5) Each investment adviser registered in this state shall file with the Division, through the IARD, 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.

Authority: *T.C.A. §§ 48-1-102, 48-1-109, 48-1-110, 48-1-111, 48-1-112, 48-1-115, 48-1-116, 48-1-117, and 48-1-121, and § 222 of the Investment Advisers Act of 1940, and 17 C.F.R. § 275.204-2.*

0780-04-05-.08 BROCHURE REQUIREMENTS.

(1) General requirements. 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 investment advisory client and prospective investment advisory client with:

(a) A brochure, which may be a copy of Form ADV Part 2A or written documents containing the information required by Form ADV Part 2A;

(b) A copy of its Part 2B brochure supplement for each individual:

1. Providing investment advice and having direct contact with clients in this state; or

2. Exercising discretion over assets of clients in this state, even if no direct contact is involved.

(c) A copy of its Part 2A Appendix 1 wrap fee brochure if the investment adviser sponsors or participates in a wrap fee account;

(d) A summary of material changes, which may be included in Form ADV Part 2 or given as a separate document. For purposes of this subparagraph, fee changes constitute material changes requiring an update to all parts of Form ADV;

(e) The brochure must comply with the language, organizational format, and filing requirements specified in the Instructions to Form ADV Part 2; and

(f) Such other information as the Division may require.

(2) Delivery.

(a) Initial Delivery. An investment adviser, except as provided in subparagraph (2)(c), shall deliver the Part 2A brochure and any brochure supplements required by this section to a prospective investment advisory client:

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

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

(b) Annual Delivery. If material changes have taken place since the last summary and brochure delivery, then investment adviser, except as provided in subparagraph (2)(c), must:

1. Deliver within one hundred twenty (120) days of the end of its fiscal year a free, updated brochure and related brochure supplements which include or are accompanied by a summary of material changes; or

2. Deliver a summary of material changes that includes an offer to provide a copy of the updated brochure and supplements and information on how the client may obtain a copy of the brochures and supplements. Any brochure requested in writing by the investment advisory client pursuant to an offer under this paragraph must be mailed or delivered within seven (7) days of the receipt of the request.

(c) Delivery of the brochure and related brochure supplements required by subparagraphs (2)(a) and (b) need not be made to:

1. Clients who receive only impersonal advice and who pay less than five hundred dollars ($500) in fees per year; or

2. An investment company registered under the Investment Company Act; or

3. A business development company as defined in the Investment Company Act and whose investment advisory contract meets the requirements of section 15c of that Act.

(d) Delivery of the brochure and related brochure supplements required by subparagraphs (2)(a) and (b) may be made electronically if the investment adviser:

1. In the case of an initial delivery to a potential client, obtains a verification that a readable copy of the brochure and supplements were received by the client;

2. In the case of other than initial deliveries, obtains each client's prior consent to provide the brochure and supplements electronically;

3. Prepares the electronically delivered brochure and supplements in the format prescribed in subparagraph (a) and instructions to Form ADV Part 2;

4. Delivers the brochure and supplements in a format that can be retained by the client in either electronic or paper form; and

5. Establishes procedures to supervise personnel transmitting the brochure and supplements, to prevent violations of this Rule.

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

(4) Definitions. For the purpose of this Rule:

(a) "Contract for impersonal investment 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.

(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.

Authority: *T.C.A. §§ 48-1-109, 48-1-112, 48-1-115, 48-1-116, § 222 of the Investment Advisers Act of 1940, and 17 C.F.R. § 275.204-4.*

0780-04-05-.09 PROHIBITED BUSINESS PRACTICES.

(1) A person who is an investment adviser, or a federal covered adviser, is a fiduciary and has a duty to act primarily for the benefit of its clients. The provisions of this subsection shall apply to federal covered investment advisers to the extent that the conduct alleged is fraudulent, deceptive, or as otherwise permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290). The following are deemed "dishonest or unethical business practices" by an investment adviser 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:

(a) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser;

(b) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both;

(c) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives, and character of the account;

(d) Placing an order to purchase or sell a security for the account of a client without authority to do so;

(e) 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;

(f) 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;

(g) 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;

(h) Extending, arranging for, or participating in arranging for credit to a client in violation of the 1934 Act or the regulations of the Federal Reserve Board;

(i) 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 investment advisory services being offered or fees to be charged for such service, or omitting 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;

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

(k) Charging a client an unreasonable advisory fee. Any fee above two percent (2%) of the client's assets under management shall create a rebuttable presumption that the fee is unreasonable;

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

1. Compensation agreements connected with investment advisory services to clients, which are in addition to compensation from such clients for such services; and

2. Charging a client an investment advisory fee for rendering advice when a commission for executing securities transactions, pursuant to such advice, will be received by the investment adviser or its employees;

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

(n) Publishing, circulating, or distributing any advertisement which does not comply with Rule 0780-04-05-.10(5) under the Act;

(o) Disclosing the identity, affairs, or investments of any client or former client unless required by law to do so, or unless consented to in writing by the client;

(p) 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 investment adviser's action is subject to and does not comply with the requirements of this Rule under the Act;

(q) Entering into, extending, or renewing any investment advisory contract, unless such contract is in writing and:

1. 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 investment adviser, to any investment adviser representative(s), or to any combination thereof; and

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

2. Includes acknowledgment by the client that the client was provided with a copy of the brochure at least forty-eight (48) hours prior to entering into any investment advisory contract. If the brochure was not provided at least (forty-eight) 48 hours prior to the client entering into the investment advisory contract, then the client has five (5) days to terminate the contract without penalty;

(r) Entering into, extending, or renewing any advisory contract contrary to the provisions of Section 205 of the Investment Advisers Act. This provision shall apply to all investment advisers registered or required to be registered under this Act, notwithstanding whether such investment adviser would be exempt from federal registration pursuant to Section 203(b) of the Investment Advisers Act;

(s) 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;

(t) 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;

(u) Failing to provide information requested by the Division pursuant to the Act or these Rules;

(v) Failing to establish, maintain, and enforce written policies and procedures reasonably designed, to prevent the misuse of material nonpublic information contrary to the provisions of Section 204A of the Investment Advisers Act;

