

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

**CHAPTER 0780-04-03
INDUSTRY REGULATION**

TABLE OF CONTENTS

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

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 to 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 Rule 17a-5 under the 1934 Act, 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 (I) above 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

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

of Accountant form to be executed by the accountant designated on such form.

(III) The financial reports required by items (I) and (II) above 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 (a) above 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 to its first year of existence, in lieu of complying with subpart (i) 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 (i) and (ii) above shall demonstrate compliance with the appropriate net capital requirement for a registered broker-dealer.

4. Satisfactory evidence of a passing score on an appropriate principle's examination taken by the executive officers or principles 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. §48-2-110(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 (a) or parts (b)1, through 5. above 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.

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

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 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. §48-2-112* 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 that 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:

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

- (i) A Form U4 and all information and exhibits required by such form;
 - (ii) The appropriate application fee as set forth by 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 (a) above 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 by 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. §48-2-110(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 (a) or parts (b) 1. through 4. above 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. §48-2-112 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 an other broker-dealer, a termination of

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

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 (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. §48-2-110(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 (f), 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:

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

- (i) A Form ADV and all information and exhibits required by such form; and
 - (ii) The appropriate application fee as set forth in the Act; and
 - (iii) Satisfaction of the investment adviser representative examination requirements under rule 0780-04-03-.01(10) 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 by-laws 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.
 - (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 subsection (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 Rule 0780-04-03-.02(4)(a)2. 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 (a) above shall be

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

submitted in paper format to the IARD or 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 by-laws 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.
 - (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 (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 Rule 0780-04-03-.02(4)(a)2. 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 rule 0780-04-03-.01(10) 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.
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 IARD as required by subparagraphs (a) and (e) herein.

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

- (c) Hardship Exemptions. This subparagraph provides two "hardship exemptions" from the requirements to make electronic filings through IARD as required by the subparagraphs (a) and (e) herein and by rule 0780-04-03-.02(4)(d) Investment Adviser Reporting Requirements.

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 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 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

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

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 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. §48-2-110(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 (a) or (b) 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. §48-2-112 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:

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

- (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 NASD, 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 NASD.
 - (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 NASD, 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 NASD, the New York Stock Exchange or the SEC shall constitute a passing grade for the examination requirements of part (a)1. and subparagraphs (b) and (d) herein.
 - (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) NASD Broker-Dealers and Exchange Members
 1. All broker-dealers, except government securities broker-dealers, who are members of the NASD 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 promulgated under the 1934 Act.

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

2. The aggregate indebtedness of each broker-dealer described in part (a)1. to all persons shall not exceed the levels prescribed under SEC rule 15c3-1 promulgated under the 1934 Act.
 3. For purposes of this subparagraph (a), the term "net capital" shall have the same meaning as in SEC rule 15c3-1 promulgated under the 1934 Act.
- (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 and Treasury rule 402.2 promulgated under the 1934 Act.
- (c) Other Broker-Dealers
1. Each registered broker-dealer that does not fall within subparagraphs (a) and (b) above shall have and maintain a minimum net capital of \$25,000. If such broker-dealer has a net capital of less than \$100,000, it shall post a surety bond of \$10,000.
 2. For purposes of this subparagraph (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 (d) of this paragraph (6), 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 licensed as an investment adviser in the state in which it maintains its principal place of business;

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

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 by 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 (a) above shall be submitted directly to the Division and shall contain the following information:

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

1. A Form U4 and all information and exhibits required by such form;
 2. The appropriate application fee as set forth by 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. §48-2-110(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 (a) or parts (b) 1, through 4, above 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. §48-2-112 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 (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. §48-2-110(c).

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

- (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 (f), 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 on 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. §48-2-110(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. §48-2-110(c)(2), and who is not included in the definition of "investment adviser representative" which appears in SEC Rule 275.203A-3 under the Investment Advisers Act, is not required to register as an investment adviser representative of such investment adviser in this state.

