



**Mississippi
Securities Act Rules**

**Delbert Hosemann
Secretary of State**

Mississippi Securities Act Rules

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Article 1: General Provisions

Preamble: The following Rules are hereby adopted by the Secretary of State by the authority granted him in Section 75-71-109, and other rule-making provisions contained in Section 75-71-101 *et seq.*, Mississippi Code of 1972, as amended. Such Rules supersede all rules heretofore adopted, and from this date shall be generally applicable to the administration of the Mississippi Securities Act, and the procedure and practice of the Business Regulation and Enforcement Division in accordance therewith. The adoption of these Rules represents a finding by the Secretary of the State that such Rules are necessary and appropriate for the public interest and for the protection of investors, and are consistent with the purposes fairly intended by the policy and provisions of the Mississippi Securities Act. These rules are intended to supplement the statutory provisions of the Mississippi Securities Act and should not be considered as replacing or superseding any provisions concerning filings, registrations, applications, or any other requirement contained therein.

101. Address and Office Hours: The Business Regulation and Enforcement Division is located in the office of the Secretary of State, 700 North Street, Post Office Box 136, Jackson, Mississippi 39205-0136, and is open each day, except Saturdays, Sundays, and state holidays, from 8 a.m. to 5 p.m., Central Standard Time or Central Daylight Time, whichever is in effect.

[Amended June 18, 2004]

103. Definitions: The following terms, as used in the Mississippi Securities Act or in these Rules, shall have the meaning ascribed to them below unless the context requires otherwise:

- A. **Act** shall mean the Mississippi Securities Act, Chapter 521, Laws of 1981, which is codified as Sections 75-71-101 *et seq.*, Mississippi Code of 1972, as amended.
- B. **Affiliate** of, or a person **affiliated** with, a specified person is a person that directly, indirectly, or through one or more intermediaries, controls, is controlled by, or is under common control with, the person specified.
- C. **Applicant** means a person, natural or otherwise, executing or submitting an application for registration or exemption.
- D. **Associated Person** means any partner, officer, director (or any person occupying a similar status or performing similar functions), or any natural person directly or indirectly controlling, or controlled by an applicant (other than employees whose functions are only clerical or ministerial).
- E. **Commission** or **Remuneration** shall mean any compensation or financial benefit, direct or indirect, fixed or contingent, paid to or received from any person in connection with a solicitation of any client or prospective client.
- F. **Controlling Person** or **Control** (including the terms **controlling**, **controlled by**, and **under common control with**) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.
- G. **Financial Institution**, **Institutional Investor**, or **Institutional Buyer** shall include, but not be limited to:

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1. Any of the following entities, acting for its own account or the accounts of other institutional buyers, that in the aggregate owns and invests on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with the entity:
 - a. Any insurance company as defined in Section 2(13) of the Securities Act of 1933;
 - b. Any investment company registered under the Investment Company Act of 1940 or any business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940;
 - c. Any Small Business Investment Company licensed by the U.S. Small Business Administration under 301(c) or (d) of the Small Business Investment Act of 1958;
 - d. Any plan established and maintained by a state, its political subdivision, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees;
 - e. Any employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974;
 - f. Any trust fund whose trustee is a bank or trust company and whose participants are exclusively plans of the types identified in paragraph (G) (1) (d) or (e) of this Section, except trust funds that include as participants individual retirement accounts or H.R. 10 plans.
 - g. Any business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940;
 - h. Any organization described in Section 501(c)(3) of the Internal Revenue Code, corporation (other than a bank as defined in Section 3(a)(2) of the Securities Act of 1933 or a savings and loan association or other institution referenced in Section 3(a)(5)(A) of the Securities Act of 1933 or a foreign bank or savings and loan association or equivalent institution), partnership, or Massachusetts or similar business trust; and
 - i. Any investment adviser registered under the Investment Advisers Act of 1940.
2. Any dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934, acting for its own account or the accounts of other institutional buyers, that in the aggregate owns and invests on a discretionary basis at least \$10,000,000 of securities of issuers that are not affiliated with the dealer; provided, that securities constituting the whole or a part of an unsold allotment to or subscription by a dealer as a participant in a public offering shall not be deemed to be owned by such dealer;
3. Any dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934 acting in a riskless principal transaction on behalf of an institutional buyer;
4. Any investment company registered under the Investment Company Act of 1940, acting for its own account or for the accounts of other institutional buyers, that is part of a family of investment companies which own in the aggregate at least \$100,000,000 in securities of issuers, other than issuers that are affiliated with the investment company or are part of such family of investment companies. **Family of investment companies** means any two or more investment companies registered under the Investment Company Act of 1940, except for a unit investment trust whose assets consist solely of shares of one or more registered

investment companies that have the same investment adviser (or, in the case of unit investment trust, the same depositor); provided that, for purposes of this Section:

- a. Each series of a series company (as defined in Rule 18f-2 under the Investment Company Act of 1940 as set out in 17 C.F.R. 270.18f-2) shall be deemed to be a separate investment company; and
 - b. Investment companies shall be deemed to have the same adviser (or depositor) if their advisers (or depositors) are majority-owned subsidiaries of the same parent, or if one investment company's adviser (or depositor) is a majority-owned subsidiary of the other investment company's adviser (or depositor);
5. Any entity, all of the equity owners of which are institutional buyers, acting for its own account or the accounts of other institutional buyers; and
 6. Any bank as defined in Section 3(a)(2) of the Securities Act of 1933, any savings and loan association or other institution as referenced in Section 3(a)(5)(A) of the Securities Act of 1933, or any foreign bank or savings and loan association or equivalent institution, acting for its own account or the accounts of other institutional buyers, that in the aggregate owns and invests on a discretionary basis at least \$100,000,000 in securities of issuers that are not affiliated with it and that has an audited net worth of at least \$25,000,000 as demonstrated in its latest annual financial statements, as of a date not more than 16 months preceding the date of sale under this rule in the case of a United States bank or savings and loan association, and not more than 18 months preceding such date of sale for a foreign bank or savings and loan association or equivalent institution.
- H. **Investment Contract** shall mean and include any interest or participation in a contract, transaction, scheme, common enterprise, or profit-seeking venture whereby a person invests therein and looks primarily to the promoter or a third party for the financial success of such venture.
- I. **Material Information** or **Adequate Information** or **Material** (when used to qualify a requirement for the furnishing of information as to any subject) shall mean that information about the company and/or its securities which would enable a prudent individual to make an informed investment decision.
- J. **NASAA** shall mean the North American Securities Administrators Association.
- K. **NASD** shall mean the National Association of Securities Dealers, Inc.
- L. **Officer** shall mean a president, vice president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, and any other persons performing similar functions with respect to any organization whether incorporated or unincorporated. A person shall not be deemed an officer merely because he is titled as such if he does not perform the legal function of an officer.
- M. **Principal** shall mean any person associated with a dealer actively engaged in the management of the dealer's securities business, including supervision, solicitation, conduct of business or the training of persons associated with the dealer for any of these functions. Such persons shall include sole proprietors, partners, officers, directors, and branch managers.
- N. **Promoter** shall mean a person who, acting alone or in conjunction with others, takes the initiative in founding, organizing, or incorporating a business, enterprise, transaction, scheme, or profit-seeking venture. A promoter does not include a lawyer or accountant acting as an independent contractor.

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- O. **Rules** refers to the rules of the Secretary of State adopted pursuant to the Act, currently in effect, including forms for registration and reports and accompanying instructions.
- P. **SEC** shall mean the Securities and Exchange Commission.
- Q. **SEC Form D** means the document, as adopted by the United States Securities and Exchange Commission and in effect on September 1, 1996, as may be amended by the SEC from time to time, entitled "Form D; Notice of Sale of Securities pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption," including Part E and the Appendix.
- R. **Secretary of State** shall mean the Secretary of State of Mississippi.
- S. **Section** refers to a section of the Act.
- T. **Business Regulation and Enforcement Division** or **Division** shall mean the Business Regulation and Enforcement Division of the Office of the Secretary of State.

105. Statutory Terms: Terms used in these Rules which are defined in the Act shall have the meaning provided for in the Act, unless otherwise specifically stated.

107. Filing Materials and Fees: All papers, forms, fees, or information required to be filed with the Division may be filed through the mail or otherwise. The date on which papers, forms, fees, or other exhibits are actually received by the Division shall be the date of filing thereof. An application is not considered complete and will not be further processed until all required documentation has been received by the Division. All fees received by the Division are subject to immediate deposit by the Division without regard to whether the amount tendered is appropriate.

109. Applications Generally: All applications for registration and notice filings shall be submitted on forms authorized by the Secretary of State. All information requested in an application is essential and must be furnished. Additional exhibits not specifically called for in an application, but which are essential to a full disclosure of all information, shall be furnished and properly identified. All applications and exhibits become a part of the records of the Secretary of State and are not returnable.

111. Procedure with Respect to Abandoned Applications: If a deficient application has been on file with the Division for a period of one hundred twenty (120) days and the applicant has not taken corrective measures, the Division shall proceed in the following manner to determine whether the application for registration has been abandoned by the applicant:

- A. A Notice of Abandonment in the form of a letter will be sent to the applicant or its representative, addressed to the most recent address for the applicant or its representative. The Notice will inform the applicant that the application is deficient and must be justified, amended, or completed to comply with the applicable requirements of the Act or withdrawn; otherwise, an Order of Abandonment will be issued by the Division within thirty (30) days after the date of the Notice.
- B. If the applicant fails to respond to such Notice by filing an amendment, completing or withdrawing the application for registration, or by stating an acceptable reason why the application should remain on pending status within thirty (30) days from the date of the Notice, the Division may issue an Order declaring the application abandoned.

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- C. The applicant, within fifteen (15) days of the receipt of the Order of Abandonment, may request in writing a hearing for reinstatement, and this request shall set forth the grounds upon which the applicant seeks a hearing.
- D. When an Order of Abandonment is entered, all papers comprising the application, with the exception of the application form and correspondence, may be removed from the files of the Business Regulation and Enforcement Division. No portion of the applicable filing fee shall be refunded.
- E. If the application has been amended, other than for the purpose of delaying the registration thereof, the one hundred twenty (120) day period shall be computed from the date of the latest such amendment.

113. Advertising and Sales Literature: The use of any advertising or sales material in such a fashion as to be deceptive or misleading is prohibited.

115. Variance from Rules: The Division may grant variances from these Rules if it determines that: (a) application of the rule from which the variance is granted would, in the particular case, be unnecessarily burdensome, and (b) such variance would not be inconsistent with the public policy purposes of the Act.

117. Oral Opinions: Oral or informal opinions by the staff of the Division as to the applicability of the Act, or portions thereof, and oral or informal representations by the staff of the Division concerning the status of filings made with the Division are not considered binding upon the Division unless accurately and promptly confirmed in writing by the party requesting such oral or informal opinion or representation.

119. Statement of Policy Regarding Public Access to Non-Investigatory Records: Any information or document contained in or filed with any application for the registration of securities, exemption from registration of securities, the transaction of business as a broker/dealer, the transaction of business as an agent, or the transaction of business as an investment adviser, any notice filing for federal covered securities or federal covered advisers or any supplement or amendment thereto, will be made available to the public for inspection and copying upon written request, except that:

- A. Any personal financial information, not otherwise available to the general public, filed with any such application or notice filing, or as a supplement or amendment thereto, shall not be made available to the public unless consented to in writing by the applicant or issuer, provided the applicant has filed a written request with the application or notice filing that the information not be disclosed. Any ambiguity as to what constitutes financial information in a particular application, or supplement or amendment thereto, shall be construed in favor of nondisclosure.
- B. Any record of a pending proceeding (not otherwise available to the general public), against a broker-dealer, investment adviser, federal covered adviser, or agent on file with the Division shall not be made available to the public unless consented to in writing by the particular broker-dealer, investment adviser, federal covered adviser, or agent.

121. Document Copying Fees: A fee covering the cost of compliance with a request to copy documents may be charged as follows:

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- A. Letter or legal size copies made by the Division shall be \$.25 per page, or copies made by the requesting party shall be \$.10 per page.
- B. Certificate of authenticity shall be \$2.00 for each certificate.
- C. Any other actual expense or cost incurred by compliance with the request shall be charged.

The Division may require payment in advance of the estimated cost of compliance with a particular request. In the event the estimated cost exceeds the actual cost, reimbursement will be made.

[Amended July 15, 2003].

123. Statement of Policy Regarding Investigative Information: In conformity with the Public Records Act of 1983 (MCA §25-61-1 *et seq.*), it is the policy of the Division not to offer public comment or to release information concerning any matter or party under investigation except that:

- A. Information and documents may be supplied to local, state, or federal law enforcement, regulatory, or prosecutorial agencies, at the discretion of the Secretary of State.
- B. Information and documents may be released to the party upon whose complaint or inquiry an investigation is initiated, at the discretion of the Secretary of State.
- C. Information and documents may be released to the media if deemed to be in the public's best interest, at the discretion of the Secretary of State.
- D. Copies of any administrative proceeding notices or orders issued by the Division may be released to the public, at the discretion of the Secretary of State.
- E. Information and documents may be released in order to comply with the Administrative Hearing Procedure rules.

125. Interpretations by the Division: Pursuant to Section 75-71-111(e) of the Act, the Division may respond to written inquiries concerning no-action determinations and interpretations of the Act or the rules promulgated thereunder, provided sufficient relevant facts are given, and the situation is not hypothetical. A non-refundable fee of \$100 must accompany each inquiry. The Division may refuse to respond to any inquiry.

127. Disposal of Unnecessary Filings: Any filed documents and papers not expressly required to be filed with the Division pursuant to a statute or a rule may be discarded at the discretion of the Division.

Article 2: Notice Filing and Registration of Securities

201. Application and Contents – Coordination: Application for registration of securities by coordination shall be submitted on Form U-1, the Uniform Application to Register Securities, and shall include a registration statement submitted pursuant to Section 75-71-403 which shall contain all information and documents required by that Section, including subsection (b)(2) but not subsection (b)(3), all information required by Sections 75-71-411 and 75-71-701, the filing fee as calculated by Section 75-71-409 and shall be in compliance with the requirements of the Rules. However, upon request, the ten (10) day filing period requirement set out in Section 75-71-403(c)(2) may be waived.

