Article 7: EXEMPTIONS

701. Uniform Limited Offering Exemption:

By authority delegated to the Secretary of State in Section 75-71-203 of the Act to promulgate rules, the following transaction is determined to be exempt from the registration provisions of the Act:

A. Any offer or sale of securities offered or sold in compliance with the Securities Act of 1933, Regulation D, Rule 230.505, and any amendments thereto, which satisfies the following further conditions and limitations:

1. No commission, fee, or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in this state unless such person is appropriately registered in Mississippi.

   It is a defense to a violation of this subsection if the issuer sustains the burden of proof to establish that it did not know and, in the exercise of reasonable care, could not have known that the person who received a commission, fee, or other remuneration was not appropriately registered in Mississippi.

2. No exemption under this Rule shall be available for the securities of any issuer if any of the parties described in the Securities Act of 1933, Regulation A, Rule 230.262:

   a. Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any state's securities law within five (5) years prior to the filing of the notice required under this exemption.

   b. Has been convicted within five (5) years prior to the filing of the notice required under this exemption of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit, including but not limited to,

forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.

c. Is currently subject to any state administrative enforcement order or judgment entered by that state's securities administrator within five (5) years prior to the filing of the notice required under this exemption or is subject to any state's administrative enforcement order or judgment in which fraud or deceit, including but not limited to, making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five (5) years prior to the filing of the notice required under this exemption.

d. Is subject to any state's administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase, or sale of securities.

e. Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminary restraining or enjoining, or is subject to any order, judgment, or decree of any court of competent jurisdiction permanently restraining or enjoining such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within five (5) years prior to the filing of the notice required under this exemption.

f. The prohibitions of Rule 701(A)(2)(a)-(c), (e) above shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against such person or if the broker-dealer employing such party is licensed or registered in

Mississippi and the Form BD filed with Mississippi discloses the order, conviction, judgment, or decree relating to such person. No person disqualified under this paragraph may act in a capacity other than that for which the person is licensed or registered.

g. Any disqualification caused by Rule 701(A)(2) is automatically waived if the state securities administrator or agency of the state which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

3. In reliance upon this "safe harbor" exemption, the issuer shall file the following with the Division or its designee:

   a. A copy of SEC Form D as filed with the SEC in the version of that form accepted at the time of filing by the SEC for filings made pursuant to the Securities Act of 1933, Regulation D, Rule 230.505.

   b. The prospectus, private placement memorandum, offering circular, or similar document to be furnished by the issuer to offerees. The use of the Small Corporate Offering Registration Form (SCOR), a copy of which is available upon request, may be acceptable for compliance with this subsection; and

   c. A filing fee as specified in Rule 405.

4. In all sales to nonaccredited investors in Mississippi one of the following conditions must be satisfied, or the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that one of the following conditions is satisfied:

   a. The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to the purchaser's other security holdings, financial

situation, and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed ten percent (10%) of the investor's net worth, it is suitable.

b. The purchaser either alone or with his/her purchaser representative(s) has such knowledge and experience in financial and business matters that he/she is, or they are, capable of evaluating the merits and risks of the prospective investment.

B. A failure to comply with a term, condition, or requirement of Rule 701(A)(1), (A)(3) or (A)(4) of this Rule will not result in loss of the exemption from the requirements of Section 75-71-203 of the Act for any offer or sale to a particular individual or entity if the person relying on the exemption shows:

1. The failure to comply did not pertain to a term, condition, or requirement directly intended to protect that particular individual or entity;
2. The failure to comply was insignificant with respect to the offering as a whole; and
3. A good faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of Rule 701(A)(1), (A)(3), or (A)(4).

C. Where an exemption is established only through reliance upon Section B of this Rule, the failure to comply shall nonetheless be actionable by the Division under Section 75-71-604 of the Act.

D. Transactions which are exempt under this Rule may not be combined with offers and sales exempt under any other Rule or section of this Act; however, nothing in this limitation shall act as an election. Should for any reason the offer and sale fail to comply with all of the conditions for this exemption, the issuer may claim the availability of any other applicable exemption.

E. The Division may, by rule or order, increase the numbers of purchasers or waive any other conditions of this exemption.

F. No sales may be made in this state until a written Acknowledgment of Notice Filing has been issued by the Division. The Division will issue the Acknowledgment of Notice Filing within five (5) business days after receiving the filing. If the Acknowledgement of Notice Filing is not issued within five (5) business days, the issuer may proceed with sale of securities in Mississippi until it receives the Acknowledgment.

G. For offerings that exceed one (1) year, notification that the offering is continuing must be filed with the Division annually.

H. A notice of termination or completion of the offering must be filed with the Division within thirty (30) days as specified in Rule 405.