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

- (k) An individual who solicits, offers, 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 NASD; or
 - 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 NASD; or
 - 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 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;
 - (v) Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, 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 NASD, the New York Stock Exchange or the SEC shall constitute a passing grade for the General Securities Representative Examination (Series 7) requirement of part (a)2. and subparagraph (c) herein.
- (c) Each applicant who demonstrates eligibility for initial registration by receiving a passing grade on the examinations delineated in parts (a)1. and (a)2. herein:
 - 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.

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

Authority: T.C.A. §§48-2-102, 48-2-109, 48-2-109(d), 48-2-110, 48-2-110(c), 48-2-110(d), 48-2-111, 48-2-112(a)(2)(B), 48-2-115, 48-2-115(f), 48-2-116(a), Public Acts of 2001, Chapter 61, and §222 of the Investment Advisers Act of 1940 as amended by §304(c) of the National Securities Markets Improvement Act of 1996. **Administrative History:** Original rule filed September 9, 1980; effective October 24, 1980. Amendment filed January 13, 1983; effective February 14, Repeal and new rule filed September 28, 1990; effective November 12, 1990. Amendment filed November 6, 1997; effective January 20, 1998. Amendment filed May 15, 2002; effective July 29, 2002. Amendment filed April 5, 2004; effective June 19, 2004.

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 expense 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,

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

- 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, by-laws, 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

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

rule 0780-04-03-.01(5)(a). Otherwise, a computation made quarterly (on a calendar year basis) of its net capital in the manner prescribed by rule 0780-04-03-.01(5).

17. All records required under rule 17a-3 promulgated under the 1934 Act not otherwise delineated in this paragraph (1).

18. All records made and kept pursuant to section 17(f)(2) and rule 17f-2 under the 1934 Act.

(b) All records required to be kept by subparagraph (a) hereof shall be kept for a period of five (5) years, or for the period of time such records are required to be maintained by rule 17a-4 promulgated under the 1934 Act, 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, 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;

(iv) The annual report shall include as a supporting schedule a computation of net capital as required by rule 0780-04-3-.01(5).

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 Rule 17a-5 promulgated under the 1934 Act. Any such report shall be filed in the form specified in 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 Rule 17a-5.

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

(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 (i) through (iii) above.
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 (i) and (iii) above.
4. Nothing in subparagraph (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, 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. § 48-2-110(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

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

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;
 - 2. A copy of every report or notice required to be filed by the broker-dealer pursuant to Rule 17a-11 promulgated under the 1934 Act, 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 (c) of this paragraph, 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 expense 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

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

- (IV) the price at which such securities were purchased or sold; or in the alternative
 - (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, by-laws, minute books and stock certificate books of the investment adviser; and
 - 10. A computation made monthly of the investment adviser's net capital.
 - 11. Copies of all written agreements, acknowledgements, and solicitor disclosure statements required by rule 0780-04-03-.13(5) and (6).
- (b) All records required by subparagraph (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 Rule 204-2 promulgated under the Investment Advisers Act, 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 or licensed 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 principle 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

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

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; and
 - (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.

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

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 (i) through (iii) above.
 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 (i) through (iii) above.
 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. §48-2-110(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 receipts 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. §48-2-109 (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:

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

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 1. through 3. above.
- (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 1, through 3. above.
- (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. §48-2-112(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;

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

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 safe keeping;
 9. Hypothecating a customer's securities without having in 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 NASD 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; and
 18. Causing any unreasonable delay in the execution of a transaction on behalf of a customer.
 19. Failing to provide information requested by the Division pursuant to the Act or the rules promulgated thereunder.
- (b) The following are deemed "dishonest or unethical business practices" by an agent under T.C.A. §48-2-112(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;

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

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 licensed 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;
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 its 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 a 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 NASD 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 broker-dealer knew or should have known were not registered under the Act unless the securities or transactions are exempt under the Act;

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

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; and
 18. Causing any unreasonable delay in the execution of a transaction on behalf of a customer.
 19. Failing to provide information requested by the Division pursuant to the Act or the rules promulgated thereunder.
- (c) The following are deemed “dishonest or unethical business practices” by an investment adviser or an investment adviser representative under T.C.A. §48-2-112(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 any rule thereunder;
 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 broker-dealer;
 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 permitted by rules of the SEC;
 9. 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 NASD is unreasonable;
 10. Placing an order to purchase or sell 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;

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

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;

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

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 this 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 this Act or any rule or regulation thereunder;
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 the rules promulgated thereunder.