(w) Possessing or utilizing a client's unique identifying information for access to a client's account held by the registrant or any other party. This includes, but is not limited to usernames and passwords;

(x) Failing to pay and fully satisfy any final judgment or arbitration award resulting from an investment-related, client or customer initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the client and the investment

adviser or investment adviser representative or between the customer and the broker-dealer or broker-dealer agent, in writing, and the broker-dealer or broker-dealer agent complies with the terms of the alternative payment arrangement;

(y) Attempting to avoid payment of any final judgment or arbitration award resulting from an investment-related, client or customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the client and the investment adviser or investment adviser representative or between the customer and the broker-dealer or broker-dealer agent, in writing, and the broker-dealer or broker-dealer agent complies with the terms of the alternative payment arrangements;

(z) Failing to pay and fully satisfy any fine, civil penalty, order of restitution, order of disgorgement, or similar monetary payment obligation imposed upon the investment adviser or investment adviser representative by the Securities and Exchange Commission, the securities or other financial services regulator of any state or province, or any self-regulatory organization;

(aa) Dishonest use of certifications, professional designations, senior-specific certifications, or senior-specific professional designations, as determined by the Division based on the following nonexclusive criteria and guidelines:

1. The use of a certification, professional designation, senior-specific certification or senior-specific professional 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 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 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 subpart (1)(ii)(1.)(iv) of this Rule 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," like words, or analogous words identifying other affinity groups, 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.

4. For purposes of subpart (aa)1.(ii) 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.

As used herein, 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.

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

(bb) Failing to establish, maintain, and enforce a required policy or procedure.

(2) Nothing in this Rule shall limit the commissioner's authority to enforce existing provisions of this law.

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), § 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.*

0780-04-05-.10 INVESTMENT ADVISER CONDUCT WHICH OPERATES AS A FRAUD OR DECEIT IN VIOLATION OF T.C.A. § 48-1-121.

(1) Cash Payments for Client Solicitations

(a) 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, for any investment adviser to pay a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities unless:

1. The solicitor is registered as an investment adviser or investment adviser representative or is exempt from registration as provided for in T.C.A. § 48-1-109(c);

2. The solicitor is not a person:

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

(ii) 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);

(iii) 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;

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

(v) Subject to an order, judgment, or decree issued under section 203(f) of the Investment Advisers Act, or (B) convicted within the previous ten years of any felony or misdemeanor involving conduct described in section 203(e)(2)(A) through (D) of the Investment Advisers Act, or (C) who has been found by the SEC to have engaged, or has been convicted of engaging, in any of the conduct specified in paragraphs (1), (5) or (6) of section 203(e) of the Investment Advisers Act, or (D) is subject to an order, judgment or decree described in section 203(e)(4) of the Investment Advisers Act; or

(vi) Subject to an order, judgment, or acceptance, waiver, and consent of any self-regulatory organization that suspends or bars the person from associating with self-regulatory organization members, associates, or agents or engaging in the securities industry;

3. Such cash fee is paid pursuant to a written agreement to which the investment adviser is a party; and

4. Such cash fee is paid to a solicitor:

(i) With respect to solicitation activities for the provision of impersonal investment advisory services only;

(ii) 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;

(iii) Other than a solicitor specified in subparts (a)4.(i) or (a)4.(ii) of this paragraph (1) if all of the following conditions are met:

(I) The written agreement required by part (1)(a)3. 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 or her 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 brochure required by Rule 0780-04-05-.08 or SEC Rule 204-3 (17 C.F.R. § 275.204-3) as applicable, and a separate written disclosure statement described in subparagraph (b) 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 brochure 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.

(b) The separate written disclosure statement required to be furnished by the solicitor to the client pursuant to subitem (1)(a)4.(iii)(I)III. of this Rule shall contain the following information:

1. The name of the solicitor;

2. The name of the investment adviser;

3. The nature of the relationship, including any affiliation, between the solicitor and the investment adviser;

4. A statement that the solicitor will be compensated for their solicitation services by the investment adviser;

5. The terms of such compensation arrangement, including a description of the compensation paid or to be paid to the solicitor;

6. The amount, if any, the client will be charged for the cost of obtaining their account in addition to the investment advisory fee; and

7. The differential, if any, among clients, with respect to the amount or level of investment 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.

(c) 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 law.

(d) For purposes of this Rule:

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

2. "Client" includes any prospective client.

3. "Impersonal investment 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.

(2) Agency Cross Transactions.

(a) For purposes of this Rule, "agency cross transaction for an advisory client" means a transaction in which a person acts as an investment adviser in relation to a transaction in which the investment adviser, or any person controlling, controlled by, or under common control with such investment adviser, including and investment adviser representative, acts as a broker-dealer for both the advisory client and another person on the other side of the transaction. When acting in such capacity such person is required to be registered as a broker-dealer or broker-dealer agent in this state unless excluded from the definition.

(b) 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, while acting as principal for its own advisory account to knowingly sell any security to or purchase any security from a client, or while acting as broker-dealer for a person other than the client, to knowingly effect any sale or purchase of any security for the account of such client, without disclosing to the client in writing before the completion of the transaction the capacity in which the investment adviser or broker-

dealer is acting and obtaining the consent of the client to the transaction. The prohibitions of this subparagraph shall not apply to any transaction with a customer of a broker-dealer if the broker-dealer is not acting as an investment adviser in relation to such transaction.

(c) An investment adviser effecting an agency cross transaction for an advisory client shall be deemed in compliance with T.C.A. § 48-1-121(b)(2) for purposes of this Rule, and with 0780-04-05-.10(2), if the following conditions are met:

1. The advisory client executes a written consent prospectively authorizing the investment adviser to effect agency cross transactions for such client;

2. Before obtaining such written consent from the client, the investment adviser makes full written disclosure to the client that, with respect to agency cross transactions, the investment adviser will act as broker-dealer for, receive commissions from and have a potentially conflicting division of loyalties and responsibilities regarding both parties to the transactions;

3. At or before the completion of each agency cross transaction, the investment adviser or any other person relying on this Rule sends the client a written confirmation. The written confirmation shall include:

(i) A statement of the nature of the transaction;

(ii) The date the transaction took place;

(iii) An offer to furnish, upon request, the time when the transaction took place; and

(iv) The source and amount of any other remuneration the investment adviser received or will receive in connection with the transaction. In the case of a purchase, if the investment adviser was not participating in a distribution, or, in the case of a sale, if the investment adviser was not participating in a tender offer, the written confirmation may state whether the investment adviser has been receiving or will receive any other remuneration and that the investment adviser will furnish the source and amount of such remuneration to the client upon the client's written request;

4. At least annually, and with or as part of any written statement or summary of the account from the investment adviser, the investment adviser or any other person relying on this Rule sends each client a written disclosure statement identifying:

(i) The total number of agency cross transactions during the period for the client since the date of the last such statement or summary; and

(ii) The total amount of all commissions or other remuneration the investment adviser received or will receive in connection with agency cross transactions for the client during the period.