I. The exemption authorized by this Rule shall be known and may be cited as the "Uniform Limited Offering Exemption."

[Authority §§ 75-71-203, 605(a)(3)] [Former Rule 703]

703. Exemption from Registration for Certain Offerings by Domestic Issuers:

By authority delegated to the Secretary of State in Section 75-71-203 of the Act, transactions pursuant to the following requirement are determined to be exempt from the registration requirements of the Act:

A. The sale of its securities by an issuer organized in this State to not more than thirty-five (35) persons within a twelve (12) month period beginning with the date of filing for exemption under this Rule, whether residents or non-residents, provided the issuer reasonably believes that the purchasers are acquiring the securities for investment purposes only and not for the purpose of resale. Purchasers of the issuer's securities which are registered pursuant to Section 75-71-303 or Section 75-71-304 of the Act shall not be considered in computing the number of purchasers during the twelve (12) month period.

B. Prior to the receipt of consideration or the delivery of a subscription agreement by an investor which results from an offer being made in reliance upon this exemption, the issuer shall file with the Division:

1. A notice on a form prescribed by the Division;
2. The prospectus, private placement memorandum, offering circular, or similar document which shall contain a full disclosure of material information to be furnished by the issuer to offerees. The use of the Small Corporate Offering Registration Form (SCOR), a copy of which is available upon request, may be acceptable for compliance with this subsection; and
3. A filing fee as specified in Rule 407.

C. Securities issued under the provisions of this Rule shall be without payment of commission, compensation, or remuneration, directly or indirectly, except where it shall have been determined by the Division that such commission or compensation is allowable prior to the initial purchase under this exemption.

D. Offerings or sales of securities pursuant to this Rule shall be made only by duly elected and acting officers of the issuers, or by the general partner of a limited partnership, or a broker-dealer and his agents registered under the Act.

E. The following legend shall be printed in all capitals on the prospectus, private placement memorandum, offering circular, or similar document used in connection with an offering under this Rule:

IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE PERSON OR ENTITY CREATING THE SECURITIES AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE

SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY GENERALLY NOT BE TRANSFERRED OR RESOLD FOR A PERIOD OF ONE (1) YEAR. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

F. Neither the issuer nor any person acting on its behalf shall offer, offer to sell, offer for sale, or sell the securities by means of any form of general solicitation or general advertising, including, but not limited to, the following:

1. Any advertisement, article, notice, or other communication published in any newspaper, magazine, or similar medium or broadcast over television or radio;
2. Any seminar or meeting unless otherwise approved by the Division; or
3. Any letter, circular, notice, or other written communication unless the communication contains the information required by this Rule or unless otherwise ordered by the Division.

G. For purposes of computing the number of investors under this Rule:

1. There shall be counted as one investor any corporation, partnership, association, joint stock company, trust, or unincorporated organization, unless such entity was organized for the specific purpose of acquiring the securities offered, in which case each beneficial owner of equity interests or equity securities in such entity shall count as a separate purchaser;

2. A purchase by a husband and wife in the joint names of both husband and wife shall be deemed to be made by a single investor;

3. The original limited partner who purchased an interest in the limited partnership primarily to enable the limited partnership to be formed and whose interest will be extinguished once the offering of limited partnership interest has terminated shall not be considered to be a purchaser.

H. Securities exempt under the provisions of this Rule may not be transferred for one (1) year after the date of purchase except in a transaction which is exempt from registration or in a transaction which complies with the registration requirements of the Act.

I. The Division and every purchaser or offeree shall be notified within five (5) business days of any material change in the information submitted in accordance with this Rule.

J. No sales may be made until a written Acknowledgment of Notice Filing has been issued by the Division.

K. For offerings that exceed one (1) year, notification that the offering is continuing must be filed with the Division annually.

L. A notice of termination of completion of the transactions exempted under this Rule must be filed with the Division within thirty (30) days as specified in Rule 407.

[Authority §§ 75-71-203, 605(a)(3)] [Former Rule 705]

705. Securities Markets Exemption:

Only Tier I (or the equivalent thereto) securities listed on the following securities markets are entitled to exemption from registration pursuant to Section 75-71-201(6) of the Act.

A. American Stock Exchange (excluding Emerging Company Marketplace (ECM) listings)

B. Boston Stock Exchange

C. Chicago Board Options Exchange

D. Cincinnati Stock Exchange

E. Chicago Stock Exchange

F. New York Stock Exchange

G. Pacific Stock Exchange

H. Philadelphia Stock Exchange

I. NASDAQ/National Market System

[Authority §§ 75-71-201(6)] [Former Rule 707]

707. Recognized Securities Manuals: A recognized securities manual shall be deemed to include the following:

A. Mergent's Industrial Manual;

B. Mergent's Municipal and Government Manual;

C. Mergent's Transportation Manual;

D. Mergent's Public Utility Manual;

E. Mergent's Bank and Finance Manual;

F. Mergent's OTC Industrial Manual;

G. Mergent's International Manual;

H. Standard & Poor's Standard Corporate Descriptions or Records; and

I. Periodic supplements to each recognized securities manual.

[Authority §75-71-202(2)(D)]