A separate application and fee must be filed for each type of security offered. Any document or exhibits previously on file may be incorporated by reference. Quarterly reports, semiannual reports, and advertising/sales material shall not be filed unless requested by the Division.

In order to facilitate the coordination of expiration dates with other states, the issuer may request a specific term of effectiveness which does not exceed one year.

203. Application and Contents – Qualification: Application for registration of securities by qualification shall be submitted on an Application for Registration by Qualification and shall include a registration statement submitted pursuant to Section 75-71-405 which shall contain all information required by that Section, the information and documents required by Sections 75-71-411 and 75-71-701, the filing fee as calculated by Section 75-71-409 and shall be in compliance with the requirements of the Rules.

207. Indefinite Notice Filing Procedure:

- A. Any person filing a notice filing involving securities issued by an open-end management investment company, a face-amount certificate company, or a unit investment trust may elect to file a notice filing for an indefinite amount of securities.
- B. A notice filer electing to file a notice filing for an indefinite amount of securities shall pay to the Division an initial notice filing fee of \$150.00 with the notice filing.
- C. Following the filing of a notice filing, sales reports as required by Rule 225 (B) shall be filed accompanied by a payment to the Division of a notice filing fee representing that amount due for sales of the securities in Mississippi for the preceding twelve (12) month period as calculated by the formula set out in Section 75-71-409. The initial \$150.00 notice filing fee paid shall be deducted from that payment and in no event shall the aggregate amounts paid be more than \$1,000.00. No refunds shall be made once a notice filing has become effective.

EXAMPLE: Indefinite notice filing filed May 1st with \$150 notice filing fee. Sales report sent in the next May 1st reflects sales of \$200,000. Fee calculation of 1/10th of 1% = \$200. Initial fee of \$150 deducted. Fee submitted to the Division with sales report should be \$50.

- D. In all other respects, the filing shall be handled as any other notice filing.

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209. Prospectus:

- A. An applicant for registration of securities by coordination or qualification must file a prospectus containing a full and complete disclosure of all material information relating to the issuer and the offering and sale of the securities being registered.
- B. The prospectus may be printed, mimeographed, lithographed, or typewritten, or prepared by any similar process which will result in clearly legible copies.
- C. The prospectus must be provided to a prospective purchaser prior to the consummation of the sale of any securities offered thereby.

211. Legend Requirement:

- A. Every submitted prospectus must carry the following legend displayed in a prominent manner:

“THESE SECURITIES ARE OFFERED PURSUANT TO A CERTIFICATE OF REGISTRATION ISSUED BY THE SECRETARY OF STATE OF MISSISSIPPI. THE SECRETARY OF STATE DOES NOT RECOMMEND OR ENDORSE THE PURCHASE OF ANY SECURITIES, NOR DOES THE SECRETARY OF STATE PASS UPON THE TRUTH, MERITS, OR COMPLETENESS OF ANY PROSPECTUS OR ANY OTHER INFORMATION FILED WITH THE SECRETARY OF STATE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.”

- B. However, any prospectus, registration statement or offering statement filed pursuant to the Securities Act of 1933 which depicts the SEC's generic legend will be considered in conformity with the preceding requirement.

213. Preliminary Prospectus:

- A. A preliminary prospectus may be distributed in Mississippi pursuant to a registration by coordination or qualification by a broker/dealer or by an issuer provided an application to register the securities is pending before the SEC, if required, and an application to register the securities is pending before the Division.
- B. A preliminary prospectus may not be further distributed if the applicant has been notified by the Division that the application for registration is substantially deficient, and that the circulation of a preliminary prospectus is not appropriate in light of the deficient application.
- C. The outside front cover page of such prospectus shall bear, in red ink, the caption "Preliminary Prospectus," the date of its issuance, and the following statement printed in type as large as that generally in the body thereof:

"A REGISTRATION STATEMENT RELATING TO THESE SECURITIES HAS BEEN FILED WITH THE SECRETARY OF STATE OF MISSISSIPPI, BUT HAS NOT YET BECOME EFFECTIVE. INFORMATION CONTAINED HEREIN IS SUBJECT TO COMPLETION OR AMENDMENT. THESE SECURITIES MAY NOT BE SOLD NOR MAY OFFERS TO BUY BE

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ACCEPTED PRIOR TO THE TIME THE REGISTRATION STATEMENT BECOMES EFFECTIVE."

- D. However, any preliminary prospectus filed pursuant to the Securities Act of 1933 which depicts the SEC's generic legend will be considered in conformity with the preceding requirement.

215. Financial Disclosure – Coordination:

- A. For any application for registration by coordination, compliance with the financial requirements of the SEC for a particular filing shall be considered compliance with the financial requirements of the Division.
- B. The Division may require the filing of additional statements or financial information or, if deemed appropriate, may waive or modify portions of the requirements of this rule.

217. Dilution:

- A. Where registered securities are being offered publicly and there is no established market for those securities, the prospectus or offering memorandum must contain a paragraph entitled "DILUTION", showing the method used in arriving at the book value of all shares outstanding upon completion of the offering.
- B. To determine the book value of all shares outstanding upon completion of the offering, add the net proceeds of the public offering (the amount remaining after deducting commissions and expenses of the offering) to the net tangible book value of the company before the offering, and divide this resulting dollar amount by the total number of shares to be outstanding upon completion of the offering.
- C. Equity shares sold to the public shall not have dilution in excess of seventy-five percent (75%), or such offering may be subject to rejection by the Division.

219. Expense Limitations: The NASAA Statement of Policy regarding underwriting expenses, underwriter's warrants, selling expenses, and selling security holders shall be the basis of review for offerings, excluding federal covered securities, filed with the Division.

221. NASAA Guidelines: Unless a specific rule promulgated herein or a state statute conflicts with the Guidelines, in which case the specific rule or statute will control, NASAA Guidelines, as published, will provide the basis for review of:

- A. Affiliate Transactions
- B. Options and Warrants
- C. Non-voting Stock
- D. Cheap Stock
- E. Oil and Gas Programs
- F. Real Estate Programs
- G. Real Estate Investment Trusts
- H. Equipment Programs

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- I. Commodity Pool Programs
- J. Omnibus Programs

Other NASAA Guidelines, as published, shall be applied as needed unless such Guideline conflicts with a specific rule promulgated herein or a state statute.

223. Certification of Registration - Coordination or Qualification: Registration in Mississippi by coordination or qualification shall become effective upon the date of the issuance of a Certificate of Registration by the Division.

225. Annual Sales Reports:

- A. Whenever an offering of securities registered pursuant to the Act is not completed within twelve (12) months of the date of initial registration, or the requested expiration date, a sales report and the non-refundable statutory sales report fee of \$50 must be filed. The report must include: (1) the amount of securities registered in Mississippi, (2) the amount sold in Mississippi to date, and (3) the amount remaining to be sold in Mississippi. So long as the registration statement is effective, a sales report must be filed every twelve (12) months thereafter until the offering is completed. The sales report is due on or before the anniversary date of the certificate of registration.
- B. Whenever an offering of federal covered securities filed pursuant to Rule 207(A), 233, or 235 is not completed within twelve (12) months of the date of initial notice filing, a sales report on Form NF or Form D and the non-refundable statutory sales report fee of \$50 must be filed. The report must include: (1) the amount of securities registered in Mississippi, (2) the amount sold in Mississippi to date, and (3) the amount remaining to be sold in Mississippi. So long as the notice is effective, a sales report must be filed every twelve (12) months thereafter until the offering is completed. The sales report is due on or before the anniversary date of the notice filing.

227. Amended Certificate of Registration:

- A. To increase the amount of securities to be registered for sale in Mississippi, an amended Form U-1 must be submitted which shows:
 - 1. The amount of the increase, incorporating by reference exhibits previously filed;
 - 2. a. Any material changes in any papers, forms, or other exhibits previously filed with the Division; or
b. A sworn statement that no material changes have been made in any papers, forms, or other exhibits previously filed with the Division;
 - 3. The fee for the increased amount calculated in the manner specified in Section 75-71-409; and
 - 4. A sales report on the securities initially registered.
- B. To amend the name on the Certificate of Registration, a complete Form U-1 (Uniform Application to Register Securities), Form U-2 (Uniform Consent to Service of Process), Form U-2A (Uniform

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Form of Corporate Resolution), and the name change filing fee of \$150.00 must be filed with the Division. The exhibits to Form U-1 are not required for name changes.

- C. When the requirements of the Act and the Rules pertaining to an amended registration statement have been satisfied, an Amended Certificate of Registration will be issued having the same effective date as the original Certificate of Registration.

229. Notice of Withdrawal or Completion of Offering:

- A. Requests for withdrawal of an offering and refund of filing fees must be made in writing and filed with the Division.
- B. Whenever an offering of securities, including covered securities under Sections 18(b)(2) and 18(b)(4)(D) of the Securities Act of 1933, has been completed, notice of completion of the offering shall be filed within sixty (60) days of completion stating (1) the name of the issuer, (2) a description of the securities registered in Mississippi, (3) the aggregate amount of securities registered in Mississippi, (4) the aggregate amount of securities sold in Mississippi, and (5) the date the offering was completed.
- C. The final sales report/completion report must be accompanied by a filing fee of \$50.

231. Subscription Agreements: For offerings that have subscription agreements, all Mississippi investors must personally sign their subscription agreements when purchasing securities. Any program which allows an agent, fiduciary, trustee, legal representative, consultant, etc. of the investor to sign a subscription agreement in lieu of the investor signing must be amended accordingly.

The Division will object to the use of subscription agreements which require purchasers of securities to acknowledge that:

- A. The purchaser has read the prospectus;
- B. The purchaser has relied only on the prospectus and not upon any representations made by any person; and
- C. The purchaser understands the risks of the investment.

233. Notice Filings for Offerings of Investment Company Securities:

- A. Prior to the offer or sale of a security which is a covered security under Section 18(b)(2) of the Securities Act of 1933, the issuer must submit to the Division or its designee the following:
 - 1. A completed NASAA Form NF, signed either manually or electronically;
 - 2. A completed NASAA Form U-2 - Uniform Consent to Service of Process, signed either manually or electronically; and
 - 3. A fee as specified in Section 75-71-409.

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- B. Upon written request of the Division and within the time period set forth in the request, the issuer must submit to the Division a copy of any document, identified in the request, that is part of the federal registration statement filed with the SEC or is part of an amendment to such federal registration statement.
- C. The Division prefers that a separate notice filing be submitted for each portfolio, series, or class to be offered or sold in Mississippi. Each portfolio, series, or class offered in this state in a single prospectus must file a separate notice filing fee.
- D. An issuer who has filed a Form U-2 in connection with a previous notice filing need not file another.
- E. Term of notice filing.
 - 1. Except as provided in subparagraph (F)(2) and (F)(3), a notice filing under paragraph (A) is effective for one year from the date filed with the Division or its designee.
 - 2. A notice filing under paragraph (A) for a unit investment trust is for an indefinite period of time from the date filed with the Division or its designee.
 - 3. To facilitate the coordination of expiration dates with other states, the issuer may request a specific term of effectiveness which does not exceed one year.
- F. Renewal. A notice filing, for which the term is about to expire, may be renewed by submitting to the Division or its designee prior to expiration, another notice and payment of the applicable fee in accordance with Section 75-71-409.
- G. Amendments.
 - 1. The materials filed pursuant to Paragraph (A) may be amended by forwarding the corrected information to the Division or its designee on a revised Form NF and requesting that the file be amended accordingly. Amendments are effective upon receipt by the Division or its designee.
 - 2. All amendments must be accompanied by a filing fee of \$150, except an amendment to increase shares, which shall be accompanied by a fee for the increased amount calculated in the manner specified in Section 75-71-409.
- H. Recognized designee.
 - 1. The Division authorizes and recognizes the Securities Registration Depository, Inc. as a designee to receive notice filings under this rule on behalf of the Division, including but not limited to, notices, fees, and all documents that are part of a federal registration statement filed with the SEC under the Securities Act of 1933.
 - 2. The designation provided in this rule is for the sole purpose of receiving filings on behalf of the Division and then transmitting those documents to the Division, or for any other purpose which the Division may prescribe by order or release.
- I. Closing Report. Within thirty (30) days of the close of the offering or when the issuer ceases to rely upon the notice, whichever occurs first, unit investment trusts shall file a closing report on Form NF.
- J. Withdrawal. A notice filing may be withdrawn by providing the Division or its designee with notice. The notice of such withdrawal is effective upon receipt by the Division or its designee.

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[Amended June 18, 2004]

235. Notice Filings for Rule 506 Offerings

- A. An issuer offering a security that is a covered security under section 18(b)(4)(D) of the Securities Act of 1933 must submit to the Division, no later than fifteen (15) days after the first sale of such federal covered security in this State, the following:
1. A notice on SEC Form D signed either manually or electronically, including Section E (State signature page) and Appendix;
 2. A completed NASAA Form U-2 - Uniform Consent to Service of Process, signed either manually or electronically; and
 3. A fee of \$300.
- B. An issuer who has filed a Form U-2 in connection with a previous notice filing need not file another.

237. Promptly Remedied: For purposes of Section 75-71-408 of this Act, an issuer will have "promptly remedied" a delay in payment or under payment of fees if such issuer remits the fee payment to the Division within ten (10) business days of receipt of notification of the delay or underpayment. If such payment is not received within the ten (10) business day period, the issuer will be found to have refused to pay the fee.