5. Each written disclosure and confirmation required by this Rule must include a conspicuous statement that the client may revoke the written consent required under part (c)1. of this Rule at any time by providing written notice to the investment adviser, and

6. No agency cross transaction may be effected in which the same investment adviser recommended the transaction to both any seller and any purchaser.

(d) Nothing in this Rule shall be construed to relieve an investment adviser or investment adviser representative from acting in the best interests of the client, including fulfillment of duties with respect to the best price and execution for the particular transaction for the client nor shall it relieve any investment adviser or investment adviser representative of any other disclosure obligations imposed by the Act.

(3) Custody or Possession of Funds or Securities of Clients.

(a) 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:

1. The investment adviser notifies the Division promptly in writing that the investment adviser has or may have custody of funds or securities. Such notification is required to be given on Form ADV;

2. A qualified custodian maintains those funds and securities:

(i) In a separate account for each client under that client's name; or

(ii) In accounts that contain only the investment adviser's clients' funds and securities, under the investment adviser's name as agent or trustee for the clients, or, in the case of a pooled investment vehicle that the investment adviser manages, in the name of the pooled investment vehicle;

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

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

5. If the investment adviser or a related person is a general partner of a limited partnership, or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle, the account statements required under part (3)(a)4. of this Rule must be sent to each limited partner, or member or other beneficial owner;

6. The client funds and securities of which the investment adviser has custody are verified by actual examination at least once during each calendar year, by an independent certified public accountant, pursuant to a written agreement between the investment adviser and the independent certified public accountant, at a time that is chosen by the independent certified public accountant without prior notice

or announcement to the investment adviser and that is irregular from year to year. The written agreement must provide for the first examination to occur within six (6) months of becoming subject to this paragraph, except that, if the investment adviser maintains client funds or securities pursuant to this Rule as a qualified custodian, the agreement must provide for the first examination to occur no later than six (6) months after obtaining the internal control report. The written agreement must require the independent certified public accountant to:

(i) File a certificate on Form ADV-E with the Division within one hundred twenty (120) days of the time chosen by the independent certified public accountant in part (3)(a)6. of this Rule, stating that it has examined the funds and securities and describing the nature and extent of the examination;

(ii) Notify the Division within one (1) business day of the finding of any material discrepancies during the course of the examination, via electronic mail or via first class mail, directed to the attention of the Division and the Director of Registration; and

(iii) File within four (4) business days of the resignation or dismissal from, or other termination of, the engagement, or removing itself or being removed from consideration for being reappointed, Form ADV-E accompanied by a statement that includes:

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

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

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

(i) The independent certified public accountant the investment adviser retains to perform the independent verification required by part (3)(a)6. of this subparagraph (3)(a) must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules; and

(ii) The investment adviser must obtain, or receive from its related person, within six (6) months of becoming subject to this paragraph, and thereafter no less frequently than once each calendar year, a written internal control report prepared by an independent certified public accountant:

(I) The internal control report must include an opinion of an independent certified public accountant as to whether controls have been placed in operation as of a specific date, and are suitably designed and are operating effectively to meet control objectives relating to custodial services, including the safeguarding of funds and securities held by either the investment

adviser or a related person on behalf of the investment adviser's clients, during the year;

(II) The independent certified public accountant must verify that the funds and securities are reconciled to a custodian other than the investment adviser or the investment adviser's related person; and

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

(b) A client may designate in writing an independent representative to receive, on their behalf, notices and account statements as required under parts (a)3. and (a)4. of this Rule.

(c) Exceptions.

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

2. Certain privately offered securities.

(i) The investment adviser is not required to comply with part (a)2. of this paragraph (3) with respect to securities that are:

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

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

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

(ii) Notwithstanding subpart (3)(c)2.(i) of this Rule, the provisions of this part (c)2. are available with respect to securities held for the account of a limited partnership, limited liability company, or other type of pooled investment vehicle, only if the limited partnership is audited and the audited financial statements are distributed, as described in part (c)4. of this Rule and the investment adviser notifies the Division in writing that the investment adviser intends to provide audited financial statements, as described above. Such notification is required to be provided on Form ADV.

3. Notwithstanding part (3)(a)6. of this Rule, an investment adviser is not required to obtain an independent verification of client funds and securities maintained by a qualified custodian if all of the following are met:

(i) The investment adviser has custody of the funds and securities solely as a consequence of its authority to make withdrawals from client accounts to pay its investment advisory fee;

(ii) The investment adviser has written authorization from the client to deduct investment advisory fees from the account held with the qualified custodian;

(iii) Each time a fee is directly deducted from a client account, the investment adviser concurrently:

(I) Sends the qualified custodian an invoice or statement of the amount of the fee to be deducted from the client's account; and

(II) Sends the client an invoice or statement itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee.

(iv) The investment adviser notifies the Division in writing that the investment adviser intends to use the safeguards provided above. Such notification is required to be given on Form ADV.

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

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

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

(II) A listing of all long and short positions on the closing date of the statement in accordance with FASB Rule ASC 946-210-50 and 13F under the Securities Exchange Act of 1934 for investment managers' annual reports; and

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

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

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

(iv) Upon liquidation, the investment adviser distributes the fund's final audited financial statements prepared in accordance with generally accepted

accounting principles to all limited partners (or members or other beneficial owners) and the Division promptly after the completion of such audit;

(v) The written agreement with the independent certified public accountant must require the independent certified public accountant to, upon resignation or dismissal from, or other termination of, the engagement, or upon removing itself or being removed from consideration for being reappointed, notify the Division within four (4) business days accompanied by a statement that includes:

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

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

(vi) The investment adviser must also notify the Division in writing that the investment adviser intends to employ the use of the statement delivery and audit safeguards described above. Such notification is required to be given on Form ADV.