709. NASDAQ/NMS Exemption: By authority delegated to the Secretary of State in Section 75-71-203 to promulgate rules exempting certain transactions from the registration requirements of the Act, the following shall be exempt from Section 75-71-301 of the Act: An offer or sale of a security designated or approved for

designation upon notice of issuance on the National Association of Securities Dealers Automated Quotation National Market System, or any other security of the same issuer which is of senior or substantially equal rank, any security called for by subscription rights or warrants so designated or approved, or any warrant or right to purchase or subscribe to any of the foregoing.

[Authority §75-71-202(2)(E)(i)]

711. Internet Solicitations Exemption:

A. **Internet** means the global information system comprised of independent computer networks which are interconnected and share information without the use of a central processing center by use of the Transmission Control Protocol/Internet Protocol (TCP/IP) suite, to include without limitation, the World Wide Web, proprietary or "common carrier" electronic delivery systems, or similar medium.

B. **Internet Offer** means a communication, regarding the offering of securities within the meaning of Sections 75-71-102(19), (26); and 75-71-105, of the Act, made on the Internet and directed generally to anyone who has access to the Internet, including persons in Mississippi.

C. Exemption.

The Division finds that registration is not necessary or appropriate for the protection of investors in connection with Internet Offers, provided:

1. The Internet Offer indicates, directly or indirectly, that the securities are not being offered to residents of Mississippi;
2. The Internet Offer is not specifically directed to any person in Mississippi by, or on behalf of, the issuer of the securities; and
3. No sales of the issuer's securities are made in Mississippi as a result of the Internet Offering.

[Authority §§ 75-71-203] [Former Rule 713]

713. Exemption of Certain Cooperative Securities: By authority delegated to the Secretary of State in Section 75-71-203 of the Act to promulgate rules, the Secretary of State finds that it is not in the public interest or necessary for the protection of investors to require registration under Section 75-71-401 of the Act of the following securities transactions:

A. Any transaction in a membership, equity interest, or retention certificate, issued by a cooperative, corporation, or non-profit corporation organized under the cooperative, business corporation, or non-profit corporation laws, respectively, of any state, and operated as a non-profit membership cooperative (collectively a "cooperative"), if:

1. Not traded to the public;
2. Each member of the cooperative has one vote with respect to matters that must be approved by the members of the cooperative or has a number of votes that are in proportion to the amount of business transacted (patronage) with the cooperative and not in proportion to the number of shares of ownership interests held by the member in the cooperative;
3. The governing documents of the cooperative provide that the shares or other ownership interests can be held only by persons or parties who patronize the cooperative;
4. The governing documents of the cooperative provide that no dividends shall be paid or no distributions shall be made except for cash patronage dividends or non-cash patronage dividends; and,
5. No person receives any commission or other compensation directly or indirectly as a result of or based upon the sale of such securities.

B. Any transaction in an instrument, certificate or like security issued by a cooperative (as defined in subsection A of this Rule in lieu of a cash patronage dividend to a member of the cooperative.

[Authority §75-71-201, 203]

715. Exemption of Certain Securities of Cross-Border Transactions:

Pursuant to Section 75-71-203 of the Act, the Secretary of State finds that it is not in the public interest or necessary for the protection of investors to require registration under Section 75-71-301 of the Act of an offer or sale of a security effected by a person exempted from the broker-dealer registration requirements under Rule 537.

[Authority §§ 75-71-203] [Former Rule 717]

717. Accredited Investor Exemption:

By authority delegated to the Secretary of State in Section 75-71-203 of the Act to promulgate rules, the following transaction involving any offer or sale of a security by an issuer in a transaction that meets the requirements of this Rule is exempt from the registration requirements of the Act:

A. Sales of securities shall be made only to persons who are or the issuer reasonably believes are accredited investors. "Accredited investor" is defined in 17 CFR 230.501(a) as currently enacted or as amended.

B. The exemption is not available to an issuer that is in the development stage that either has no specific business plan or purpose or had indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

C. The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within twelve (12) months of sale shall be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under Article 3 of the Act or to an accredited investor pursuant to an exemption available under the Act.

D. 1. The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of ten percent (10%) or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of such underwriter:

a. within the last five (5) years, has filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the SEC;

b. within the last five (5) years, has been convicted of any criminal offense in connection with the offer, purchase or sale of any security, or involving fraud or deceit;

c. is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five (5) years, finding fraud or deceit in connection with the purchase or sale of any security; or,

d. is currently subject to any order, judgment or decree of any court of competent jurisdiction, entered within the last five (5) years, temporarily, preliminary or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

2. Rule 717(D)(1) shall not apply if:

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

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

c. the issuer establishes that it did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this paragraph.