(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.

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

2. Compliance with Rule 10b-10 promulgated under the 1934 Act or with Article III, Section 12 of the NASD 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 and 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 licensed 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, or any rule 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 0780-04-2-.08, the Tennessee Uniform Limited Offering Exemption, must be appropriately registered in this state pursuant to the Act and all rules and regulations promulgated thereunder.
- (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. §48-2-109(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. §48-2-109(c)(2), a copy of any answer, response or reply to any complaint, indictment or information described in parts 1. through 3. above.
 - (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. §48-2-109(c)(2), a copy of any decision, order or sanction that

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

is made, entered or imposed with respect to any proceeding described in parts 1. through 3. above.

- (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. §§48-2-102, 48-2-107, 48-2-109, 48-2-110, 48-2-111, 48-2-111(a), 48-2-112(a)(2)(B), 48-2-112(a)(2)(G), 48-2-113, 48-2-115(f), 48-2-116(a), and 48-2-118; 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. §§203A, 205 and 215 of the Investment Advisers Act of 1940. **Administrative History:** Original rule filed September 9, 1980; effective October 24, 1980. Amendment filed January 13, 1983; effective February 14, 1984. Repeal and new rule filed September 28, 1990; effective November 12, 1990. Amendment filed November 6, 1997; effective January 20, 1998. Amendment filed May 15, 2002; effective July 29, 2002. Amendment filed April 5, 2004; effective June 19, 2004. Amendment filed December 31, 2008; effective March 16, 2009.

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 \$100 by check made payable to the Tennessee Department of Commerce and Insurance.
 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 days after the date stamped on the Form IN-0911 by the Department of Commerce and Insurance or, in the event the application is incomplete, thirty 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. §48-2-110(f)4, or the thirty 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

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

- (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 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.
 2. A nonrefundable renewal fee of \$50 by check 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 days of occurrence.

Authority: T.C.A. §§48-2-107, 48-2-110, 48-2-110(f), 48-2-111, 48-2-111(a), 48-2-112(a)(2)(B), 48-2-112(f), 48-2-113, 48-2-115(f), 48-2-116(a), 48-2-118, Public Acts of 2001, Chapter 61, and §222 of the Investment Advisers Act of 1940 as amended by §304(a) of the National Securities Markets Improvement Act of 1996; §§201A, 205, and 215 of the Investment Advisers Act of 1940. **Administrative History:** Original rule filed September 9, 1980; effective October 24, 1980. Amendment filed January 13, 1983; effective February 14, 1983. Amendment filed July 5, 1983; effective August 4, 1983. Amendment filed January 12, 1989; effective February 26, 1989. Repeal and new rule filed September 28, 1990; effective November 12, 1990. Amendment filed May 15, 2002; effective July 29, 2002.

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 part:

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

- (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. §48-2-103(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. §48-2-103(b)2., (b)9, or (b)10.* or
 - (III) That are made pursuant to any of the events described in *T.C.A. §48-2-102(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 Rule 415 under the 1933 Act, the twelve (12) months shall begin with the last sale of any security included within one Rule 415 registration.
- (iii) The associated person restricts his participation to any one or more of the following activities:
 - (I) Preparing any written communication or delivering such communication through the mails 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. §48-2-109* solely by reason of his participation in the offer, sale or transfer of securities of the issuer if he does not meet the conditions specified in this rule.
- (c) Definitions. When used in this rule:

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

1. The term “associated person of an issuer” means any natural person who is a partner, officer, director, or employee of:
 - (i) The issuer;
 - (ii) A corporate general partner of a limited partnership that is the issuer
 - (iii) A company or partnership that controls, is controlled by, or is under common control with, the issuer; or
 - (iv) An investment adviser registered under the Investment Advisers Act of 1940 to an investment company registered under the Investment Company Act of 1940 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 personal property, 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. §§48-2-102, 48-2-110(f), and 48-2-116(a). **Administrative History:** Original rule filed September 9, 1980; effective October 24, 1980. Amendment filed January 13, 1983; effective February 14, 1983. Repeal and new rule filed September 28, 1990; effective November 12, 1990. Amendment filed May 15, 2002; effective July 29, 2002. Amendment filed April 5, 2004; effective June 19, 2004.