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Article 3: Reserved

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Article 5 Registration of Broker/Dealers and Agents

501. Broker/Dealer Application:

- A. In order to apply for registration, NASD-member broker/dealers shall submit the following information to the Secretary of State via the Central Registration Depository (CRD):
1. Form BD, or a successor form.
 2. A Statement of Net Capital or such financial statements as required by the NASD or SEC which indicate net capital.
 3. A balance sheet prepared in accordance with generally accepted accounting principles. Attached to every balance sheet shall be an oath or affirmation that such statement is true and correct to the best knowledge, information, and belief after a diligent inquiry by the person making such oath or affirmation. If the broker/dealer is a sole proprietorship, the oath or affirmation shall be made by the proprietor; if a partnership, by a general partner; if a corporation, by a duly authorized officer; and if a trust, by a trustee. In lieu of the above, the most recent financial statements as required by the NASD or SEC may be filed. In either case, the financial information must be dated not more than ninety (90) days prior to the date of filing.
 4. The \$ 200 non-refundable statutory registration fee shall be submitted to the Central Registration Depository (CRD).
- B. In order to apply for registration, non-NASD member broker/dealers shall submit the following information to the Secretary of State at the address set out in Rule 101:
1. Form BD, or a successor form.
 2. Surety bond as provided in Rule 505.
 3. Statement of Net Capital.
 4. A balance sheet prepared in accordance with generally accepted accounting principles. The balance sheet must be dated not more than ninety (90) days prior to the date of filing. Attached to every balance sheet or financial statement which is required shall be an oath or affirmation that such statement is true and correct to the best knowledge, information, and belief after a diligent inquiry has been made by the person making such oath or affirmation. If the broker/dealer is a sole proprietorship, the oath or affirmation shall be made by the proprietor; if a partnership, by a general partner; if a corporation, by a duly authorized officer; and if a trust, by a trustee.
 5. The \$200 non-refundable statutory registration fee.

[Amended June 18, 2004]

503. Minimum Financial Requirements and Financial Reporting Requirements of Broker-Dealers:

- A. Each broker-dealer registered or required to be registered under this Act shall comply with SEC Rule 15c3-1 (17 C.F.R. 240.15c3-1 (1996)), 15c3-2 (17 C.F.R. 240.15c3-2 (1996)), and 15c3-3 (17 C.F.R. 240.15c-3 (1996)).

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- B. Each broker-dealer registered or required to be registered under this Act shall comply with SEC Rule 17a-11 (17 C.F.R. 240.17a-11) and shall simultaneously file with the Division upon request copies of notices and reports required under that rule.
- C. To the extent that the U.S. Securities and Exchange Commission promulgates changes to the above-referenced rules, dealers in compliance with such rules as amended shall not be subject to enforcement action by the Commission for violation of this rule to the extent that the violation results solely from the dealer's compliance with the amended rule.

505. Bonding Requirements for Intrastate Broker-Dealers: Every broker-dealer registered or required to be registered under this Act whose business is exclusively intrastate, who does not make use of any facility of a national securities exchange and who is not registered under Section 15 of the Securities Exchange Act of 1934, shall be bonded in an amount of not less than \$30,000 by a bonding company qualified to do business in this state.

All registrants prior to the effective date of this rule shall have until January 1, 1998, to increase their surety bond (or substitute thereof) to comply with this rule.

507. Change of Material Information; Amendments: The Division must be notified within thirty (30) days whenever the information contained in any application or amendment for registration as a broker/dealer and/or agent changes in a material way or is, or becomes, inaccurate or incomplete in any respect. All amendments for NASD-member broker/dealers shall be filed through the Central Registration Depository (CRD). Events requiring notice shall include, but are not limited to, the following:

- A. A change in ownership, management, or control of a broker/dealer;
- B. A change in any of the broker/dealer's officers, partners, or controlling persons;
- C. The establishment or change in location or mailing address of any office in Mississippi;
- D. A change in the name of a broker/dealer. If applicable, any necessary modifications to ensure compliance with subparagraph (B)(3) of Rule 501 shall be made;
- E. A change in type of entity, general plan, character of business, method of operation, or type of securities in which dealing or trading is being effected;
- F. Termination of business or discontinuance of activities as a broker/dealer;
- G. The naming of a broker/dealer, principal, officer, and/or agent as a defendant or respondent in one or more of the following instances:
 - 1. Criminal allegations involving securities or any aspect of the securities business, or any felony;
 - 2. Civil allegations involving a security or any aspect of the securities business, or any activity alleging a breach of a fiduciary trust, or fraud;
 - 3. Administrative allegations involving a security or any aspect of the securities business, or any activity alleging a breach of a fiduciary trust, or fraud;
 - 4. Arbitration proceedings with allegations involving a security or any aspect of the securities business, or any activity alleging a breach of a fiduciary trust, or fraud;
 - 5. Any proceeding in which an adverse decision could result in:

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- a. A denial, suspension, or revocation, or the equivalent of those terms, of a license, permit, registration, or charter;
- b. The imposition of a fine or other penalty; or
- c. An expulsion or barring from membership in an association or organization.

509. Financial Reporting:

- A. Upon request, each broker/dealer must file with the Division audited financial statements as of the end of its fiscal year. The statements must meet the requirements of paragraph (B) or an independent public accountant.
- B. The financial statements filed pursuant to this rule must:
 - 1. Include a balance sheet, a statement of income or operations, a statement of shareholder equity, and a statement of cash flows, accompanied by appropriate notes stating the accounting principles and practices followed in their preparation, the basis at which securities are included, and other notes as may be necessary for an understanding of the statements;
 - 2. Be prepared in accordance with generally accepted accounting principles;
 - 3. Be audited by an independent certified public accountant. The audit must:
 - a. Be made in accordance with generally accepted auditing standards;
 - b. 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.
 - 4. Be accompanied by an unqualified opinion of the auditor as to the report of financial condition. In addition, the auditor 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 funds, and shall indicate any corrective action taken or proposed;
 - 5. The financial statements shall be filed with the Division within ninety (90) days following the end of the broker/dealer's licensee's fiscal year.
- C. The financial reporting requirements of this Section shall be limited for a broker/dealer registered with the SEC to the financial reporting requirements in the Securities Exchange Act of 1934.

511. Renewal of Registration:

- A. The registration of a broker/dealer who is a member of the NASD shall be renewed through the Central Registration Depository (CRD) according to the CRD administrative rules governing the registration process with the CRD system.
- B. The registration of a broker/dealer who is not a member of the NASD may be renewed by submitting the following:
 - 1. A letter requesting renewal, and

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2. The statutory renewal fee.

- C. If renewal requirements are not satisfied on or before December 31, the registration will be considered terminated and a new application with all exhibits and the statutory registration fee must be filed.

513. Termination of Registration: If a registered broker/dealer should terminate registration for any reason, written notice on Form BDW shall be submitted within thirty (30) days to the Division. NASD member broker/dealers shall file the Form BDW through the Central Registration Depository (CRD).

515. Record Keeping Requirements of Broker/Dealers:

- A. Unless otherwise provided by order of the Securities and Exchange Commission, each broker/dealer registered or required to be registered under this act shall make, maintain, and preserve books and records in compliance with U.S. Securities and Exchange Commission Rules 17a-3 (17 C.F.R. 240.17a-3 (1996)), 17a-4 (17 C.F.R. 240.17a-4 (1996)), 15c2-6 (17 C.F.R. 240.15c2-6 (1996)) and 15c2-11 (17 C.F.R. 240.15c2-11 (1996)).
- B. To the extent that the U.S. Securities and Exchange Commission promulgates changes to the above-referenced rules, dealers in compliance with such rules as amended shall not be subject to enforcement action by the Commission for violation of this rule to the extent that the violation results solely from the dealer's compliance with the amended rule.

519. Preservation of Records: All records required to be preserved under these Rules shall be in such form as to promptly allow examination by the Division. Copies shall be provided to the Division upon request, and the cost of the copies shall be borne by the broker/dealer and/or the agent.

521. Supervision: All broker/dealers shall establish and keep current a set of written supervisory procedures and a system for implementing such procedures which may be reasonably expected to prevent and detect any violations of the Act and rules promulgated thereunder. The procedures shall include the designation by name or title of those persons delegated supervisory responsibility in at least the areas of sales, financial operations, and compliance. A complete set of such procedures and systems shall be kept in all offices located in this state.

523. Standards of Conduct: Each broker/dealer and agent shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. Acts and practices, including, but not limited to, the following, are considered contrary to such standards and may constitute grounds for denial, suspension, or revocation of registration, imposition of fines, or such other action authorized by statute.

A. Broker/Dealers.

1. Causing any unreasonable delays in the placement of orders, execution of orders, and/or the delivery of securities purchased by any of its customers and/or in the payment upon request of free credit balances reflecting completed transactions of 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;

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3. Recommending to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation, and needs, and any other relevant information known by the broker/dealer;
4. Executing a transaction on behalf of a customer without authorization to do so;
5. Marking any order tickets or confirmations as unsolicited when in fact the transaction is solicited;
6. 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;
7. Extending, arranging for, or participating in arranging for credit to a customer in violation of the Securities Exchange Act of 1934 or the regulations of the Federal Reserve Board;
8. Executing any transaction in a margin account without obtaining from the customer a properly executed written margin agreement prior to the settlement date for the initial transaction in the account;
9. Failing to segregate customers' free securities or securities held in safekeeping;
10. Hypothecating a customer's securities without having a lien thereon unless a written consent is first obtained, except as permitted by rules of the SEC;
11. Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;
12. Failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together includes all information set forth in the final prospectus;
13. Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends, or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities, and other services related to its securities business, except where such fees are negotiated or have been previously consented to by the customer;
14. Offering to buy from or sell to any person any security at a stated price unless such broker/dealer is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell;
15. Representing that a security is being offered to a customer "at the market" or a price relevant to the market price, unless such broker/dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created, or controlled by such broker/dealer, or by any person for whom he is associated in such distribution, or any person controlled by, controlling, or under common control with such broker/dealer;
16. Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive, or other fraudulent device, practice, plan, program, design, or contrivance which may include, but not be limited to:
 - a. Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

- b. Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time, and substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; provided however, nothing in this subsection shall prohibit a broker/dealer from entering bona fide agency cross transactions for its customers;
 - c. Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others;
 - d. Contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead or using any advertising or sales presentation in a deceptive or misleading manner;
 - e. In connection with the offer, sale, or purchase of a security, falsely leading a customer to believe that the broker/dealer or agent is in possession of material, non-public information which would impact on the value of the security;
 - f. In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors of similar investment objective for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstance of each investor;
17. Guaranteeing a customer against loss in any securities account of such customer carried by the broker/dealer or in any securities transaction effected by the broker/dealer with or for such customer;
18. Publishing, circulating, or causing to be published or circulated any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker/dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price of any security, unless such broker/dealer believes that such quotation represents a bona fide bid for, or offer of, such security;
19. Using any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material, or presentation based on conjecture, unfounded or unrealistic claims, or assertions in any brochure, flyer, or display by words, pictures, graphs, or otherwise designed to supplement, detract from, supersede, or defeat the purpose or effect of any prospectus or disclosure;
20. Failing to disclose that the broker/dealer is controlled by, controlling, affiliated with, or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of such security, the existence of such control to such

- customer, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending or written disclosure at or before the completion of the transaction;
21. Failing to make a bona fide public offering of all of the securities allotted to a broker/dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member. This includes, among other things, (1) transferring securities to a customer's, another broker/dealer's, or a fictitious account with the understanding that those securities will be returned to the broker/dealer or its nominees or (2) "parking" or withholding securities;
 22. Failure or refusal to furnish a customer, upon reasonable request, information to which he is entitled or to respond to a formal written request or complaint;
 23. Violating any laws or rules of the SEC or a national securities exchange or national securities association of which it is a member, or violating any federal or state securities law or any rule or regulation promulgated thereunder.

B. Agents.

1. Lending or borrowing money or securities from a customer (unless such customer is a bona fide financial institution whose business is to borrow or lend), or acting as a custodian for money, securities, or an executed stock power of a customer;
2. Effecting securities transactions not recorded on the regular books or records of the broker/dealer which the agent represents, unless the transactions are authorized in writing by the broker/dealer prior to execution of the transaction;
3. Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited;
4. 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;
5. Dividing or otherwise splitting the agent's commissions, profits, or other compensation from the purchase or sale of securities with any person not also registered as an agent for the same broker/dealer, or for a broker/dealer under direct or indirect common control; or
6. Engaging in conduct specified in subsection (A) 1, 2, 3, 4, 5, 6, 8, 11, 12, 16, 17, 18, 19, 23.

The conduct set forth above is not inclusive. Engaging in other conduct such as forgery, embezzlement, non-disclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices shall also be grounds for denial, suspension, or revocation of registration, or imposition of fines.

525. Agent Registration and Termination (NASD): Registration, renewal, and termination of agents associated with members of the NASD shall be made through the CRD according to the CRD administrative rules governing the registration process with the CRD system.

527. Agent Registration and Termination (non-NASD):

- A. Application for registration as an agent not associated with members of the NASD shall be submitted on Form U-4 along with the \$50 non-refundable statutory registration fee.

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- B. If an agent's relationship with a broker/dealer is terminated for any reason, the Division shall be notified by the broker/dealer on Form U-5 within fifteen (15) days of such termination.
- C. Renewal of the permit of an agent not associated with members of the NASD must be requested, along with the statutory renewal fee, by the broker/dealer prior to December 31 of each year. If the renewal request is not received on or before December 31, the registration will be considered terminated, and a new application and fee must be submitted.

529. Records to be Preserved by Agents: Every registered agent not located in a broker/dealer main or branch office shall preserve the following records for a period of not less than three (3) years, the first two (2) years of which shall be kept in an easily accessible place:

- A. A record of all commissions, overrides, draws, salary, expenses, and other compensation or remuneration received in connection with the agent's securities sales efforts;
- B. A description of the type and amount of securities sold;
- C. The date of each sale;
- D. The sales price and how such price was determined;
- E. The commission earned and received for each sale;
- F. A copy of any sales confirmation, subscription agreement, and other contracts relating to each sale;
- G. The name and address of each purchaser;
- H. The name and address of any person in addition to the agent who participated in each sale, the nature of the participation, and the compensation or remuneration received by such other person for that person's assistance;
- I. Record of any client's securities received or delivered by the agent;
- J. Copies of all office checkbooks, bank statements, canceled checks, and cash reconciliations;
- K. A complaint file containing all complaints made by any person against the agent.

531. Dual Registration: Registration of any agent with more than one issuer or broker/dealer is permitted. However, any agent so registered may not transact business in any particular security on behalf of more than one issuer or broker/dealer with whom he is registered.