E. 1. A general announcement of the proposed offering may be made by any means.

2. The general announcement shall include only the following information, unless additional information is specifically permitted by the Secretary of State:

a. The name, address and telephone number of the issuer of the securities;

b. The name, a brief description and price (if known) of any security to be issued;

c. A brief description of the business of the issuer in twenty-five (25) words or less;

d. The type, number and aggregate amount of securities being offered;

e. The name, address and telephone number of the person to contact for additional information; and,

f. A statement that:

(i) sales will only be made to accredited investors;

(ii) no money or other consideration is being solicited or will be accepted by way of this general announcement; and,

(iii) the securities have not been registered with or approved by any state securities agency or the SEC and are being offered and sold pursuant to an exemption from registration.

F. The issuer, in connection with an offer, may provide information in addition to the general announcement under Rule 717(E), if such information:

1. Is delivered through an electronic database that is restricted to persons who have been pre-qualified as accredited investors; or,

2. Is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

G. No telephone solicitation shall be permitted unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

H. Dissemination of the general announcement of the proposed offering to persons who are not accredited investors shall not disqualify the issuer from claiming the exemption under this Rule.

J. The issuer shall file with the Division a notice of transaction, a consent to service of process, a copy of the general announcement, and a fee as specified in Rule 409 within fifteen (15) days after the first sale in this state.

[Authority §§ 75-71-203; 401-404; 605(a)(1),(3); 605(b); 608(c); 610(e)] [Former Rule 719]

719. Broker-Dealers, Investment Advisers, Broker-Dealer Agents and Investment Adviser Representatives Using the Internet:

Broker-dealers, investment advisers, broker-dealer agents (hereinafter "BD agents") and investment adviser agents/representatives (hereinafter "IA reps") who use the Internet, the World Wide Web, and similar proprietary or common carrier electronic systems (collectively, hereinafter the "Internet") to distribute information on available products and services through certain communications made on the Internet directed generally to anyone having access to the Internet, and transmitted through postings on Bulletin Boards, displays

on "Home Pages" or similar methods (hereinafter "Internet Communications") shall not be deemed to be "transacting business" in this state for purposes of Sections 75-71-401 and 75-71-404 of the Act based solely on that fact if the following conditions are observed:

A. The Internet Communication contains a legend in which it is clearly stated that:

   1. The broker-dealer, investment adviser, BD agent or IA rep in question may only transact business in this state if first registered, excluded or exempted from State broker-dealer, investment adviser, BD agent or IA rep registration requirements, as may be; and

   2. Follow-up, individualized responses to persons in this state by such broker-dealer, investment adviser, BD agent or IA rep that involve either the effecting or attempting to effect transactions in securities, or the rendering of personalized investment advise for compensation, as may be, will not be made absent compliance with State broker-dealer, investment adviser, BD agent or IA rep registration requirements, or an applicable exemption or exclusion;

B. The Internet Communication contains a mechanism, including and without limitation, technical "firewalls" or other implemented policies and procedures, designed reasonably to ensure that prior to any subsequent, direct communication with prospective customers or clients in this state, said broker-dealer, investment adviser, BD agent or IA rep is first registered in this state or qualifies for an exemption or exclusion from such requirement. Nothing in this paragraph shall be construed to relieve a State registered broker-dealer, investment adviser, BD agent or IA rep from any applicable securities registration requirement in this state;

C. The Internet Communication does not involve either effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, as may be, in this

state over the Internet, but is limited to the dissemination of general information on products and services; and

D. In the case of a BD agent or IA rep:

1. The affiliation with the broker-dealer or investment adviser of the BD agent or IA rep is prominently disclosed within the Internet Communication;

2. The broker-dealer or investment adviser with whom the BD agent or IA rep is associated retains responsibility for reviewing and approving the content of any Internet Communication by a BD agent or IA rep;

3. The broker-dealer or investment adviser with whom the BD agent or IA rep is associated first authorizes the distribution of information on the particular products and services through the Internet Communication; and

4. In disseminating information through the Internet Communication, the BD agent or IA rep acts within the scope of the authority granted by the broker-dealer or investment adviser;

E. The position expressed in this Rule extends to State broker-dealer, investment adviser, BD agent and IA rep registration requirements only, and does not excuse compliance with applicable securities registration, antifraud or related provisions;

F. Nothing in this Rule shall be construed to affect the activities of any broker-dealer, investment adviser, BD agent and IA rep engaged in business in this state that is not subject to the jurisdiction of the Mississippi Secretary of State as a result of the National Securities Markets Improvements Act of 1996, as amended.

[Authority §§ 75-71-203; 401-404; 605(a)(1),(3); 605(b); 608(c); 610(e)] [Former Rules 719, 721]