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

(d) Sending an account statement under part (3)(a)5. of this Rule or distributing audited financial statements under part (3)(c)4. of this Rule shall not satisfy the requirements of this Rule if such account statements or financial statements are sent solely to limited partners (or members or other beneficial owners) that themselves are limited partnerships (or limited liability companies, or another type of pooled investment vehicle) and are related persons of the investment adviser.

(e) Definitions. For purposes of this Rule:

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

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

(ii) A person is presumed to control a corporation if the person:

(I) Directly or indirectly has the right to vote twenty-five percent (25%) or more of a class of the corporation's voting securities; or

(II) Has the power to sell or direct the sale of twenty-five percent (25%) or more of a class of the corporation's voting securities;

(iii) A person is presumed to control a partnership if the person has the right to receive upon dissolution, or has contributed, twenty-five percent (25%) or more of the capital of the partnership;

(iv) A person is presumed to control a limited liability company if the person:

(I) Directly or indirectly has the right to vote twenty-five percent (25%) or more of a class of the interests of the limited liability company;

(II) Has the right to receive upon dissolution, or has contributed twenty-five percent (25%) or more of the capital of the limited liability company; or

(III) Is an elected manager of the limited liability company; or

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

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

(i) Custody includes:

(I) Possession of client funds or securities unless the investment adviser receives them inadvertently and returns them to the sender promptly, but in any case, within three (3) business days of receiving them;

(II) Any arrangement, including a general partner of attorney, under which the investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser's instruction to the custodian; and

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

(ii) Receipt of checks drawn by clients and made payable to third parties will not meet the definition of custody if forwarded to the third party within three (3) business days of receipt and the investment adviser maintains the records required under Rule 0780-04-05-.06.

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

4. "Independent representative" means a person who:

(i) Acts as agent for an investment advisory client, including in the case of a pooled investment vehicle, for limited partners or a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or contract is obliged to act in the best interest of the investment advisory client or the limited partners, members, or other beneficial owners;

(ii) Does not control, is not controlled by, and is not under common control with investment adviser; and

(iii) Does not have, and has not had within the past two (2) years, a material business relationship with the investment adviser.

5. "Qualified custodian" means the following:

(i) A bank, including a trust company, as defined in section 202 (a)(2) of the Investment Advisers Act, 15 U.S.C. 80b-2 (a)(2), or a savings association as defined in section 3 (b)(1) of the Federal Deposit Insurance Act, 12 U.S.C. 1813 (b)(1), that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act, 12 U.S.C. 1811;

(ii) A broker-dealer registered in this jurisdiction and with the SEC holding the client assets in client accounts;

(iii) A registered futures commission merchant under Section 4f(a) of the Commodity Exchange Act, holding the client assets in client accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and

(iv) A foreign financial institution that customarily holds financial assets for its clients, provided that the foreign financial institution keeps the investment advisory clients' assets in client accounts segregated from its proprietary assets.

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

(4) Financial and Disciplinary Disclosure

(a) 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:

1. A financial condition of the investment adviser that is reasonably likely to impair the ability of the investment adviser to meet contractual commitments to the client, if the investment adviser has discretionary authority (express or implied) or custody over such client's funds or securities, or requires prepayment of investment advisory fees of more than one thousand two hundred dollars ($1,200) from such client, six (6) months or more in advance; or

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

(b) It shall constitute a rebuttable presumption that the following legal or disciplinary events involving the investment adviser or a management person of the investment 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 this part (4)(a)2. for a period of ten (10) years from the time of the event:

1. A criminal or civil action in a court of competent jurisdiction in which the person:

(i) 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;

(ii) Was found to have been involved in a violation of an investment-related statute or regulation; or

(iii) 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.

2. 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:

(i) Was found to have caused an investment-related business to lose its authorization to do business; or

(ii) 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, was the subject of an order in which civil penalties were assessed or otherwise significantly limiting the person's investment-related activities.

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

(i) Was found to have caused an investment-related business to lose its authorization to do business; or

(ii) 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.

(c) The information required to be disclosed by subparagraph (4)(a) of this Rule shall be disclosed in writing to clients promptly, and to prospective clients not less than forty-eight (48) hours prior to entering into any written 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.

(d) For purposes of this Rule:

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

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

3. "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.

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

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

(e) For purposes of calculating the ten (10) year period during which events are presumed to be material under subparagraph 4(b). 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.

(f) Compliance with subparagraph 4(b) of this Rule shall not relieve any investment adviser representative from the disclosure obligations of subparagraph 4(a) of this Rule. Compliance with subparagraph 4(a) 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.

(5) Advertisement.

(a) 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 or its representative, directly or indirectly, to publish, circulate, or distribute any advertisement:

1. 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;

2. 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 or its representative within the immediately preceding period of not less than one (1) year, if such advertisement or list includes both of the following:

(i) 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 most recently available market price of each such security; and

(ii) 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";

3. 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 their 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;

4. 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;

5. Represents that the department, division, or any of its personnel has approved any advertisement; or

6. Contains any untrue statement of a material fact, or which is otherwise false or misleading.

(b) 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 electronic or paper publication or by radio or television, or by any medium, which offers:

1. 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;

2. 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

3. Any other investment advisory service with regard to securities.

(6) Nothing in this Rule shall limit the commissioner's authority to enforce existing provisions of law.

***Authority**: T.C.A. §§ 48-1-109, 48-1-111, 48-1-115, 48-1-116, and 48-1-121, § 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, 17 C.F.R. § 275.204-3, 17 C.F.R. § 275.206(3)-2, 17 C.F.R. § 275.206(4)-1, and 17 C.F.R. § 275.206(4)-2.*

0780-04-05-.11 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 the 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;

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.

(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:

(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 (4)(a)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.