533. Written Examinations:

- A. Written examinations shall be required to determine an applicant's qualification and competency to transact business in this state as a broker/dealer or broker/dealer agent.
- B. Effective March 15, 1988, each broker/dealer principal and each broker/dealer agent applicant must satisfy two examination requirements to obtain a license:
 - 1. An examination on state securities law which will be satisfied by passing the Uniform Securities Agent State Law Examination (USASLE) (S-63) or the Uniform Combined State Law Examination (UCSLE) (S-66) administered by the National Association of Securities Dealers (NASD); and
 - 2. An examination of general or limited knowledge of securities principles, which will be satisfied by passing the appropriate examination required by the NASD for the activity in which applicant will be engaged.

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- C. Applicants successfully completing a limited knowledge examination as provided under Section B (2) of this Rule will be eligible only for registration to effect transactions in those securities to which the limited examination relates.
- D. The examinations required by Sections B (1) and (2) of this Rule are administered by the NASD at various regional testing sites. Any fees required by the NASD for the taking of such examinations are the responsibility of the applicant.
- E. The examinations required under this Rule shall not be applicable to an applicant:
 - 1. Who is registered with the NASD and registered with this State prior to March 15, 1988, with no break in registration longer than a two (2) year period; or
 - 2. Who is not registered with the NASD and has remained continuously registered in this State without interruption for at least five (5) years prior to the effective date of this Rule, with no break in registration longer than a two (2) year period.

535. Issuers:

- A. Every issuer selling its own securities shall make and keep current the following books and records:
 - 1. Stockholders' ledgers or other records reflecting alphabetically the names and addresses of all stockholders, stock certificates issued to each, dates paid, and full details as to transfers or cancellations;
 - 2. Copies of all promotional and sales materials used in connection with the sales of the issuer's securities;
 - 3. Copies of all confirmations of sales of securities;
 - 4. Stock Certificate Books.
- B. Agents of issuers required to be registered under the Act may do so by submitting applications to the Division on Form U-4 along with the \$50 non-refundable statutory registration fee. Agent terminations shall be filed with the Division on Form U-5 within fifteen (15) days of such termination.

537. Registration Exemption – Canadian Cross-Border Trading:

Pursuant to Section 75-71-109(a) of the Act, the Secretary of State finds that it is consistent with the public interest and with the purpose fairly intended by the policy and provisions of the Act to exempt the following persons from the registration requirements of Section 75-71-301 of the Act:

- A. A broker-dealer who is resident in Canada, has no office or other physical presence in this state, and complies with the following conditions:
 - 1. Only effects or attempts to effect transactions in securities:
 - a. With or through the issuers of the securities involved in the transactions, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies (as defined in the Investment Company Act of 1940), pension or profit-

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sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;

- b. With or for a person from Canada who is temporarily present in this state, with whom the Canadian person had a bona fide business-client relationship before the person entered this state; or,
- c. With or for a person from Canada who is present in this state, whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor; and

- 2. Files a notice in the form of his current application required by the jurisdiction in which his head office is located and a consent to service of process;
- 3. Is registered with or a member of a self-regulatory organization, stock exchange in Canada, or the Bureau des services financiers;
- 4. Maintains his provincial or territorial registration and his registration with or membership in a self-regulatory organization, stock exchange, or the Bureau des services financiers in good standing;
- 5. Discloses to his clients in this state that he is not subject to the full regulatory requirements of the Act; and,
- 6. Is not in violation of Sections 75-71-501 or 75-71-503 of the Act and all rules promulgated thereunder.

B. An agent who represents a broker-dealer exempted from registration pursuant to Subsection A above, provided that such agent maintains his or her provincial or territorial registration in good standing.

[Amended September 17, 2002]

Article 6: Registration of Investment Advisers and Notice Filing of Federal Covered Advisers

601. Definitions:

- A. Custody: For purposes of this article, the Division adopts the definition contained in Rule 635(C)(1).
- B. Investment Adviser: In order to provide uniform interpretation of the application of federal and state adviser laws to financial planners and other persons, the Division hereby expressly adopts S.E.C. Release No. IA-1092 (17 C.F.R. 276.1092), as it relates to the definition of Investment Adviser set forth in Section 75-71-105(g) of the Act.

602. Electronic Filing with Designated Entity:

- A. Pursuant to the Act, the Division designates the web-based Investment Adviser Registration Depository (IARD) operated by the National Association of Securities Dealers to receive and store filings and collect related fees from investment advisers and investment adviser representatives on behalf of the Division.
- B. Unless otherwise provided, all investment adviser and investment adviser representative applications, amendments, notices, related filings, and fees required to be filed with the Division pursuant to the rules promulgated under this Act, shall be filed electronically with and transmitted to IARD. The following additional conditions relate to such electronic filings:
 - 1. When a signature or signatures are required by the particular instructions of any filing to be made through IARD, a duly authorized officer of the applicant or the applicant himself or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to IARD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing.
 - 2. Solely for purposes of a filing made through IARD, a document is considered filed with the Division when all fees are received and the filing is accepted by IARD on behalf of the Division.
- C. Notwithstanding subsection B, of this rule, the electronic filing of any particular document and the collection of related processing fees shall not be required until such time as IARD provides for receipt of such filings and fees. Any documents or fees required to be filed with the Division that are not permitted to be filed with or cannot be accepted by IARD shall be filed directly with the Division.
- D. An investment adviser shall be deemed to have fulfilled the requirement of filing a Consent to Service of Process with the Division upon completing and filing the relevant portion of the revised Form ADV.
- E. Investment advisers licensed under the Act, or required to be licensed under the Act, who experience unanticipated technical difficulties that prevent submission of an electronic filing to IARD may request a temporary hardship exemption from filing electronically with IARD. To request a temporary hardship extension, the investment adviser must:

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1. File Form ADV-H in paper format with the Division no later than one business day after the filing that is subject of Form ADV-H was due; and
2. Submit the filing that is the subject of Form ADV-H in electronic form to IARD no later than seven (7) business days after the filing was due.

The temporary hardship exemption will be deemed effective upon receipt by the Division of the complete Form ADV-H. Multiple temporary hardship exemption requests within the same calendar year are discouraged, and may be disallowed by the Division.

- F. A continuing hardship exemption will be granted only if the investment adviser is able to demonstrate that the electronic filing requirements of this rule are prohibitively burdensome. To apply for a continuing hardship exemption, the investment adviser must:
1. File Form ADV-H in paper format with the Division at least twenty (20) business days before a filing is due; and
 2. If a filing is due to more than one state, the Form ADV-H must be filed with the state where the investment adviser's principal place of business is located. The state who receives the application will grant or deny the application within ten (10) business days after the filing of Form ADV-H.

The exemption is effective upon approval by the Division. The time period of the exemption may be no longer than one year after the date on which the Form ADV-H is filed. If the Division approves the application, the investment adviser must, no later than five (5) business days after the exemption approval date, submit filings to IARD in paper format (along with the appropriate processing fees) for the period of time for which the exemption is granted.

The decision to grant or deny a request for a hardship exemption will be made by the state where the investment adviser's principal place of business is located, which decision will be conformed to by the other state(s) where the investment adviser is registered.

[Adopted March 2, 2001]

603. Application - Investment Adviser: The application for initial registration as an investment adviser pursuant to the Act shall be made by completing Form ADV (Uniform Application for Investment Adviser Registration) in accordance with the form instructions and by filing the form with IARD. The application for initial registration shall also include the following:

- A. A copy of the articles of incorporation or articles of limited partnership currently in effect, certified by the governmental agency where filed.
- B. A surety bond as provided in Rule 605.
- C. A Statement of Net Capital. Such statement shall be attested under oath by an officer of the corporation or partner, if a partnership.
- D. A balance sheet prepared according to Rule 501(B)(4).
- E. The \$200 non-refundable statutory registration fee.
- F. Reference should be made to Rule 629 for registration of investment adviser representatives.

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- G. Investment Adviser firms exempt under Section 75-71-303 of the Act are not required to file the above information with the Division.
- H. An Investment Adviser that has its principal place of business in a state other than Mississippi shall be exempt from the requirements of subsection D of this Section, provided that the investment adviser is registered as an investment adviser in the state where it has its principal place of business and is in compliance with such state's requirements relating to financial reporting.

[Amended March 2, 2001]

605. Bonding Requirements for Investment Advisers:

- A. Every investment adviser having custody of or discretionary authority over client funds or securities shall be bonded:
 - 1. In an amount determined by the Division based upon the number of clients and the total assets under management of the investment adviser, which shall be at a minimum of \$30,000 for investment advisers having custody of client funds and \$10,000 for investment advisers with discretionary authority over client funds; and,
 - 2. By a bonding company qualified to do business in Mississippi.
- B. The requirements of this Rule shall not apply to those applicants or registrants who comply with the requirements of Rule 607.
- C. An investment adviser that has its principal place of business in a state other than Mississippi and the investment adviser representatives of such investment adviser shall be exempt from the requirements of section A) of this Rule, provided that the investment adviser is registered as an investment adviser in the state where it has its principal place of business and is in compliance with such state's requirements relating to bonding.
- D. For purposes of this Rule, "custody" is defined in Rule 635(C)(1).

607. Minimum Financial Requirements for Investment Advisers:

- A. Unless an investment adviser posts a bond pursuant to Rule 605, an investment adviser registered or required to be registered under the Act who has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000, and every investment adviser registered or required to be registered under the Act who has discretionary authority over client funds or securities but does not have custody of client funds or securities, shall maintain at all times a minimum net worth of \$10,000.
- B. Unless otherwise exempted, as a condition of the right to continue to transact business in Mississippi, every investment adviser registered or required to be registered under the Act shall by the close of business on the next business day notify the Division if such investment adviser's total worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next day a report with the Division of its financial condition, including the following:
 - 1. A trial balance of all ledger accounts;

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2. A statement of all client funds or securities which are not segregated;
 3. A computation of the aggregate amount of client ledger debit balances; and
 4. A statement as to the number of client accounts.
- C. For purposes of this Rule, the term **net worth** shall mean an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets: prepaid expenses (except as to items properly classified as current assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expenses, all other assets of intangible nature; home, home furnishing, automobile(s), and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.
- D. The Division may require that a current appraisal be submitted in order to establish the worth of any asset.
- E. Every investment adviser that has its principal place of business in a state other than Mississippi and the investment adviser representatives of such investment adviser shall maintain only such minimum capital as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is licensed or registered in such state and is in compliance with such state's minimum capital requirements.
- F. For purposes of this Rule, "custody" is defined in Rule 635(C)(1).

609. Financial Reporting:

- A. Each investment adviser who has custody or possession of client's funds or securities or requires payment of advisory fees six months or more in advance and in excess of \$500 per client shall file with the Division audited financial statements as of the end of the investment adviser's fiscal year. The statements must meet the requirements of Section (B).
- B. The financial statements filed pursuant to this rule must:
1. Include a balance sheet, a statement of income or operations, a statement of shareholder equity, and a statement of cash flows, accompanied by appropriate notes stating the accounting principles and practices followed in their preparation, the basis at which securities are included and other notes as may be necessary for an understanding of the statements;
 2. Be prepared in accordance with generally accepted accounting principles;
 3. Be audited by an independent certified public accountant. The audit must:
 - a. Be made in accordance with generally accepted auditing standards;
 - b. 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;
 4. Be accompanied by an unqualified opinion of the auditor as to the report of financial condition. In addition, the auditor 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 funds, and shall indicate any corrective action taken or proposed;

5. Be filed with the Division within ninety (90) days following the end of the investment adviser's licensee's fiscal year.
- C. An investment adviser that has its principal place of business in a state other than Mississippi shall be exempt from the requirements of Section (A) of this Rule, provided that the investment adviser is registered as an investment adviser in the state where it has its principal place of business and is in compliance with such state's requirements relating to financial reporting.
- D. For purposes of this Rule, "custody" is defined in Rule 635(C)(1).

611. Change of Material Information; Amendments:

The Division shall be notified within thirty (30) days whenever the information contained in any application or amendment for registration as an investment adviser or representative changes in a material way or is or becomes inaccurate or incomplete in any respect. Events requiring notification shall include, but are not limited to, the following:

- A. Change in firm name, ownership, management or control of an investment adviser, or a change in any of its partners, officers, or persons in similar positions, or its business address, or the creation or termination of a branch office in Mississippi. Notice of such change shall be filed with IARD, in accordance with the instructions in Form ADV along with a satisfactory rider or endorsement to the required surety bond.
- B. Change in type of entity, general plan, or character of an investment adviser's business or method of operation.
- C. Insolvency, dissolution, liquidation, or a material adverse change or impairment of working capital, or noncompliance with the minimum capital or bond requirements.
- D. Termination of business or discontinuance of activities as an investment adviser.
- E. The naming of an investment adviser, principal, officer, and/or employee as a defendant or respondent in one of more of the following instances:
 1. Criminal allegations involving any aspect of the securities or any aspect of the securities business, or any felony.
 2. Civil allegations involving a security or any aspect of the securities business, or any activity alleging a breach of a fiduciary trust, or fraud.
 3. Administrative allegations involving a security or any aspect of the securities business, or any activity alleging a breach of a fiduciary trust, or fraud.
 4. Arbitration proceedings with allegations involving a security or any aspect of the securities business, or any activity alleging a breach of a fiduciary trust, or fraud.
 5. Any proceeding in which an adverse decision could result in:
 - a. A denial, suspension, or revocation, or the equivalent of those terms, of a license, permit, registration, or charter;
 - b. The imposition of a fine or other penalty; or
 - c. An expulsion or barring from membership in an association or organization.

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[Amended March 2, 2001]

613. Termination or Withdrawal of Registration:

- A. Terminations or withdrawals of registration as an investment adviser shall be completed by following the instructions on Form ADV-W and filing Form ADV-W with IARD.
- B. Any investment adviser who is no longer in existence or is not engaged in business as an investment adviser shall, within 30 days of such cessation, file with IARD a Form ADV-W prepared in accordance with the instructions contained therein.