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

- (1) The following persons shall be exempted from the registration requirements for investment advisers set forth in T.C.A. §48-2-109:
 - (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.
- (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.

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

- (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. §§48-2-102 and 48-2-116(a). **Administrative History:** Original rule filed September 9, 1980; effective October 24, 1980. Amendment filed January 13, 1983; effective February 14, 1983. Repeal and new rule filed September 28, 1990; effective November 12, 1990. Amendment filed May 15, 2002; effective July 29, 2002.

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. §48-2-102 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. §48-2-109(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. §48-2-121(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 herein required in subparagraphs (1)(a) and (1)(b) above are deemed filed for purposes of T.C.A. §48-2-109(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:

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

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 cancel the incomplete notice filing manually or in IARD without prejudice and, within thirty (30) days of such cancellation, send notice of such cancellation to the last known business address of the investment adviser.

Authority: T.C.A. §§48-2-102, 48-2-109, 48-2-116(a), §307(a) of the National Securities Markets Improvement Act of 1996, and Public Acts of 2001, Chapter 61. **Administrative History:** Original rule filed January 13, 1983; effective February 14, 1983. Amendment filed May 6, 1987; effective June 20, 1987. Amendment filed September 18, 1987; effective November 2, 1987. Amendment filed September 28, 1990; effective November 12, 1990. Amendment filed November 6, 1997; effective January 20, 1998. Amendment filed May 15, 2002; effective July 29, 2002. Amendment filed April 5, 2004; effective June 19, 2004.

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. §48-2-121(b)(2) 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 do 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; and
 - (b)
 1. All such funds of such clients are deposited in one 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; and
 - (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

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

- 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; and
- (d) Such investment adviser sends to each client, not less frequently than once every 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; and
 - (e) Such investment adviser complies with the reporting requirements set forth under rule 0780-04-03-.02(4)(a)2.
 - (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. §48-2-109(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 Rule 15c3-1 [Reg. §240.15c3-1] under the 1934 Act, or (b) such broker-dealer is a member of an exchange whose members are exempt from Rule 15c3-1 [Reg. §240.15c3-1] under the provisions of paragraph (b)(2) thereof, and such broker-dealer is in compliance with all rules and settled 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 paragraph (1)(b)3. of this rule if such investment adviser:
 - (a) is registered or licensed 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 paragraph (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 paragraph (1)(a-e) 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. §48-2-109(c)(2)* that fully complies with Rule 206(4)-2 promulgated under the Investment Advisers Act (17 CFR §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. §§48-2-116 (a) and 48-2-121 (b); Public Acts 1997, Chapter 164, Section 7; §222 of the Investment Advisers Act of 1940, as amended by §304(a) of the National Securities Markets*

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

Improvement Act of 1996; 17 CFR §275.206(4)-2 **Administrative History:** *Original rule filed November 6, 1997; effective January 20, 1998.*

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. §48-2-121(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 \$500 from such client, 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 paragraph (1)(b) of the rule for a period of 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 Securities and Exchange Commission, 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 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:

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

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 \$2,500; or otherwise significantly limiting the person's investment-related activities.
- (3) The information required to be disclosed by paragraph (1) shall be disclosed to clients promptly, and to prospective clients not less than 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 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 10 year period during which events are presumed to be material under paragraph (2), 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 the rule; compliance with paragraph (1) of the rule shall not relieve any investment adviser from any other disclosure requirement under the Act, the rules and regulations thereunder, or under any other federal or state law.

Authority: *T.C.A. §§48-2-121 (b)(2) and 48-2-116(a); §§222 of the Investment Advisers Act of 1940, as amended by §304(a) of the National Securities Markets Improvement Act of 1996; 17 CFR §275.206(4)-4. Administrative History:* Original rule filed November 6, 1997; effective January 20, 1998.

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. §48-2-121(b)(2)* of the Act for any investment adviser, directly or indirectly, to publish, circulate or distribute any advertisement.