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.*

CHAPTER 0780-04-06
INVESTMENT ADVISER REPRESENTATIVE REGULATION

TABLE OF CONTENTS

0780-04-06-.01	Investment Adviser Representative Registration
0780-04-06-.02	Exemption from Investment Adviser Representative Registration
0780-04-06-.03	Examinations of Investment Adviser Representatives
0780-04-06-.04	Investment Adviser Representative Reporting Requirements
0780-04-06-.05	Prohibited Business Practices
0780-04-06-.06	Investment Adviser Representative Conduct Which Operates as a Fraud or Deceit in Violation of T.C.A. § 48-1-121
0780-04-06-.07	Continuing Education

0780-04-06-.01 INVESTMENT ADVISER REPRESENTATIVE REGISTRATION

(1) Investment Adviser Representative

(a) All investment adviser representative applicants 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:

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

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

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

(b) Investment adviser representatives applying for registration through the IARD and 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.

(c) Pursuant to Section 203.A.(b)(1)(A) of the Investment Advisers Act:

1. An investment adviser representative who has no place of business located within this state, and who is associated with an investment adviser that is registered under Section 203 of the Investment Advisers Act, is not required to register as an investment adviser representative of such investment adviser in this state;

2. An investment adviser representative who does have a place of business located within this state, and who is associated with an investment adviser registered under Section 203 of the Investment Advisers Act and which has filed a completed investment adviser notice filing in this state pursuant to T.C.A. § 48-1-109(c)(2), is required to register as an investment adviser representative of such investment adviser in this state.

(2) 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 paragraph (1) of this Rule is received by the Division.

(3) Renewals. All investment adviser representatives 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.

(4) Revocation or Denial. The registration of an investment adviser representative shall be subject to revocation proceedings even though the registrant has filed a Form U5 to terminate the registrant's registration, and an application for registration as an investment adviser representative shall be subject to denial proceedings even though the applicant has filed a Form U5 to withdraw the applicant's 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 the 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 Form U5. For purposes of this paragraph (4), "filing date" shall mean the date upon which the Form U5 is filed on behalf of a registrant or an applicant through the IARD and CRD System.

(5) Transfer. There is no provision under the Act to transfer an individual investment adviser representative's registration. When an investment adviser representative terminates their relationship with an investment adviser with whom the registrant 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 representative proposes to have the new relationship. The termination of registration shall be effected by the investment adviser by submitting a Form U5 within thirty (30) days of the date of termination. The filings prescribed in this paragraph (5) are not required in the event of a mass transfer of investment adviser representative registrations pursuant to IARD operational procedures and are not required in the event of a succession as permitted in T.C.A. § 48-1-110(c).

(6) Temporary Registration. 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 may apply for temporary registration with another investment adviser through the IARD by complying with the procedure required by the IARD. Any 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.

(7) Abandonment.

(a) The Division may determine that an application to register an investment adviser representative has been abandoned if:

1. 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

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 applicant.

(b) 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.

(8) Withdrawal of Applications. An application for registration as an investment adviser representative may be withdrawn prior to the effectiveness of registration by following the procedures established by the IARD and CRD System.

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.

0780-04-06.02 EXEMPTIONS FROM INVESTMENT ADVISER REPRESENTATIVE REGISTRATION.

(1) An investment adviser representative who is not included in the SEC Rule 203A-3 (17 C.F.R. § 275.203a-3) definition of "investment adviser representative" and who is not associated with an investment adviser which has filed a completed investment adviser notice filing pursuant to T.C.A. § 48-1-109(c)(2), is exempted from the definition of investment adviser representative as defined under T.C.A. § 48-1-102(14).

(2) 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 exempted from the definition of investment adviser representative as defined under T.C.A. § 48-1-102(14).

(3) An individual who is employed by or associated with an investment adviser that is exempt from registration in this state pursuant to 0780-04-05-.03(1)(c) and does not otherwise act as an investment adviser representative is exempted from the registration requirements of T.C.A. § 48-1-109(c).

***Authority**: T.C.A. §§ 48-1-102, 48-1-109, 48-1-115, 48-1-116, and 48-1-121.*

0780-04-06.03 EXAMINATION OF INVESTMENT ADVISER REPRESENTATIVES.

(1) Each applicant for initial registration as an investment adviser representative shall, unless covered by paragraph (2) or (3) or otherwise waived by the Commissioner, have passed:

(a) the Series 65/Uniform Investment Adviser Law Examination ("Series 65 Examination") within twenty-four (24) months of the date of application; or

(b) the Series 66/Uniform Combined State Law Examination ("Series 66 Examination") and the Series 7/General Securities Representative Examination ("Series 7 Examination") within twenty-four (24) months of the date of application; and

(c) the Securities Industry Essential Examination within forty-eight (48) months of the date of application.

(2) Compliance with paragraph (1) is waived if the applicant has been awarded any of the following designations and at the time of filing an application is current and in good standing:

(a) Certified Financial Planner ("CFP") awarded by the Certified Financial Planners Board of Standards;

(b) Chartered Financial Consultant ("ChFC");

(c) Chartered Financial Analyst ("CFA") awarded by the Institute of Chartered Financial Analysts;

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

(e) Any further certificates or credentials that are placed on the NASAA 65 Equivalency List, as maintained and updated by NASAA and the NASAA Exams Advisory Committee.

(3) Any individual who has been registered as an investment adviser representative in any state within two years from the date of filing an application for registration shall not be required to retake the examinations in paragraph (1) to be eligible for registration.

(4) Any individual who is not registered as an investment adviser representative in any state for more than twenty-four (24) months but less than sixty (60) months, who has elected to participate in the FINRA Maintaining Qualifications Program pursuant to FINRA Rule 1240(c), and whose appropriate FINRA qualifying examinations remain valid pursuant to effective participation in the FINRA Maintaining Qualifications Program shall not have to retake the appropriate FINRA qualifying examinations to comply with the examination requirements of paragraph (1); provided, however, that successful participation in the FINRA Maintaining Qualifications Program shall not extend the Series 65 Examination or the Series 66 Examination for purposes of investment adviser representative registration.