[Amended March 2, 2001]

615. Renewal of Registration:

The application for annual renewal registration as an investment adviser shall be filed with IARD before December 31 of each year. The application for annual renewal registration shall include the following:

- A. A copy of the surety bond required by Rule 605, if applicable; and,
- B. The \$200 non-refundable statutory renewal fee.

[Amended March 2, 2001]

617. Record Keeping Requirements for Investment Advisers:

- A. Every investment adviser registered or required to be registered under the Act shall make and keep true, accurate and current the following books, ledgers and records:
 - 1. A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.
 - 2. General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.
 - 3. A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank, broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.
 - 4. All check books, bank statements, canceled checks and cash reconciliations of the investment adviser.
 - 5. All bills or statements (or copies of), paid or unpaid, relating to the investment adviser's business as an investment adviser.
 - 6. All trial balances, financial statements prepared in accordance with generally accepted accounting principles, and internal audit working papers relating to the investment adviser's business as an investment adviser. For purposes of this subsection, "financial statements" shall

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mean a balance sheet prepared in accordance with generally accepted accounting principles, an income statement, a cash flow statement and a net worth computation, if applicable, as required by Rule 607 of this Act.

7. Originals of all written communications received and copies of all written communications sent by the investment adviser relating to (A) any recommendation made or proposed to be made and any advice given or proposed to be given, (B) any receipt, disbursement or delivery of funds or securities, or (C) the placing or execution of any order to purchase or sell any security, provided, however, (i) that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, and (ii) that if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 10 persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if the notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular or advertisement a memorandum describing the list and its source.
8. A list or other record of all accounts which list identifies the accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.
9. A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser.
10. A copy in writing of each agreement entered into by the investment adviser with any client, and all other written agreements otherwise relating to the investment adviser's business as an investment adviser.
11. A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser), and if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including by electronic media, recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.
12. a. A record of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except
 - i. Transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and
 - ii. Transactions in securities which are direct obligations of the United States. The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e. purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the

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reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

b. For purposes of this subdivision (12) the following definitions will apply. The term "advisory representative" shall mean any partner, officer or director of the investment adviser; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations:

- i. Any person in a control relationship to the investment adviser,
- ii. Any affiliated person of a controlling person and
- iii. Any affiliated person of an affiliated person.

"Control" shall mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 % of the voting securities of a company shall be presumed to control such company.

c. An investment adviser shall not be deemed to have violated the provisions of this subdivision (12) because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

13. a. Notwithstanding the provisions of subdivision (12) above, where the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except

- i. Transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and
- ii. Transactions in securities which are direct obligations of the United States.

The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e. purchase, sale, or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction

was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

- b. An investment adviser is "primarily engaged in a business or businesses other than advising investment advisory clients" when, for each of its most recent three fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived, on an unconsolidated basis, more than 50% of
 - i. Its total sales and revenues, and
 - ii. Its income (or loss) before income taxes and extraordinary items, from such other business or businesses.
- c. For purposes of this subdivision (13) the following definitions will apply. The term "advisory representative", when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, shall mean any partner, officer, director or employee of the investment adviser who participates in any way in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons, who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of such recommendations or of the information concerning the recommendations:
 - i. Any person in a control relationship to the investment adviser,
 - ii. Any affiliated person of a controlling person and
 - iii. Any affiliated person of an affiliated person.

"Control" shall mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company shall be presumed to control such company.
- d. An investment adviser shall not be deemed to have violated the provisions of this subdivision (13) because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

14. A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of the investment adviser in accordance with the provisions of Rule 627 of this Act, and a record of the dates that each written statement, and each amendment or revision, was

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given, or offered to be given, to any client or prospective client who subsequently becomes a client.

15. For each client that was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser:
 - a. evidence of a written agreement to which the adviser is a party related to the payment of such fee;
 - b. a signed and dated acknowledgment of receipt from the client evidencing the client's receipt of the investment adviser's disclosure statement and a written disclosure statement of the solicitor; and,
 - c. a copy of the solicitor's written disclosure statement. The written agreement, acknowledgment and solicitor disclosure statement will be considered to be in compliance if such documents are in compliance with Rule 275.206(4)-3 of the Investment Advisers Act of 1940.

For purposes of this rule, the term "solicitor" shall mean any person who, for compensation, acts as an agent of an investment adviser in referring potential clients.

16. All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including but not limited to electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser); provided, however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this paragraph.
17. A file containing a copy of all written communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee, and regarding any written customer or client complaint
18. Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.
19. Written procedures to supervise the activities of employees and investment adviser representatives, and that are reasonably designed to achieve compliance with applicable securities laws and regulations.
20. A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self regulatory organization and that pertains to the registrant or its investment adviser representatives as that term is defined in subdivision (A)(12)(b) of this Rule, which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.
21. Copies, with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form U-4 and each amendment to Disclosure

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Reporting Pages (DRPs U-4) must be retained by the investment adviser (filing on behalf of the investment adviser representative) and must be made available for inspection upon regulatory request.

22. Where the adviser inadvertently held or obtained a client's securities or funds and returned them to the client within three business days or has forwarded third party checks within 24 hours the adviser will be considered as not having custody but shall keep the following records relating to the inadvertent custody:

A ledger or other listing of all securities or funds held or obtained, including the following information:

- a. Issuer;
 - b. Type of security and series;
 - c. Date of issue;
 - d. For debt instruments, the denomination, interest rate and maturity date;
 - e. Certificate number, including alphabetical prefix or suffix;
 - f. Name in which registered;
 - g. Date given to the adviser;
 - h. Date sent to client or sender;
 - i. Form of delivery to client or sender, or copy of the form of delivery to client or sender; and
 - j. Mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.
23. If an investment adviser obtains possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving any public offering that comply with the exception from custody under Rule 635(B)(2), the adviser shall keep the following records:
- a. A record showing the issuer or current transfer agent's name, address, phone number and other applicable contract information pertaining to the party responsible for recording client interests in the securities; and
 - b. A copy of any legend, shareholder agreement or other agreement showing that those securities that are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

B. Additional recordkeeping requirements for advisers with custody

1. If an investment adviser has custody, as that term is defined in Rule 635(C), the records required to be made and kept under Rule 617(A) shall also include:
 - a. A copy of any and all documents executed by the client (including a limited power of attorney) under which the adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the adviser's instruction to the custodian.
 - b. A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for all accounts and all other debits and credits to the

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- accounts.
- c. A separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits.
 - d. Copies of confirmations of all transactions effected by or for the account of any client.
 - e. A record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount or interest of each client, and the location of each security.
 - f. A copy of each of the client's quarterly account statements, as generated and delivered by the qualified custodian. If the adviser also generates a statement that is delivered to the client, the adviser shall also maintain copies of such statements along with the date such statements were sent to the clients.
 - g. If applicable to the adviser's situation, a copy of the auditor's report and financial statements and letter verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination.
 - h. A record of any finding by the independent certified public accountant of any material discrepancies found during the examination.
 - i. If applicable, evidence of the client's designation of an independent representative.
2. If an investment adviser has custody because it advises a pooled investment vehicle, as defined in Rule 635(C)(1)(d), the adviser shall also keep the following records:
- a. True, accurate and current account statements;
 - b. Where the adviser complies with Rule 635(B)(3) the records required to be made and kept shall include:
 - i. The date(s) of the audit;
 - ii. A copy of the audited financial statements; and
 - iii. Evidence of the mailing of the audited financial to all limited partners, members or other beneficial owners within 120 days of the end of its fiscal year.
 - c. Where the adviser complies with rule 635(A)(7) the records required to be made and kept shall include:
 - i. A copy of the written agreement with the independent party reviewing all fees and expenses, indicating the responsibilities of the independent third party.
 - ii. Copies of all invoices and receipts showing approval by the independent party for payment through the qualified custodian.
3. If an investment adviser has custody because it is acting as the trustee for a beneficial trust as it is described in Rule 635(B)(5) the investment adviser shall also keep the following records until the account is closed or the adviser is no longer acting as trustee.
- a. A copy of the written statement given to each beneficial owner setting forth a description of the requirements of Rule 635(A) and the reason why the adviser will not be complying with

- those requirements; and
- b. A written acknowledgement signed and dated by each beneficial owner, and evidencing receipt of the statement required under subsection (A) above.
- C. Every investment adviser subject to subsection (A) of this Rule who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:
1. Records showing separately for each client the securities purchased and sold, and the date, amount and price of each purchase and sale.
 2. For each security in which any client has a current position, information from which the investment adviser can promptly furnish the name of each the client, and the current amount or interest of the client.
- D. Any books or records required by this Rule may be maintained by the investment adviser in such manner that the identity of any client to whom the investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.
- E. Every investment adviser subject to subsection (A) of this rule shall preserve the following records in the manner prescribed:
1. All books and records required to be made under the provisions of paragraphs (A) to (C), inclusive, of this Rule (except for books and records required to be made under the provisions of paragraphs (A)(11) and (A)(16) of this Rule), shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on record, the first two years in the principal office of the investment adviser.
 2. Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.
 3. Books and records required to be made under the provisions of paragraphs (A)(11) and (A)(16) of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in an the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media.
 4. Books and records required to be made under the provisions of paragraphs (A)(17)-(20), inclusive, of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser, or for the time period during which the investment adviser was registered or required to be registered in the state, if less.

5. Notwithstanding other record preservation requirements of this Rule, the following records or copies shall be required to be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services: (A) records required to be preserved under paragraphs (A)(3),(A)(7)-(10), (A)(14)-(15), (A)(17)-(19), (B) and (C) inclusive, of this Rule, and (B) the records or copies required under the provision of paragraphs (A)(11) and (A)(16) of this Rule which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business location's physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the period described in subdivision (E) of this Rule.
- F. An investment adviser subject to Rule 617(A), before ceasing to conduct or discontinuing business as an investment adviser shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this Rule for the remainder of the period specified in this Rule, and shall notify the Division in writing of the exact address where the books and records will be maintained during the period.
- G. Production of records
 1. The records required to be maintained and preserved pursuant to this Rule may be immediately produced or reproduced by photograph on film or, as provided in paragraph G.2. below, on magnetic disk, tape or other computer storage medium, and be maintained and preserved for the required time in that form. If records are produced or reproduced by photographic film or computer storage medium, the investment adviser shall:
 - a. Arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record,
 - b. Be ready at all times to provide, and promptly provide, any facsimile enlargement of film or computer printout or copy of the computer storage medium which the Division by its examiners or other representatives may request,
 - c. Store separately from the original one other copy of the film or computer storage medium for the time required,
 - d. With respect to records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction, and
 - e. With respect to records stored on photographic film, at all times have available for the Division's examination of its records pursuant to Section 75-71-333(d) of the Act, facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.
 2. Pursuant to paragraph G(1) an adviser may maintain and preserve on computer tape or disk or other computer storage medium records which, in the ordinary course of the adviser's business, are created by the adviser on electronic media or are received by the adviser solely on electronic media or by electronic data transmission.

- H. For purposes of this Rule, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client; and "discretionary power" shall not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.
- I. Any book or other record made, kept, maintained and preserved in compliance with Rules 17a-3 [17 C.F.R. 240.17a-3] and 17a-4 [17 C.F.R. 240.17a-4] under the Securities Exchange Act of 1934, which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this Rule, shall be deemed to be made, kept, maintained and preserved in compliance with this Rule.
- J. Every investment adviser registered or required to be registered in this state and that has its principal place of business in a state other than Mississippi shall be exempt from the requirements of this section, provided the investment adviser is licensed in such state and is in compliance with such state's recordkeeping requirements.
- K. Every investment adviser that has its principal place of business in a state other than Mississippi shall be exempt from the requirements of Rule 617, provided the investment adviser is licensed or registered in such state and is in compliance with such state's record keeping requirements.
- L. Every investment adviser that exercises voting authority with respect to client securities shall make, maintain, and preserve records in compliance with SEC Rule 204-2(c)(2) relating to proxy voting (17 C.F.R. 275.204-2(c)(2)).

619. Segregated Accounts: An investment adviser shall at all times keep its customers' securities and funds in trust and segregated from its own securities and funds.

- A. All financial transactions between the investment adviser and his clients are to be effected through one or more bank accounts, each to be designated "special account for the exclusive benefit of clients of (name of investment adviser)"; each shall be separate from any other bank accounts of the investment adviser and shall at no time be used directly or indirectly as security for a loan to the investment adviser by the bank and shall be subject to no right, lien, or claim of any kind in favor of the bank or any persons claiming through the bank; and each shall be separate from any other bank account used by the investment adviser to pay operating and administrative expenses.
- B. Immediately after accepting custody or possession of funds or securities from any client, an investment adviser must notify such client in writing of the place and manner in which such funds and securities will be maintained, and thereafter, if and when there is any change in the place or manner in which such funds or securities are being maintained, must give such client written notice thereof.

621. Supervision:

- A. All investment advisers shall establish and keep current a set of written compliance-supervisory procedures, and a system for implementing such procedures, which may be reasonably expected to prevent and detect any violations of the Act and rules promulgated thereunder.
 - 1. Procedures should include a business continuity plan generally providing for, but not limited to, protection of, back-up and recovery of books and records, establishing alternate means of

communications with customers, employees, and regulators, office re-location in the event of a loss of principal place of business, and designation of duties to responsible person(s) in the event of the death or disability of a key individual, principal, owner, or other such personnel.

2. A complete set of such procedures and systems shall be kept in all offices located in this state.

- B. Every investment adviser that has its principal place of business in a state other than Mississippi shall be exempt from the requirements of Section (A), provided the investment adviser is licensed or registered in such state and is in compliance with such state's written compliance-supervisory procedures requirements.