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

- (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 or;
 - (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 year, if such advertisement and such list, if it is furnished separately:
 - 1. state 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. contain 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"; or
 - (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; or
 - (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 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. §§48-2-116(a) and 48-2-121(b); §§222 of the Investment Advisers Act of 1940, as amended by §304 of the National Securities Markets Improvement Act of 1996; 17 CFR §275.206(4)-1.*
Administrative History: *Original rule filed November 6, 1997; effective January 20, 1998.*

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. §48-2-109 (c)* of the Act shall, in accordance with the provisions of this rule, furnish each advisory client and prospective

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

advisory client with a written disclosure statement which may be either a copy of Part II of its Form ADV or a written document containing at least the information then so required by Part II of Form ADV

- (2) Delivery
 - (a) An investment adviser, except as provided in subparagraph (b), shall deliver the statement required by this section to an advisory client or prospective advisory client:
 1. not less than 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 paragraph (a) need not be made in connection with entering into a contract for impersonal advisory services.
- (3) Offer to deliver.
 - (a) An investment adviser, except as provided in subparagraph (b), 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 (a) 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 (a) 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 this paragraph (3) must be mailed or delivered within seven 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 II 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 the rules thereunder 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. §48-2-109(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

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

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 Schedule H 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 wrap fee program, the investment adviser may omit from the disclosure statement furnished to clients and prospective clients of a wrap fee programs or program any information required by Schedule H 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 paragraph (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. §48-2-112(a)(2)(G).

Authority: T.C.A. §§48-2-112 (a)(2)(G) and 48-2-116(a); §222 of the Investment Advisers Act of 1940, as amended by §304(a) of the National Securities Markets Improvement Act; 17 CFR §275.204-4.

Administrative History: Original Rule filed November 6, 1997; effective January 20, 1998.

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. §48-2-102 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:

(Rule 0780-04-03-.11, continued)

- (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 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 30 days prior to the date of the transaction, and
 - 2. was assigned to such individual associated person for 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 30 consecutive days during the 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 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) 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 subparagraph (a)2 of this rule, each of up to 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 paragraph (2)(a) 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 §§48-2-109 and 48-2-110 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.

(Rule 0780-04-03-.11, continued)

- (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. §48-2-121.

Authority: T.C.A. §§48-2-102, 48-2-102(2) and 48-2-116(a); §15 of the Securities and Exchange Act of 1934, as amended by §103 (a)(2) of the National Securities Markets Improvement Act of 1996.

Administrative History: Original rule filed November 6, 1997; effective January 20, 1998. Amendment filed May 15, 2002; effective July 29, 2002. Amendment filed April 5, 2004; effective June 19, 2004.

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. §48-2-102(10)(E)(ii) and 48-2-102(10)(F) of the Act.
- (2) General. For purposes of T.C.A. §48-2-102(10)(E)(ii) and 48-2-102(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 paragraph (2)(a) are the only primary beneficiaries;
 4. All trusts of which the natural person and/or the persons referred to in this paragraph (2)(a) are the only primary beneficiaries;
- (b) 1. A corporation, general partnership, limited liability company, trust (other than a trust referred to in paragraph (2)(a)4, of this selection), 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 a “owner”); and
2. Two or more legal organizations referred to in paragraph(2)(b)1. of this section 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 section with regard to any other owner;
- (b) An owner need not to 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;

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

- (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 to 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 advisor 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 section shall not be deemed to be holding itself out generally to the public as an investment adviser, within the meaning of rule 0780-04-03-.05(1)(b), solely because such investment adviser participates in a non-public offering of interests in a limited partnership under the Securities Act of 1933.