(5) Notwithstanding the other provisions of this Rule, an individual who terminates their registration as an investment adviser representative may maintain the validity of their Series 65 Examination or the investment adviser representative portion of the Series 66 Examination, as applicable, without being employed by or associated with an investment adviser or federal covered investment adviser for a maximum of five (5) years following the termination of the effectiveness of the investment adviser representative registration if the individual meets all of the following:

(a) The individual previously took and passed the examination for which they seek to maintain validity under this Rule;

(b) The individual was registered as an investment adviser representative for at least one year immediately preceding the termination of the investment adviser representative registration;

(c) The individual was not subject to a statutory disqualification as defined in Section 3(a)(39) of the Exchange Act while registered as an investment adviser representative or at any period after termination of the registration;

(d) The person elects to participate in the Exam Validity Extension Program ("EVEP") under this paragraph (5) within twenty-four (24) months from the effective date of the termination of the investment adviser representative registration;

(e) The individual does not have a deficiency under the investment adviser representative continuing education program at the time the investment adviser representative registration becomes ineffective;

(f) The person who completes annually on or before December 31 of each calendar year in which the person participates in the IAR EVEP:

1. six (6) Credits of IAR CE Ethics and Professional Responsibility Content offered by an Authorized Provider, including at least three (3) hours covering the topic of ethics, and

2. six (6) Credits of IAR CE Products and Practice Content offered by an Authorized Provider;

(g) An individual who elects to participate in EVEP is required to complete credits required by subparagraph (f) of this Rule for each calendar year that elapses after the individual's investment adviser registration became ineffective regardless of when the individual elects to participate in EVEP; and

(h) An individual who complies with the FINRA Maintaining Qualification Program under FINRA Rule 1240(c) shall be considered in compliance with part (f)2. of this Rule.

(6) For purposes of this Rule, 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 Examination") requirement of subparagraph (1)(b) and paragraph (3) of this Rule.

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

(8) The commissioner may, upon written request and good cause shown by the applicant, waive the twenty-four (24) month examination time requirement. However, good cause may not be shown for any request to extend the twenty-four (24) month examination time requirement more than thirty (30) additional days.

***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, § 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. § 240.17a-5, 17 C.F.R. § 275.203A-3, and 17 C.F.R. § 402.2.*

0780-04-06-.04 INVESTMENT ADVISER REPRESENTATIVE REPORTING REQUIREMENTS.

(1) 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:

(a) 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;

(b) 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

(c) 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.

(2) Upon request by the Division, each investment adviser representative registered in this state shall file with the Division through the registrant's investment adviser, if registered, or directly if the registrant's 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 paragraph (1) of this Rule.

(3) Upon request by the Division, each investment adviser representative registered in this state shall file with the Division through the registrant's investment adviser, if registered, or directly if the registrant's 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 paragraph (1) 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.

***Authority**: T.C.A. §§ 48-1-102, 48-1-109, 48-1-110, 48-1-111, 48-1-112, 48-1-115, 48-1-116, 48-1-117, and 48-1-121, and § 222 of the Investment Advisers Act of 1940, and 17 C.F.R. § 275.204.*

0780-04-06-.05 PROHIBITED BUSINESS PRACTICES.

(1) A person who is an investment adviser representative is a fiduciary and has a duty to act primarily for the benefit of his or her clients. The following are deemed "dishonest or unethical business practices" by 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:

(a) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser representative;

(b) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both;

(c) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives, and character of the account;

(d) Placing an order to purchase or sell a security for the account of a client without authority from the client to do so;

(e) 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;

(f) 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;

(g) Loaning money to a client unless the client is an affiliate of the investment adviser;

(h) Extending, arranging for, or participating in arranging for credit to a client in violation of the 1934 Act or the regulations of the Federal Reserve Board;

(i) 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 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;

(j) Providing a report or recommendation to any advisory client prepared by someone other than the investment adviser representative, or the investment adviser representative's investment adviser, without disclosing that fact. This prohibition does not apply to a

situation where the investment adviser representative uses published research reports or statistical analyses to render advice or where an investment adviser representative orders such a report in the normal course of providing service;

(k) Charging a client an unreasonable advisory fee. Any fee above two percent (2%) shall create a rebuttable presumption that the fee is unreasonable;

(l) 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:

1. Compensation agreements connected with advisory services to clients, which are in addition to compensation from such clients for such services; and

2. 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;

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

(n) Publishing, circulating, or distributing any advertisement which does not comply with Rule 0780-04-04-.10(5) under the Act;

(o) Disclosing the identity, affairs, or investments of any client or former client unless required by law to do so, or unless consented to by the client;

(p) Entering into, extending, or renewing any investment advisory contract, unless such contract is in writing and, in substance, discloses:

1. The services to be provided;

2. The term of the contract;

3. The advisory fee

4. The formula for computing the fee

5. The amount of prepaid fee to be returned in the event of contract termination or non-performance;

6. Whether the contract grants discretionary power to the investment adviser, to any investment adviser representative(s), or to any combination thereof; and

7. That no assignments of such contract shall be made by the investment adviser representative without the consent of the other party to the contract;

(q) Entering into, extending, or renewing any advisory contract contrary to the provisions of Section 205 of the Investment Advisers Act. This provision shall apply to all investment adviser representatives registered or required to be registered under this Act, notwithstanding whether such investment adviser representative would be exempt from federal registration pursuant to Section 203(b) of the Investment Advisers Act;

(r) 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;

(s) 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;

(t) Failing to provide information requested by the Division pursuant to the Act or these Rules;

(u) Possessing or utilizing a client's unique identifying information for access to a client's account held by the registrant or any other party. This includes, but is not limited to usernames and passwords;

(v) Failing to pay and fully satisfy any final judgment or arbitration award resulting from an investment-related, client or customer initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the client and the investment adviser or investment adviser representative or between the customer and the broker-dealer or broker-dealer agent, in writing, and the broker-dealer or broker-dealer agent complies with the terms of the alternative payment arrangement;

(w) Attempting to avoid payment of any final judgment or arbitration award resulting from an investment-related, client or customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the client and the investment adviser or investment adviser representative or between the customer and the broker-dealer or broker-dealer agent, in writing, and the broker-dealer or broker-dealer agent complies with the terms of the alternative payment arrangements;

(x) Failing to pay and fully satisfy any fine, civil penalty, order of restitution, order of disgorgement, or similar monetary payment obligation imposed upon the investment adviser or investment adviser representative by the Securities and Exchange Commission, the securities or other financial services regulator of any state or province, or any self-regulatory organization; or

(y) Dishonest use of certifications, professional designations, senior-specific certifications, or senior-specific professional designations, as determined by the Division based on the following nonexclusive criteria and guidelines:

1. The use of a certification, professional designation, senior-specific certification or senior-specific professional 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 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 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 subpart (1)(y)1.)(iv) of this Rule 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," like words, or analogous words identifying other affinity groups, 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.