623. Standards of Conduct: Investment advisers, federal covered advisers and investment adviser representatives are fiduciaries and have a duty to act primarily for the benefit of their clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment adviser or a representative and his clients and the circumstances of each case, an investment adviser, a federal covered adviser, or an investment adviser representative shall not engage in fraudulent, deceitful, unethical or dishonest business practices, including, but not limited to, the following:

- A. Recommending to a client to whom investment, supervisory, management, or consulting services are provided, the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation, and needs, and any other information known or acquired by the investment adviser.
- B. Placing an order to purchase or sell a security for the account of a client without authority to do so.
- C. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.
- D. 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.
- E. 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.
- F. Publishing, circulating, or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940, (17 C.F.R. 206(4)-1), as now or hereafter amended.
- G.
 1. Failing to enter into a contract with any investment advisory client.
 2. Entering into, extending, or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the adviser, and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract. No contract shall contain a "hedge clause," or any other language which may lead a client to believe that legal rights have been restricted or waived.
- H. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority. Discretionary

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power does not include a power relating solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

- I. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives, and character of the account.
- J. Misrepresenting to any advisory client or prospective advisory client the qualifications of the investment adviser or any employee of the investment adviser; 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.
- K. 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.)
- L. Charging a client an advisory fee that is unreasonable in light of the type of services to be provided, the experience and expertise of the adviser, and the sophistication and bargaining power of the client.
- M. Failing to disclose to a client in writing before entering into or renewing an advisory agreement with that client 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 but not limited to, the following:
 - 1. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and
 - 2. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees.
- N. Guaranteeing a client that a specific result will be achieved as a result of the advice which will be rendered.
- O. Disclosing the identity, affairs, or investments of any client to any third party, unless required by law to do so or unless consented to by the client.
- P. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the safekeeping requirements of Rule 635.
- Q. Paying a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities in a manner which does not comply with Rule 206(4)-3 under the Investment Advisers Act of 1940 (17 C.F.R. 275.206(4)-3), as now or hereinafter amended.
- R. Failing to disclose to any client or prospective client all material facts with respect to the financial and disciplinary information required to be disclosed under Rule 206(4)-4 under the Investment Advisers Act of 1940 (17 C.F.R. 275.206(4)-4), as now or hereinafter amended.
- S. While acting as principal for the investment adviser's own account, knowingly effecting any sale or purchase of any security for the account of a client without disclosing to such client in writing before the completion of such transaction the capacity in which the investment adviser is acting and obtaining the consent of the client to such transaction.

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- T. Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information in violation of section 204A of the Investment Advisers Act of 1940.
- U. Entering into, extending, or renewing any advisory contract which would violate section 205 of the Investment Advisers Act of 1940. This provision shall apply to all advisers registered or required to be registered under the Act, notwithstanding whether such adviser would be exempt from federal registration pursuant to section 203(b) of the Investment Advisers Act of 1940.
- V. To indicate, in an advisory contract, any condition, stipulation, or provision binding any person to waive compliance with any provision of this act or the Investment Advisers Act of 1940, or any other practice that would violate section 215 of the Investment Advisers Act of 1940.
- W. Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative in contravention of section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact that such investment adviser is not registered or required to be registered under section 203 of the Investment Advisers Act of 1940.
- X. 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.
- Y. Exercising voting authority with respect to client securities in a manner which does not comply with Rule 206(4)-6 under the Investment Advisers Act of 1940 (17 C.F.R. 275.206(4)-6), as now or hereinafter amended.

The conduct set forth above is not inclusive. Engaging in other conduct such as non-disclosure, incomplete disclosure, or deceptive or fraudulent practices shall be deemed an unethical or dishonest business practice. The standards set forth in this rule shall apply to federal covered advisers to the extent they involve conduct that is fraudulent or deceitful.

625. Commingling of Accounts Prohibited: An investment adviser engaged in more than one enterprise or activity shall maintain separate books of account and records relating to its securities business. The assets of the securities business shall not be commingled with those of such other businesses, and there shall be a clearly defined division with respect to income and expenses.

627. Brochure Rule:

- A. Every investment adviser shall furnish each 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 so required by Part II of Form ADV. An acknowledgment of receipt of the disclosure statement must be signed by the client and kept in the client's file during the period in which services are provided the client.
- B. An investment adviser shall deliver the statement required by this rule to a client:
 1. Not less than 48 hours prior to entering into any written or oral investment advisory contract with such client; or
 2. At the time of entering into any such contract, if the client has a right to terminate the contract without penalty within five (5) business days after entering into the contract.

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- C. The client shall be notified within ten (10) days of any material change in the information supplied pursuant to Section (A).
- D. An investment adviser shall annually, without charge, deliver or offer in writing to deliver upon written request to each of its advisory clients the statement required by this rule. Any statement requested in writing by an advisory client pursuant to such offer must be mailed or delivered within seven (7) days of the receipt of the request.
- E. An investment adviser who is exempt from registration pursuant to the Section 75-71-303(2) exception for registered broker/dealers and who is not a member of the NASD shall comply with the requirements of this rule.
- F. Nothing in this rule shall relieve any investment adviser from any obligation pursuant to any provision of the Act or the rules and regulations thereunder or other federal or state law to disclose any information to its clients or prospective clients not specifically required by this rule.

629. Investment Adviser Representative: Registration, Renewal, and Withdrawal Requirements:

A. Registration Requirements.

1. Examination Requirements.

- a. Except as provided in paragraphs b), c), and d), a person applying to be registered as an investment adviser representative under the Act shall provide the Division with proof that he or she has obtained a passing score on one of the following examinations:
 - i. The Uniform Investment Adviser Law Examination (Series 65 examination); or
 - ii. The General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination).
- b. Any individual who is registered as an investment adviser representative in any jurisdiction in the United States on January 1, 2000 shall not be required to satisfy the examination requirements for continued registration, except that the Division may require additional examinations for any individual found to have violated the Mississippi Securities Act.
- c. An individual who has not yet been registered in any jurisdiction for a period of two years shall be required to comply with the examination requirements of this rule.
- d. The examination requirements shall not apply to any individual who holds and maintains a current professional designation from one of the following:
 - i. CERTIFIED FINANCIAL PLANNER TM/CFP [®] certification awarded by the Certified Financial Planner Board of Standards, Inc.
 - ii. Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania.
 - iii. Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants.

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- iv. Chartered Financial Analyst (CFA) awarded by the Association of Investment Management and Research (AIMR).
 - v. Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.
 - vi. Such other professional designation as the Division may by order recognize.
2. Registered investment advisers shall file and amend, as needed, a completed Form U-4 on any investment adviser representative along with proof the applicant has complied with the examination requirements of paragraph 1), and a \$50 non-refundable registration fee.
 3. In the event an investment adviser representative is beginning an employment relationship with a federal covered adviser, the investment adviser representative shall file and amend, as needed, a completed Form U-4, along with proof of having complied with the examination requirements of paragraph 1), and a \$50 non-refundable registration fee.
 4. The Division is not required to issue a certificate or permit.

B. Registration renewal requirements.

1. All registrations expire on December 31 of each year.
2. To renew registration, applicant must submit the renewal fee of \$50 to the Division before December 31.

C. Termination.

1. In the event an investment adviser representative terminates his relationship with an investment adviser, written notice of termination with a statement of the reason(s) for such termination must be submitted by the investment adviser to the Division within thirty (30) days.
2. In the event an investment adviser representative terminates his relationship with a federal covered adviser, written notice of termination with a statement of the reason(s) for such termination must be submitted by the investment adviser representative to the Division within thirty (30) days.

D. Dual Registration. Applicant may associate with only one investment adviser at one time.

[Amended January 16, 2002; June 18, 2004]

631. Notice Filing Requirements for Federal Covered Advisers:

- A. The notice filing for a federal covered adviser pursuant to Section 75-71-307, shall be filed with IARD on an executed Form ADV (Uniform Application for Investment Adviser Registration). A notice filing of a federal covered adviser shall be deemed filed when the registration fee of \$200 and the Form ADV are filed with and accepted by IARD on behalf of the Division.
- B. Until IARD provides for the filing of Part 2 of Form ADV, the Division will deem filed Part 2 of Form ADV if a federal covered investment adviser provides, within five (5) days of a request, Part 2 of Form ADV to the Division. Because the Division deems Part 2 of the Form ADV to be filed, a

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federal covered investment adviser is not required to submit Part 2 of Form ADV to the Division unless requested.

C. Notice filing renewals.

1. The annual renewal of the notice filing for a federal covered adviser shall be filed with IARD. The renewal of the notice filing for a federal covered adviser shall be deemed filed when the renewal fee of \$200 is filed with and accepted by IARD on behalf of the Division. All notice filings expire on December 31 of each year.
2. A federal covered adviser must file with IARD, in accordance with the instructions in the Form ADV, any amendments to the federal covered adviser's Form ADV.

D. Terminations and withdrawals of notice filings shall be completed by following the instructions on Form ADV-W and filing Form ADV-W with IARD.

E. A federal covered adviser may submit a notice filing for a successor, whether or not the successor is then in existence, for the unexpired portion of the federal covered adviser's term. There shall be no filing fee.

[Amended March 2, 2001]

633. Promptly Remedied: For purposes of Section 75-71-307 of this Act, a federal covered adviser will have "promptly remedied" a delay in payment or underpayment of fees if such federal covered adviser remits the fee payment to the Division within ten (10) business days of receipt of notification of the delay or underpayment. If such payment is not received within the ten (10) business day period, the federal covered adviser will be found to have refused to pay the fee.

635. Custody of Client Funds or Securities by Investment Advisers:

A. **Safekeeping required.** If you are an investment adviser registered or required to be registered, it is unlawful and deemed to be a fraudulent, deceptive, or manipulative act, practice or course of business for you to have custody of client funds or securities unless:

1. Notice to Division. The investment adviser notifies the Division promptly in writing that the investment adviser has or may have custody. Such notification is required to be given on Form ADV;
2. Qualified custodian. A qualified custodian maintains those funds and securities;
 - a. In a separate account for each client under that client's name; or
 - b. In accounts that contain only your clients' funds and securities, under your name as agent or trustee for the clients.
3. Notice to clients. If you open an account with a qualified custodian on your client's behalf, either under the client's name or under your name as agent, you notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information.
4. Account statements must be sent to clients, either:

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- a. By a qualified custodian. You have reasonable basis for believing that the qualified custodian sends an account statement, at least quarterly, to each of your clients for which it maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period; or
 - b. By the adviser.
 - i. The adviser sends an account statement, at least quarterly, to each client for whom you have custody of funds or securities, identifying the amount of funds and of each security of which you have custody at the end of the period and setting forth all transactions during that period;
 - ii. An independent certified public accountant verifies all client funds and securities by actual examination at least once during each calendar year at a time chosen by the accountant without prior notice or announcement to the adviser and that is irregular from year to year, and files a copy of the auditors report and financial statements with the Division within 30 days after the completion of the examination, along with a letter stating that it has examined the funds and securities and describing the nature and extent of the examination; and
 - iii. The independent certified public accountant, upon finding any material discrepancies during the course of the examination, notifies the Division within one business day of the finding, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the Division;
 - c. Special rule for limited partnerships and limited liability companies. If you are a general partner of a limited partnership (or managing member of a limited liability company, or hold a comparable position for another type of pooled investment vehicle), the account statements required under paragraphs (A)(4) of this section must be sent to each limited partner (or member or other beneficial owner or their independent representative).
5. Independent representatives. A client may designate an independent representative to receive, on his behalf, notices and account statements as required under paragraphs (A)(3) and (A)(4) of this section.
6. Direct Fee Deduction. An adviser who has custody as defined in Rule 635(C)(1)(c) by having fees directly deducted from client accounts must also provide the following safeguards:
- a. Written Authorization. The adviser must have written authorization from the client to deduct advisory fees from the account held with the qualified custodian;
 - b. Notice of fee deduction. Each time a fee is directly deducted from a client account, the adviser must concurrently:
 - i. Send the qualified custodian notice of the amount of the fee to be deducted from the client's account; and

- ii. Send the client an invoice itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under managements the fee is based on, and the time period covered by the fee.
 - c. Notice of Safeguards. The investment adviser notifies the Division in writing that the investment adviser intends to use the safeguards provided above. Such notification is required to be given on Form ADV.
 - d. Waiver of Net Worth or Bonding Requirements. An investment adviser having custody solely because it meets the definition of custody as defined in Rule 635(C)(1)(c) and who complies with the safekeeping requirements in Rule 635(A)(1) through (6) will not be required to meet the Bonding, Net Worth, and Financial Reporting Requirements for custodial advisers as set forth in Rules 605, 607, and 609.
7. Pooled Investments. An investment adviser who has custody as defined in Rule 635(C)(1)(d) and who does not meet the exception provided under Rule 635(B)(3) must, in addition to the safeguards set forth in Rule 635(A)(1) through (5) also comply with the following:
- a. Engage an Independent Party. Hire an independent party to review all fees, expenses and capital withdrawals from the pooled accounts;
 - b. Review of Fees. Send all invoices or receipts to the independent party, detailing the amount of the fee, expenses or capital withdrawal and the method of calculation such that the independent party can:
 - i. Determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement) and
 - ii. Forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment adviser.
 - c. For purposes of this rule, an Independent Party means a person that:
 - i. Is engaged by you to act as a gatekeeper for the payment of fees, expenses and capital withdrawals from the pooled investment;
 - ii. Does not control and is not controlled by and is not under common control with you; and
 - iii. Does not have, and has not had within the past two years, a material business relationship with you.
 - d. Notice of Safeguards. The investment adviser notifies the Division in writing that the investment adviser intends to use the safeguards provided above. Such notification is required to be given on Form ADV.
 - e. Waiver of Net Worth or Bonding Requirements. An investment adviser having custody solely because it meets the definition of custody as defined in 635(C)(1)(d) and who complies with the safekeeping requirements in Rule 635(A)(1) through (5) and (7) will not be required to meet the Bonding, Net Worth, and Financial Reporting Requirements for custodial advisers as set forth in Rules 605, 607, and 609.