Authority: *T.C.A. §§48-2-102, 48-2-102(7), 48-2-116(a); §222 of the Investment Advisers Act of 1940, as amended by §304(d) of the National Securities Markets Improvement Act of 1996; 17 CFR §275.203(b)(3)-1. **Administrative History:** Original rule filed November 6, 1997; effective January 20, 1998. Amendment filed April 5, 2004; effective June 19, 2004.*

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. §48-2-121(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. §48-2-112(a)* of the Act, or
 - 2. convicted within the previous ten years of any felony or misdemeanor involving conduct described in *T.C.A. §48-2-112(a)(2)(C)*, or
 - 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. §§48-2-121(C), 48-2-112(a)(2)(B), 48-2-112(a)(2)(J)*, or has materially aided in the act in violation of *T.C.A. §48-2-112(a)(2)(B)*,
 - 4. subject to an order, judgment, or decree described in *T.C.A. §48-2-112(a)(2)(D)* of the Act; or
 - 5. described in Regulation §275.206(4)-3(a)(1)(ii) as promulgated under the Investment Advisers Act; and
 - (b) such cash fee is paid pursuant to a written agreement to which the adviser is a party; and
 - (c) such cash fee is paid to a solicitor:
 - 1. with respect to solicitation activities for the provision of impersonal advisory services only; or
 - 2. who is:

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

- (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 paragraph (1)(c) 1 or 2 above if all of the following conditions are met:
 - (i) The written agreement required by paragraph (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 the rules thereunder of the Investment Advisers Act and the rules promulgated thereunder, whichever is applicable.
 - (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, 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.
 - (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 paragraph (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

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

- (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 paragraph (1)(b) of this rule as part of the records required to be kept under *T.C.A. §48-2-111(a)* and rule 0780-04-03-.02(3).
- (6) The investment adviser shall retain a copy of each acknowledgement and solicitor disclosure document referred to in paragraph (1)(c)3(ii) as part of the records required to be kept under *T.C.A. §48-2-111(a)* and rule 0780-04-03-.02(3).
- (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 or licensed 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. §§48-2-111(a), 48-2-116(a), and 48-2-121(b)(2); 17 CFR § 275.206(4)-3.*
Administrative History: *Original rule filed November 6, 1997; effective January 20, 1998.*

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. §48-2-121(b)(2)* of the Act for any investment advisor acting as principal for his own account:
- (a) Knowingly to 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 to 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 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. §48-2-109* of the Act, or a person registered as a broker-dealer under *T.C.A. §48-2-109* of the Act and controlling, controlled by or under common control with an investment adviser registered under *T.C.A. §48-2-109* of the Act, shall be deemed not to be in violation of the provisions of this rule and *T.C.A. §48-2-121(b)(2)* of the Act 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 that with respect to agency cross transactions 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 in connection with the transaction.

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

- (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 from 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 paragraph (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 paragraph (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. §48-2-121(b)(2)* of the Act or by other applicable provisions of the Act.

Authority: *T.C.A. §§48-2-121(b)(2) and 48-2-116(a); §222 of the Investment Advisers Act of 1940 as amended by §304(a) of the National Securities Markets Improvement Act of 1996; 17 CFR §275.206(3)-2.*

Administrative History: *Original rule filed November 6, 1997; effective January 20, 1998.*

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. §48-2-109(g)*, a Canadian broker-dealer must receive acknowledgment from the Division of its receipt of English language versions of the following exhibits:

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

- (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 (a)5. herein;
 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. §48-2-109(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. §48-2-109(g).

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

- (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 cancel the incomplete filing without prejudice and, within thirty (30) days of such cancellation, mail a notice of the cancellation 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 Division. Annual fees previously received by the Division in conjunction with such terminated exemption notice filings are nonrefundable.
 - (b) An incomplete initial exemption notice filing, a renewal exemption notice filing or an incomplete renewal exemption notice filing may be withdrawn by the Canadian broker-dealer by filing a written request for withdrawal directly with the Division. Annual fees previously received by the Division in conjunction with such withdrawn exemption notice filings are nonrefundable.
 - (c) A Canadian broker-dealer which has filed an initial or renewal exemption notice filing and which has become ineligible for the exemption from broker-dealer registration authorized by T.C.A. §48-2-109(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) herein.

- (5) The filings herein required shall constitute filings with the Commissioner pursuant to T.C.A. §48-2-121(c).

Authority: T.C.A. §§48-2-102, 48-2-109(g) and 48-2-116(a). **Administrative History:** Original rule filed April 5, 2004; effective June 19, 2004.