4. For purposes of part (1)(y)1. 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.

As used herein, 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.

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

(2) Nothing in this Rule shall limit the commissioner's authority to enforce existing provisions of this law.

***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), § 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*

0780-04-06-.06 INVESTMENT ADVISER REPRESENTATIVE CONDUCT WHICH OPERATES AS A FRAUD OR DECEIT IN VIOLATION OF T.C.A. § 48-1-121.

(1) Cash Payments for Client Solicitations.

(a) 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, for any investment adviser representative to pay a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities unless:

1. The solicitor is registered as an investment adviser or investment adviser representative or is exempt from registration as provided in T.C.A. § 48-1-109(c);

2. The solicitor is not a person:

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

(ii) 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);

(iii) 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;

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

(v) Subject to an order, judgment, or decree issued under section 203(f) of the Investment Advisers Act, or (B) convicted within the previous ten years of any felony or misdemeanor involving conduct described in section 203(e)(2)(A) through (D) of the Investment Advisers Act, or (C) who has been found by the SEC to have engaged, or has been convicted of engaging, in any of the conduct specified in paragraphs (1), (5) or (6) of section 203(e) of the Investment Advisers Act, or (D) is subject to an order,

judgment or decree described in section 203(e)(4) of the Investment Advisers Act; ; or

(vi) Subject to an order, judgment, or acceptance, waiver, and consent of any self-regulatory organization that suspends or bars the person from associating with self-regulatory organization member, associates, or agents or engaging in the securities industry;

3. Such cash fee is paid pursuant to a written agreement to which the investment adviser representative is a party;

4. Such cash fee is paid to a solicitor:

(i) With respect to solicitation activities for the provision of impersonal advisory services only;

(ii) Who is:

(I) A partner, officer, director, or employee of such investment adviser representative; 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 representative; provided that the status of such solicitor as a partner, officer, director, or employee of such investment adviser representative or other person, and any affiliation between the investment adviser representative and such other person, is disclosed to the client at the time of the solicitation or referral;

(iii) Other than a solicitor specified in subparts (a)4.(i) or (a)4.(ii) of this paragraph, if all of the following conditions are met:

(I) The written agreement required by part (1)(a)3. of this Rule:

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

II. Contains an undertaking by the solicitor to perform the solicitor's duties under the agreement in a manner consistent with the instructions of the investment adviser representative, the provisions of the Act, 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 representative, provide the client with a current copy of the investment adviser's brochure required by by Rule 0780-04-05-.08 or SEC Rule 204-3 (17 C.F.R. § 275.204-3) as applicable, and a separate written disclosure statement described in subparagraph (1)(b) of this Rule.

(II) The investment adviser representative 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 representative 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.

(b) The separate written disclosure statement required to be furnished by the solicitor to the client pursuant to subitem (1)(a)4.(iii)(I)III. of this Rule shall contain the following information:

1. The name of the solicitor;

2. The name of the investment adviser representative;

3. The nature of the relationship, including any affiliation, between the solicitor and the investment adviser representative;

4. A statement that the solicitor will be compensated for any solicitation services by the investment adviser representative;

5. The terms of such compensation arrangement, including a description of the compensation paid or to be paid to the solicitor; and

6. The amount, if any, the client will be charged for the cost of obtaining the client's account in addition to the advisory fee; and

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

(c) 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.

(d) For purposes of this Rule:

1. "Solicitor" means any person who, directly or indirectly, solicits any client for, or refers any client to, an investment adviser representative.

2. "Client" includes any prospective client.

3. "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.

(e) The investment adviser representative shall provide a copy of each written agreement required by subparagraph (1)(b) of this Rule to the investment adviser as part of the records required to be kept under T.C.A. § 48-1-111(a) and paragraph (3) of Rule 0780-04-05-.06.

(f) The investment adviser representative shall provide a copy of each acknowledgement and solicitor disclosure document referred to in subpart (1)(c)3.(iv) of this Rule to the investment adviser as part of the records required to be kept under T.C.A. § 48-1-111(a) and paragraph (3) of Rule 0780-04-05-.06.

(f) An investment adviser representative 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 (7) or (8) of this Rule if:

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

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

3. The provisions of paragraphs (7) or (8) of this Rule would require the investment adviser representative to submit records in addition to those required under the laws of the state in which the investment adviser representative maintains its principal place of business.

(2) Agency Cross Transactions.

(a) For purposes of this Rule, "agency cross transaction for an advisory client" means a transaction in which a person acts as an investment adviser in relation to a transaction in which the investment adviser, or any person controlling, controlled by, or under common control with such investment adviser, including an investment adviser representative, acts as a broker-dealer for both the advisory client and another person on the other side of the transaction. When acting in such capacity such person is required to be registered as a broker-dealer or broker-dealer agent in this state unless excluded from the definition.

(b) 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 representative, while acting as principal for its own advisory account to knowingly sell any security to or purchase any security from a client, or while acting as broker-dealer for a person other than the client, to knowingly effect any sale or purchase of any security for the account of such client, without disclosing to the client in writing before the completion of the transaction the capacity in which the investment adviser representative or broker-dealer is acting and obtaining the consent of the client to the transaction. The prohibitions of this subparagraph shall not apply to any transaction with a customer of a broker-dealer if the broker-dealer is not acting as an investment adviser in relation to such transaction.