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8. Investment Adviser or Investment Adviser Representative as Trustee. When a trust retains an investment adviser, investment adviser representative, officer, or employee of the adviser as trustee and the adviser acts as investment adviser to that trust, the adviser will:
- a. Notice of Safeguards. The investment adviser notifies the Division in writing that the investment adviser intends to use the safeguards provided above. Such notification is required to be given on Form ADV.
 - b. Invoice Requirement. The adviser will send to the grantor of the trust, the attorney for the trust if it is a testamentary trust, the co-trustee (other than an officer or employee of the adviser), or a defined beneficiary of the trust, at the same time that it sends any statement to the custodian, a statement showing the amount of the trustees' fee or investment management fee, the value of the assets on which the fees were based, and the specific manner in which the fees were calculated.
 - c. Custodian Agreement: The adviser will enter into a written agreement with a qualified custodian which specifies:
 - i. **Payment of Fees.** The qualified custodian will not deliver trust securities to any officer or employee of the adviser, nor will it transmit any funds to the adviser or to any of its employees, except that it may pay trustees' fees to the trustee and investment management fees to the adviser, provided that:
 - (1) The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co-trustee (other than an officer or employee of the adviser), or a defined beneficiary of the trust has authorized the qualified custodian in writing to pay those fees;
 - (2) The statements for those fees show the amount of the fees for the trustee and, in the case of statements for investment management fees, show the value of the trust assets on which the fee is based and the manner in which the fee was calculated; and
 - (3) The qualified custodian agrees to send to the grantor of the trust, the attorneys for a testamentary trust, the co-trustee (other than an officer or employee of the adviser), or a defined beneficiary of the trust, at least quarterly, a statement of all disbursements from the account of the trust, including the amount of investment management fees paid to the adviser and the amount of trustees' fees paid to the trustee.
 - ii. **Distribution of Assets.** Other than as set forth in subparagraph (1) below, the qualified custodian may transfer funds or securities, or both, of the trust only upon the direction of the trustee (who may be the investment adviser, or an officer or employee of the adviser) whom the qualified custodian has duly accepted as an authorized signatory for such instructions. The grantor of the trust, the attorneys for a testamentary trust, the co-trustee (other than the investment adviser, investment adviser representative, or an officer or employee of the adviser), or a defined beneficiary of the trust, must designate the authorized signatory for management of the trust. The direction to transfer funds or securities, or both, can be made only to the following:

- (1) To a trust company, bank trust department or brokerage firm independent of the adviser for the account of the trust to which the assets relate;
 - (2) To the named grantors or to the named beneficiaries of the trust;
 - (3) To a third person independent of the adviser in payment of the fees or charges of the third person, including, but not limited to, (i) attorney's, accountant's, or custodian's fees for the trust; and (ii) taxes, interest, maintenance or other expenses, if there is property other than securities or cash owned by the trust;
 - (4) To third persons independent of the adviser for any other purpose legitimately associated with the management of the trust; or
 - (5) To a broker-dealer in the normal course of portfolio purchases and sales, provided that the transfer is made on payment against delivery basis or payment against trust receipt.
- d. Waiver of Net Worth or Bonding Requirements. An adviser who has custody solely because it meets the definition of custody as defined in Rule 635 (C)(1)(d) and who complies with the safekeeping requirements in Rule 635 (A)(1) through (5) and the additional safeguards of Rule 635(A)(8) will not be required to meet the bonding, net worth, and financial reporting requirements for custodial advisers as set forth in Rule 605, 607, and 609 of the Act.

B. Exceptions.

1. Shares of mutual funds. With respect to shares of an open-end company as defined in Section 5(a)(1) of the Investment Company Act of 1940 [15 U.S.C. 80a-5(a)(1)] (“mutual fund”), you may use the mutual fund’s transfer agent in lieu of a qualified custodian for purposes of complying with paragraph (A) of this section;
2. Certain privately offered securities.
 - a. You are not required to comply with Rule 635(A) with respect to securities that are:
 - i. acquired from the issuer in a transaction or chain of transactions not involving any public offering;
 - ii. uncertificated, and ownership thereof is recorded only on books of the issuer or its transfer agent in the name of the client; and
 - iii. transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.
 - b. Notwithstanding paragraph B(2)(i) of this section, the provisions of this paragraph B(2) are available with respect to securities held for the account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if the limited partnership is audited, the audited financial statements are distributed, as described in paragraph B(3) of this section and the investment adviser notifies the Division in writing that the investment adviser intends to provide audited financial statements, as described above. Such notification is required to be given on Form ADV.

3. Limited partnerships subject to annual audit. You are not required to comply with paragraph 635(A)(3) of this rule with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) that is subject to audit at least annually and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within 120 days of the end of its fiscal year. The investment adviser must also notify the Division in writing that the investment adviser intends to employ the use of the audit safeguards described above. Such notification is required to be given on Form ADV.
4. Registered investment companies. You are not required to comply with this rule with respect to the account of an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 to 80a-64].
5. Beneficial Trusts. You are not required to comply with safekeeping requirements of this Rule 635(A) or the Bonding, Net Worth and Financial Reporting Requirements of Rule 605, 607, and 609 if you have custody solely because you are the trustee for a beneficial trust, if all of the following conditions are met for each trust:
 - a. The beneficial owner of the trust is a parent, a grandparent, a spouse, a sibling, a child or a grandchild of the adviser. These relationships shall include “step” relationships.
 - b. For each account under paragraph (i) you comply with the following:
 - i. You provide a written statement to each beneficial owner of the account setting forth a description of the requirements of Rule 635(A) of this rule and the reasons why you will not be complying with those requirements.
 - ii. You obtain from each beneficial owner a signed and dated statement acknowledging the receipt of the written statement required under (A) above.
 - iii. You maintain a copy of both documents described in subparagraphs (i) and (ii) above until the account is closed or you are no longer trustee.
6. Any adviser who intends to have custody of client funds or securities but is not able to utilize a Qualified Custodian as defined in Rule 635(C)(3) must first obtain approval from the Division and must comply with all of the applicable safekeeping provisions under Rule 635(A) including taking responsibility for those provisions that are designated to be performed by a qualified custodian.

C. Definitions. For purposes of this section:

1. “Custody” means holding directly or indirectly, client funds or securities, or having any authority to obtain possession of them or has the ability to appropriate them. Custody includes:
 - a. Possession of client funds or securities unless received inadvertently and returned to the sender promptly, but in any case within three business days of receiving them;
 - b. Receipt of checks drawn by clients and made payable to unrelated third parties will not meet the definition of custody if forwarded to the third party within 24 hours of receipt and the adviser maintains the records required under Rule 617(A)22;

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- c. Any arrangement (including a general power of attorney) under which you are authorized or permitted to withdraw client funds or securities maintained with a custodian upon your instruction to the custodian; and
 - d. Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives you or your supervised person legal ownership of or access to client funds or securities.
2. “Independent representative” means a person who:
- a. Acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle) and by law or contract is obliged to act in the best interest of the advisory client or the limited partners (or members, or other beneficial owners);
 - b. Does not control, is not controlled by, and is not under common control with you; and
 - c. Does not have, and has not had within the past two years, a material business relationship with you.
3. “Qualified custodian” means the following independent institutions or entities:
- a. A bank or savings association that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act;
 - b. A registered broker-dealer holding the client assets in customer accounts;
 - c. A registered futures commission merchant register under Section 4f(a) of the Commodity Exchange Act, holding the client assets in customer accounts, but only with respect to clients’ funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and
 - d. A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients’ assets in customer accounts segregated from its proprietary assets.

Article 7: Exemptions

701. General Exemption: The exemption from registration granted by Section 75-71-203(9) is self-actuating.

703. Uniform Limited Offering Exemption: By authority delegated to the Secretary of State in Section 75-71-203(13) of this Act to promulgate rules, the following transaction is determined to be exempt from the registration provisions of this 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

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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 paragraphs (a) through (c) and (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 this Section 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. The issuer shall file with the Division:

- a. One manually or electronically signed copy of SEC Form D, no later than fifteen (15) days after the first sale of securities in Mississippi in reliance upon this “safe harbor” exemption;
- 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;
- c. NASAA Form U-2 - Uniform Consent to Service of Process, which is available from NASAA or the Division; and
- d. A filing fee of \$300.

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.

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- B. A failure to comply with a term, condition, or requirement of paragraphs 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(13) 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 paragraphs 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 75-71-715 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.
- G. For offerings that exceed one 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 thereof together with a non-refundable termination fee of \$50.
- I. The exemption authorized by this rule shall be known and may be cited as the "Uniform Limited Offering Exemption."

[Amended June 18, 2004]

705. Exemption from Registration for Certain Offerings by Domestic Issuers: By authority delegated to the Secretary of State in Section 75-71-203(13), 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 75-71-403 or Section 75-71-405 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;

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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 of \$300.
- 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;
 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:

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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 or completion of the transactions exempted under this rule must be filed with the Division within thirty (30) days thereof together with a non-refundable \$50 termination fee.

[Amended June 18, 2004]

707. Exchange Exemption: Only Tier I (or the equivalent thereto) securities listed on the following exchanges are entitled to exemption from registration pursuant to Section 75-71-201(8) 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. Midwest Stock Exchange
- F. New York Stock Exchange
- G. Pacific Stock Exchange
- H. Philadelphia Stock Exchange

709. 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;

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- 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.

[Amended July 12, 2001]

711. NASDAQ/NMS Exemption: By authority delegated to the Secretary of State in Section 75-71-203(13) to promulgate rules exempting certain transactions from the registration requirements of the Act, the following shall be exempt from Sections 75-71-113 and 75-71-401 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.

713. 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 Section 75-71-105(l), 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.

714. Exemption of Certain Cooperative Securities: By authority delegated to the Secretary of State in Section 75-71-203(13) 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:

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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) in lieu of a cash patronage dividend to a member of the cooperative.

717. Exemption of Certain Securities of Cross-Border Transactions: Pursuant to Section 75-71-203(13) 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 75-71-401 of the Act of the following securities transactions:

- (1) An offer or sale of a security effected by a person exempted from the broker-dealer registration requirements under Rule 537.

719. Accredited Investor Exemption: By authority delegated to the Secretary of State in Section 75-71-203(13) 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 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 Sections 75-71-401 - 75-71-431 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 10% or more of any class of its equity securities, any of the issuer's promoters presently connected with the

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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 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 United States Securities and Exchange Commission;
- b. within the last five 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 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 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. Subparagraph (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 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

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any state securities agency or the U.S. Securities and Exchange Commission 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 paragraph (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.
- I. The issuer shall file with the Secretary of State, Business Regulation and Enforcement Division a notice of transaction, a consent to service of process, a copy of the general announcement, and a fee of \$300.00 within 15 days after the first sale in this state.

[Adopted June 9, 2003 in accordance with Model Accredited Investor Exemption proposed by North American Securities Administrators Association].

721 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 75-71-301 and 75-71-303 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;

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- 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.

Article 8: Administrative Hearing Procedures

The following procedures governing administrative hearings shall apply to hearing rights granted by the statutory provisions of the Mississippi Securities Act and any Rules promulgated thereunder.

801. Definitions: Requesting Party shall mean the registrant, applicant, or person as defined by Section 75-71-105(h) of the Mississippi Securities Act who requests an administrative hearing on a particular matter.

803. Timely Request for a Hearing - Contents and Service of Temporary or Summary Order or Notice:

- A. A Requesting Party must file a written Request for Hearing with the Secretary of State within thirty (30) days after service of the temporary or summary order or notice entered by the Securities Division;
- B. Such temporary or summary order or notice entered by the Division shall clearly set out such thirty (30) day period of time;
- C. A true and correct copy of such temporary or summary order or notice shall be served promptly after its execution on the party or parties against whom it is entered or on its legal representative.

805. Assignment of Hearing Officer - Setting of Hearing:

- A. When a hearing is requested, the Secretary of State shall, within fifteen (15) days after receipt of the Request for Hearing, designate a Hearing Officer and set a date, time, and place for the hearing;
- B. A Notice of Hearing shall be sent certified mail, return receipt requested, to each Requesting Party.

807. Witnesses: Each party shall, no later than ten (10) days prior to the hearing date, file with the Hearing Officer a list of witnesses such party may call to testify at the hearing. The list shall contain for each witness:

- A. Name;
- B. Current residential and business address, if known;
- C. Current residential and business telephone number, if known;
- D. A statement indicating whether such person is to testify in person or by affidavit.

A true and correct copy of such list shall be forwarded by each party to all other parties no later than ten (10) days prior to the hearing date.

809. Documents:

- A. Upon request by the Requesting Party, the Division shall make available for inspection and copying any documents, papers, and tangible things it may introduce at the hearing. This shall include written reports prepared by any expert retained by the Division to testify at the hearing;
- B. At the same time the Division makes such documents, papers, tangible things, or expert reports available for inspection and copying, the Requesting Party shall also make any such documents, papers, tangible things, or expert reports in its possession available for inspection and copying by the Division.

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811. Failure to Appear at Hearing:

- A. If the Requesting Party, without good cause, fails to appear at the hearing, such failure may be considered as a withdrawal of the Request for Hearing and the Hearing Officer may dismiss the Request for Hearing and enter an appropriate Final Order;
- B. If the Division, without good cause, fails to appear at the hearing, such failure may be considered as a withdrawal of the temporary or summary order or notice, and the Hearing Officer may declare null and void the temporary or summary order or notice and enter an appropriate Final Order.

813. Conduct of Hearing:

- A. The Hearing Officer shall have the authority to administer oaths and affirmations;
- B. Each Party may be represented by an attorney or other authorized representative;
- C. The Hearing Officer may clear the hearing room of witnesses not under examination. The Requesting Party may remain in the hearing room throughout the hearing;
- D. The Hearing Officer shall have the authority to maintain the decorum of the hearing and shall take reasonable steps to do so when necessary, including clearing the hearing room of any person who is disruptive.

815. Evidence:

- A. Hearings shall be informal and technical rules of evidence shall be relaxed;
- B. All witnesses who appear and testify under oath shall be subject to cross-examination. A witness who does not appear may testify by affidavit provided the party presenting the particular witness' affidavit has complied with the requirements of Rule 807(D) thereby affording the opposing party an opportunity to contact said witness and obtain an affidavit on its own behalf;
- C. The Hearing Officer shall have the authority to admit into the record any evidence which, in his or her judgment, has a reasonable degree of probative value and trustworthiness. The Hearing Officer shall have the authority to exclude evidence which is irrelevant, immaterial, lacking in probative value, untrustworthy, or unduly cumulative;
- D. Documents received into evidence by the Hearing Officer shall be marked by him or her, or under his or her direction, and filed for the record of the appeal;
- E. Rebuttal and surrebuttal evidence may be heard at the discretion of the Hearing Officer;
- F. Arguments summarizing the evidence and the law may be heard at the discretion of the Hearing Officer.
- G. Acceptance or deposit of tendered filing fees by the Division shall not be deemed an admission by the Division of the validity or invalidity of any of the claims which are the subject of the hearing, including but not limited to whether the amount of such fees was sufficient.

817. Order of Proof - Burden of Proof:

- A. At the hearing, the Division shall be the first to present evidence. The Requesting Party shall follow the Division in presenting evidence on its behalf;

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- B. Unless otherwise specified by law, the standard of proof at the hearing shall be by a preponderance of the evidence.

819. Presentation and Transcription of Record of Hearing:

- A. A record of testimony at the hearing may be made by non-stenographic means, in which event notice shall be given to all parties designating the manner of recording and preserving the testimony.
- B. It shall be the responsibility of any party desiring to preserve by stenographic means a record of testimony given at the hearing to:
 - 1. Arrange, on his or her own initiative, for a certified court reporter to make a stenographic recording of the hearing;
 - 2. Pay all fees and expenses for such transcription directly to the court reporter.
- C. A true and correct copy of said stenographic recording shall be made available to any other party requesting same, provided such party agrees to pay the expense of such copy.

821. Order to be Filed Upon Completion of Hearing: After all evidence is heard or received and the hearing is completed, the Hearing Officer shall, within a reasonable time thereafter, prepare and file a written findings of fact and conclusions of law and a Final Order based thereon shall be issued. A copy of such decision and order shall be sent promptly by the Secretary of State, via certified mail, return receipt requested, to the Requesting Party, its attorney, or authorized representative.

823. Compliance with Order: All parties shall promptly comply with all orders of the Hearing Officer.

825. Judicial Review:

- A. Any party aggrieved by a final written decision and order of the Hearing Officer may appeal such order in the manner provided by Section 75-71-601 of the Mississippi Securities Act;
- B. In connection with the hearing of an appeal, any party aggrieved by any matter that does not appear on the record may file a sworn Bill of Exceptions to preserve such matter for appellate review. A Bill of Exceptions must specifically set forth the facts upon which prejudice is claimed;
- C. Any opposing party may file a response to a Bill of Exceptions;
- D. A Bill of Exceptions shall be ruled on by the Hearing Officer. Such ruling, in addition to the Bill of Exceptions and any response thereto, shall be made a part of the record of the appeal.

827. Continuances: Continuances requested by any party shall be granted within the discretion of the Hearing Officer only for good cause shown.

829. Computation of Time: In computing any period of time prescribed or allowed under these rules, the Hearing Officer shall be guided by the Mississippi Rules of Civil Procedure.

831. Amendment of Rules - Validity of Rules - Enforcement of Rules:

- A. The Secretary of State may, from time to time, amend these rules or promulgate new rules;
- B. If any one or more of these rules is found to be invalid by any court of competent jurisdiction, such finding shall not affect the validity of any other of these rules.

Article 9: Viatical Settlement Investment Contracts

[Implemented August 17, 2000]

- 900. Viatical settlement investment contracts as securities
- 901. Scope of viatical settlement investment contract requirements
- 902. Exemption from registration
- 903. Effective date and expiration date for exemption of viatical settlement investment contracts
- 904. Revocation of exemption
- 905. Right of rescission applicable to sales of viatical settlement interests
- 906. Advertising
- 907. Sales agents
- 908. Waiver of viatical settlement requirements
- 909. Privacy

900. Viatical Settlement Investment Contracts As Securities:

- A. **Viatical Settlement Investment Contracts:** The Mississippi Securities Act defines a viatical settlement investment contract as any agreement, regardless of title or caption, for the purchase, sale, assignment, transfer, devise, or bequest of any portion of the benefit of the life insurance policy or certificate. The term viatical settlement investment contract does not include: (a) The assignment, transfer, sale, devise, or bequest of a death benefit, life insurance policy or certificate of insurance by the viator to the viatical settlement provider under the Viatical Settlements Act created in Senate Bill No.3000, 2000 Regular Session; (b) The assignment of a life insurance policy to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan; or, (c) The exercise of accelerated benefits under the terms of a life insurance policy issued in accordance with the insurance laws of this state.
- B. **Issuer:** With respect to a fractional or pooled interest in a viatical settlement investment contract, issuer means the person who creates, for the purpose of sale, the fractional or pooled interest. The issuer of a viatical settlement investment contract that is not fractionalized or pooled means the person effecting the transactions with the investors in such contracts.
- C. **Security:** The definition of Security within the Mississippi Securities Act includes the term viatical settlement investment contract. Therefore, the Office of the Secretary of State is vested with the authority pursuant to the Mississippi Securities Act to regulate the sale of viatical settlement investment contracts as securities and to prescribe such rules and requirements for the regulation thereof.

901. Scope Of Viatical Settlement Investment Contract Requirements:

- A. The provisions of this Article set out the regulatory standards for the exemption of viatical settlement investment contracts from the registration requirement of the Mississippi Securities Act, renewal of the exemption from registration, fees, effective dates, and related matters for viatical settlement investment contracts and issuers.
- B. Nothing in this Article shall:

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1. Provide an exemption from the fraud provisions of the Mississippi Securities Act;
2. Relieve broker-dealers or agents from compliance with the Mississippi Securities Act; or,
3. Prohibit an issuer from using the registration procedures in the Mississippi Securities Act or from claiming an exemption available under the Mississippi Securities Act.

902. Exemption From Registration:

- A. Except as provided in 902(B) of this Rule, an offer or sale of a viatical settlement investment contract, or a security that represents or is secured by a viatical settlement investment contract, is exempt from registration under the Mississippi Securities Act if the issuer:
1. At least thirty (30) days prior to the date the initial offer is made, files a registration statement on State of Mississippi Form V902, a filing fee of \$500; and the materials contained in Rule 902(A)(2).
 2. The following items must be filed with a registration statement:
 - a. Prospectus, pamphlet, circular, form letter, advertisement, or other sales literature used or intended to be used in connection with the offer or sale of the security.
 - b. The issuer's most recent audited income and expense statement and balance sheet. A prospective viatical settlement purchaser may obtain copies upon written request to the Secretary of State.
 3. All viatical settlement investment contracts sold in Mississippi must include a medical release executed by the viator in favor of the Secretary of State for the State of Mississippi. This release must be maintained in the issuer's office and must be provided by the issuer to the Secretary of State upon demand.
 4. Before a sale, each prospective individual viatical settlement purchaser must be furnished written information that is sufficient to make an informed investment decision. For purposes of this paragraph, information that is sufficient to make an informed investment decision includes the:
 - a. Viatical settlement disclosure document developed by the Secretary of State and available on the State of Mississippi Form VIAD, Part I. The issuer must provide in that document an address to which a notice of rescission may be sent.
 - b. Disclosure of any significant factors that may affect the outcome of the investment.
 5. On or before the time of closure of a sale, defined as the date when the viatical settlement provider locates and proposes to the viatical settlement purchaser an acceptable, specific viatical contract under the executed purchase agreement, an individual investor must receive a viatical settlement disclosure document that the issuer has completed using State of Mississippi Form VIAD, Part II.
 6. In order to qualify for the exemption and unless waived by the Secretary of State, the issuer and the issuer's predecessors must show, along with the issuer's predecessor, that it has been in continuous operation for at least three years without a default during the current fiscal year or

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within the two preceding fiscal years in the payment of principal, interest, dividends, or other obligations on a security of the issuer or a predecessor of the issuer with a fixed maturity or a fixed interest, dividend, or other provision.

- B. The Secretary of State shall deny an application for exemption under this Article if an issuer, a predecessor of the issuer, an affiliate of the issuer, a director of this issuer, an officer of the issuer, a general partner of the issuer, a beneficial owner of 10 percent or more of a class of the issuer's equity securities, a promoter of the issuer presently connected with the issuer in any capacity, an underwriter of the securities to be offered, a partner of an underwriter of the securities to be offered, a director of an underwriter of the securities to be offered, or an officer of the underwriter of the securities to be offered:
1. Has filed within the last five years a registration statement that is the subject of a currently effective registration stop order entered by a state securities administrator or the SEC;
 2. Within the last five years has been convicted of:
 - a. a felony;
 - b. a criminal offense involving fraud or deceit; or
 - c. a criminal offense in connection with the offer, purchase, or sale of a security;
 3. Is currently subject to a state or federal administrative enforcement order or judgement in connection with the purchase, offer, or sale of a security;
 4. Is currently subject to an order, judgement, or decree temporarily, preliminarily, or permanently restraining or enjoining the person subject to the order from engaging in or continuing to engage in conduct or a practice involving fraud or deceit in connection with the purchase, offer, or sale of a security.
- C. For any other reason that is in the public interest as determined by the Secretary of State.

903. Effective Date And Expiration Date For Exemption Of Viatical Settlement Investment Contracts:

Unless made effective earlier by the Secretary of State, an application for exemption from registration under this Rule becomes effective thirty-one (31) days after the Secretary of State receives the completed application, a fee of \$500, and the required documents unless the Secretary of State contacts the filer either orally or in writing within thirty (30) days after the receipt of the filing to seek additional information or clarification. At such time that the Secretary of State determines that the application is not complete or that additional information is required in order to make a determination on whether or not to grant the exemption under this Article, the registration will be placed in pending status until such time as the Secretary of State either grants or denies the exemption. An exemption granted under this rule shall expire twelve (12) months after the date on which it is granted. A renewal must be made prior to the expiration of the exemption on State of Mississippi Form VR 903. Failure to timely renew will require the applicant to complete the process for application for exemption.

904. Revocation Of Exemption:

The Secretary of State may, in his discretion, enter an order revoking an exemption granted pursuant to this Article. The order may not be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the Secretary of State may, in his discretion, summarily revoke by order any of the specified exemptions pending final determination of a proceeding under this subsection. Upon the entry of a summary order, the Secretary of State shall promptly notify all interested parties that the order has been entered and thereafter the interested parties shall have thirty (30) days from receipt of the order in which to request a hearing. Upon receipt of a request for hearing, the Secretary of State will promptly set a hearing to be held in accordance with Article 8 of the Mississippi Securities Act Rules. If any of the interested parties fail to request a hearing within the thirty (30) day period, the Secretary of State will enter a final order, and the final order will remain in full force and effect until it is vacated or modified by the Secretary of State.

905. Right Of Rescission Applicable To Sales Of Viatical Settlement Interests:

- A. In addition to any other rights provided for under this Article or otherwise, a person who buys a viatical settlement investment contract or a security that either represents or is secured by a viatical settlement interest may rescind the purchase by giving the entity designated in the disclosure documents written notice of rescission, by ordinary mail, postage prepaid, postmarked no later than thirty (30) days following the later of the date on which the purchaser paid for the investment, or the date on which the purchaser received the Form VIAD Part II.
- B. The notice of rescission required under (A) of this Section is sufficient if addressed to the entity designated for the notice at the address given in the disclosure statement. The rescission notice is effective on the date it is mailed. The rescission notice may be in any form that expresses the intention of a purchaser to rescind the transaction.
- C. Notwithstanding the time limit in (A) of this Section, if the issuer has not found an acceptably suitable viatical settlement investment contract and closed the transaction within ninety (90) days of the execution of the purchase agreement, on the ninetieth day following the execution of the purchase agreement, the issuer shall provide the viatical settlement purchaser with a rescission offer using a form approved by the Secretary of State, and the viatical settlement investment contract purchaser will have ten (10) business days from its receipt to either accept or reject the rescission offer. The issuer shall keep a record of the rescission offer and its acceptance or rejection for at least three (3) years after providing that offer, and shall provide that record to the Secretary of State at his request.
- D. In this Rule, “**business day**” means a day other than Saturday, Sunday, or a state or federal holiday.

906. Advertising:

- A. The exemption contained in this Article shall not be available to any issuer who engages in false or misleading advertising in the sale or promotion of viatical settlement investment contracts. Furthermore, the Secretary of State shall revoke an exemption granted pursuant to this Article if he

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determines that an issuer has engaged in false or misleading advertisement of viatical settlement investment contracts.

B. False and misleading viatical settlement investment contracts advertisements include, but are not limited to, the following representations:

1. "Fully secured," "100% secured," "fully insured," "secure," "safe," "backed by rated insurance company(s)," "backed by federal and/or state law," or similar representations;
2. "No risk," "minimal risk," "low risk," "no speculation," "no fluctuation," or similar representations;
3. "Guaranteed fixed return, annual return, principal, earnings, profits, investment," or similar representations;
4. "No sales charges or fees," or other similar representations;
5. "High yield," "superior return," "excellent return," "high return," "quick profit", or similar representations;
6. "Perfect investment," "proven investment," or similar representations;
7. Purported favorable representations or testimonials about the benefits of viaticals as an investment, taken out of context from newspapers, trade papers, journals, radio and television programs, and all other forms of print and electronic media.

907. Sales Agents:

Any sales agent who engages in the sale of viatical settlement investment contracts must provide the Secretary of State with the following:

- A. Proof of obtaining a passing grade on the NASD Series 7 examination;
- B. Proof of obtaining a passing grade on the NASD Series 63 examination;
- C. An accurate, complete and signed Form U-4; and,
- D. A \$50 filing fee.

908. Waiver Of Viatical Settlement Requirements:

Upon the request of an issuer, the Secretary of State may, in his discretion, waive a requirement of this Article by order if he determines the waiver to be in the public interest and that the requirement to be waived is not necessary for protection of investors. The issuer bears the burden of proof to satisfy the Secretary of State that the waiver is in the public interest and that the requirement to be waived is not necessary for protection of investors.

909. Privacy:

Except as required for the Secretary of State to execute his responsibilities under the Mississippi Securities Act, an issuer of a viatical settlement interest may not disclose to another person the identity of the viator or insured of the insurance policy that is the subject of the viatical settlement interest.