(c) An investment adviser effecting an agency cross transaction for an advisory client shall be deemed in compliance with T.C.A. § 48-1-121(b)(2) for purposes of this Rule, and with 0780-04-06-.06(2), if the following conditions are met:

1. The advisory client executes a written consent prospectively authorizing the investment adviser to effect agency cross transactions for such client;

2. Before obtaining such written consent from the client, the investment adviser makes full written disclosure to the client that, with respect to agency cross

transactions, the investment adviser will act as broker-dealer for, receive commissions from and have a potentially conflicting division of loyalties and responsibilities regarding both parties to the transactions;

3. At or before the completion of each agency cross transaction, the investment adviser or any other person relying on this Rule sends the client a written confirmation. The written confirmation shall include:

(i) A statement of the nature of the transaction;

(ii) The date the transaction took place;

(iii) An offer to furnish, upon request, the time when the transaction took place; and

(iv) The source and amount of any other remuneration the investment adviser received or will receive in connection with the transaction. In the case of a purchase, if the investment adviser was not participating in a distribution, or, in the case of a sale, if the investment adviser was not participating in a tender offer, the written confirmation may state whether the investment adviser has been receiving or will receive any other remuneration and that the investment adviser will furnish the source and amount of such remuneration to the client upon the client's written request;

4. At least annually, and with or as part of any written statement or summary of the account from the investment adviser, the investment adviser or any other person relying on this Rule sends each client a written disclosure statement identifying:

(i) The total number of agency cross transactions during the period for the client since the date of the last such statement or summary; and

(ii) The total amount of all commissions or other remuneration the investment adviser received or will receive in connection with agency cross transactions for the client during the period.

5. Each written disclosure and confirmation required by this Rule must include a conspicuous statement that the client may revoke the written consent required under part (2)(c)1. of this Rule at any time by providing written notice to the investment adviser.

6. No agency cross transaction may be effected in which the same investment adviser recommended the transaction to both any seller and any purchaser.

(d) Nothing in this Rule shall be construed to relieve an investment adviser or investment adviser representative from acting in the best interests of the client, including fulfilling his duty with respect to the best price and execution for the particular transaction for the client nor shall it relieve any investment adviser or investment adviser representative of any other disclosure obligations imposed by the Act.

(3) Custody or Possession of Funds or Securities of Clients.

(a) 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 representative in this state to have custody or possession of any funds or securities in which any client has any beneficial interest.

(4) Financial and Disciplinary Disclosure.

(a) 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 representative to fail to disclose to any client or prospective client all material facts with respect to a legal or disciplinary event that is material to an evaluation of the investment adviser representative's integrity or ability to meet contractual commitments to clients.

(b) It shall constitute a rebuttable presumption that the following legal or disciplinary events involving the investment adviser representative that were not resolved in the person's favor or subsequently reversed, suspended, or vacated are material within the meaning of subparagraph 4(a) of this Rule for a period of ten (10) years from the time of the event.

1. A criminal or civil action in a court of competent jurisdiction in which the person:

(i) Was convicted of, or pleaded guilty or nolo contendere ("no contest") to, any 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;

(ii) Was found to have been involved in a violation of an investment-related statute or regulation; or

(iii) 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.

2. 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:

(i) Was found to have caused an investment-related business to lose its authorization to do business; or

(ii) 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; was the subject of an order in which civil penalties were assessed; or was subject to an order otherwise significantly limiting the person's investment-related activities.

3. Self-Regulatory Organization ("SRO") proceedings in which the person:

(i) Was found to have caused an investment-related business to lose its authorization to do business; or

(ii) 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.

(c) 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 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.

(d) For purposes of this Rule:

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

2. "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.)

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

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

(e) For purposes of calculating the ten (10) year period during which events are presumed to be material under subparagraph (4)(b) 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.

(f) Compliance with subparagraph (4)(b) of this Rule shall not relieve any investment adviser representative from the disclosure obligations of subparagraph (4)(a) of this Rule. Compliance with subparagraph (4)(a) of this Rule shall not relieve any investment adviser representative from any other disclosure requirement under the Act, these Rules, or under any other federal or state law.

(5) Advertisement.

(a) 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 representative, directly or indirectly, to publish, circulate, or distribute any advertisement:

1. 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;

2. Which refers, directly or indirectly, to past specific recommendations of such investment adviser representative, 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 representative within the immediately preceding period of not less than one (1) year, if such advertisement or list, includes both of the following:

(i) 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 most recently available market price of each such security; and

(ii) 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";

3. 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 their 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;

4. 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

5. Represents that the department, division, or any of its personnel has approved any advertisement;

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

(b) 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 electronic or paper publication or by radio or television, or by any medium, 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.

(c) This Rule shall not apply to those investment adviser representatives solely registered with SEC registered investment advisers.

(6) Nothing in this Rule shall limit the commissioner's authority to enforce existing provisions of law.

***Authority**: T.C.A. §§ 48-1-109, 48-1-111, 48-1-115, 48-1-116, and 48-1-121, § 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, 17 C.F.R. § 275.204-3, 17 C.F.R. § 275.206(3)-2, 17 C.F.R. § 275.206(4)-1, and 17 C.F.R. § 275.206(4)-2,*

0780-04-06-.07 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.

(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 0780-04-06.03(2) comply with subparagraphs (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 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 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 Rule 0780-04-06-.03 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.

***Authority**: T.C.A. §§ 48-1-102, 48-1-109, 48-1-110, 48-1-112, 48-1-115 and 48-1-116.*

CHAPTER 0780-04-07
OIL AND GAS ISSUER-DEALERS REGULATION

TABLE OF CONTENTS

0780-04-07-.01 Oil and Gas Issuer-Dealers

0780-04-07-.01 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), 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, including but not limited to, the information listed in T.C.A § 48-1-110(f)(4).

(b) All applications for registration must be submitted directly to the Division.

(c) An application is deemed filed for purposes of T.C.A. § 48-1-110(f) and this Rule when it is complete. An application is deemed to be complete when all information requested by the Division pursuant to subparagraph (1)(a) of this Rule is received by the Division. Registration shall be effective at twelve o'clock (12:00) noon, central time thirty (30) days after receipt of the completed application and the filing fee unless a proceeding has been initiated by the Division to suspend or deny the application pursuant to T.C.A § 48-1-110(f)(5) 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.

2. Upon determination that an application has been abandoned, the Division shall, 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) business 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), payable 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, 48-1-118, § 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.*