

Part 14 Chapter 5: REGISTRATION OF BROKER-DEALERS AND AGENTS

Rule 5.01 Application for Broker-Dealer

- A. To apply for registration, FINRA-member broker-dealers shall submit the following information to the Division through the CRD:
 - 1. Form BD, or a successor form.
 - 2. A statement of net capital or such financial statements as required by FINRA or the 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 of the person making such oath or affirmation after a diligent inquiry. 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 FINRA or the SEC may be filed. In any case, the financial information must be dated not more than ninety (90) days prior to the date of filing.
 - 4. The registration fee as specified in Rule 4.13 shall be submitted to the CRD.

- B. To apply for registration, non-FINRA-member broker-dealers shall submit the following information to the Division at the address set out in Rule 1.01:
 - 1. Form BD, or a successor form.
 - 2. A surety bond as provided in Rule 5.05.
 - 3. A 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 by the person making such oath or affirmation after a diligent inquiry has been made. 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 registration fee as specified in Rule 4.13.

Source: *Miss. Code Ann.* §§ 75-71-401, 406 (2016).

Rule 5.03 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 Rules 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)).
- 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 copies of notices and reports required under that rule.
- C. To the extent that the SEC promulgates changes to the above-referenced rules, dealers in compliance with such rules as amended shall not be subject to enforcement action by the Division for violation of this Rule to the extent that the violation results solely from the broker-dealer's compliance with the amended rule.

Source: *Miss. Code Ann.* § 75-71-411 (2016).

Rule 5.05 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 Thirty Thousand Dollars (\$30,000.00) by a bonding company qualified to do business in this state.

Source: *Miss. Code Ann.* § 75-71-411(e) (2016).

Rule 5.07 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 FINRA-member broker-dealers shall be filed through the CRD. Amendments for non-FINRA-member broker-dealers shall be submitted directly to the Division. Events requiring notice shall include, but are not limited to, the following:

- A. A change in ownership, management, form of organization or state of organization, or incorporation 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 this state;
- D. A change in the name of a broker-dealer;
- E. If applicable, any necessary modifications to ensure compliance with Subsection -(B)(2) of Rule 5.01;

- F. 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;
- G. Termination of business or discontinuance of activities as a broker-dealer; and
- H. 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, any aspect of the securities business, any activity alleging a breach of a fiduciary trust, or fraud;
 - 3. Administrative allegations involving a security, any aspect of the securities business, any activity alleging a breach of a fiduciary trust, or fraud;
 - 4. Arbitration proceedings with allegations involving a security, any aspect of the securities business, 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.
 - 6. Judgments, liens, and bankruptcy filing proceedings.

Source: *Miss. Code Ann.* § 75-71-407 (2016).

Rule 5.09 Financial Reporting.

- A. Upon request, each broker-dealer must file audited financial statements with the Division as of the end of the broker-dealer's fiscal year. The statements must meet the requirements of Subsection (B) of this Rule.
- 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, and these should be accompanied by appropriate notes stating the accounting principles and practices followed in their preparation, the basis on 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; and
 - 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 fiscal year.
- C. For a broker-dealer registered with the SEC, the financial reporting requirements of this Rule shall be limited to the financial reporting requirements in the Securities Exchange Act of 1934.

Source: *Miss. Code Ann.* § 75-71-411(b) (2016).

Rule 5.11 Renewal of Registration.

- A. The registration of a broker-dealer who is a member of FINRA shall be renewed through the 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 FINRA may be renewed by submitting the following to the Division:
 1. A letter requesting renewal, and
 2. The renewal fee specified in Rule 4.13.
- 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 registration fee must be filed.

Source: *Miss. Code Ann.* § 75-71-406(d) (2016).

Rule 5.13 Withdrawal of Registration. If a registered broker-dealer should withdraw its registration for any reason, written notice on Form BDW shall be submitted by the broker-dealer within thirty (30) days to the Division. FINRA member broker-dealers shall file the Form BDW

through the CRD. A non-member broker-dealer shall submit Form BDW directly with the Division.

Source: *Miss. Code Ann.* § 75-71-409 (2016).

Rule 5.15 Record Keeping Requirements of Broker-Dealers.

- A. Unless otherwise provided by order of the SEC, each broker-dealer registered or required to be registered under this Act shall make, maintain, and preserve books and records in compliance with SEC 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 SEC promulgates changes to the above-referenced rules, broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the Division for violation of this Rule to the extent that the violation results solely from the broker-dealer's compliance with the amended rule.

Source: *Miss. Code Ann.* § 75-71-411(c)(1) (2016).

Rule 5.17 Preservation of Records. All records required to be preserved under these Rules shall be kept 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.

Source: *Miss. Code Ann.* § 75-71-411(c)(2) (2016).

Rule 5.19 Supervision. All broker-dealers shall establish and keep current a set of written supervisory-compliance 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 or be immediately accessible.

Source: *Miss. Code Ann.* §§ 75-71-406(e), 411(c) (2016).

Rule 5.21 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, conduct, 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, a bar, or such other action authorized by statute.

- A. Broker-dealers.

1. Causing any unreasonable delays in the placement of orders, execution of orders, or the delivery of securities purchased by any of its customers 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 that is excessive in size or frequency in view of the financial resources, investment objectives of the customer, and character of the account;
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, age, financial situation, risk tolerance, 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 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 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 for 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; 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 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 with similar investment objectives 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 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, and if such disclosure is not made in writing, it shall be supplemented by 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; or
 23. Violating any laws or rules of the SEC or a national securities exchange or any 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 Subsections (A) (1), (2), (3), (4), (5), (6), (8), (11), (12), (16), (17), (18), (19), or (23) of this Rule.

The conduct set forth above is not exhaustive. 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.

Source: *Miss. Code Ann.* §§ 75-71-412(d)(13), 605(a)(2) (2016).

Rule 5.23 Agent Registration and Termination (FINRA). Registration, renewal, and termination of agents associated with members of FINRA shall be made to the Division through the CRD according to the CRD administrative rules governing the registration process with the CRD system.

Source: *Miss. Code Ann.* §§ 75-71-406, 409 (2016).

Rule 5.25 Agent Registration and Termination (non-FINRA).

- A. Application for registration as an agent not associated with members of FINRA shall be submitted directly to the Division on Form U-4 along with the registration fee specified in Rule 4.13.
- B. If an agent's relationship with a broker-dealer is terminated for any reason, the broker-dealer shall notify the Division on Form U-5 within fifteen (15) days of such termination.

- C. Renewal of the permit of an agent not associated with members of FINRA must be requested and the renewal fee must be submitted 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.

Source: *Miss. Code Ann.* §§ 75-71-406, 409 (2016).

Rule 5.27 Dual Registration. Registration of any broker-dealer agent with more than one 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.

Source: *Miss. Code Ann.* § 75-71-402(e) (2016).

Rule 5.29 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 agent.
- B. Each broker-dealer principal and each broker-dealer agent applicant must satisfy two (2) examination requirements to obtain a license:
 - 1. An examination on state securities law, which will be satisfied by passing either the Uniform Securities Agent State Law Examination (USASLE) (S-63) or the Uniform Combined State Law Examination (UCSLE) (S-66) administered by FINRA; and
 - 2. An examination of general or limited knowledge of securities principles, which will be satisfied by passing the appropriate examination required by FINRA for the activity in which applicant will be engaged.
- C. Applicants successfully completing a limited knowledge examination as provided under Subsection (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 Subsections (B)(1) and (2) of this Rule are administered by FINRA at various regional testing sites. Any fees required by FINRA 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 FINRA 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 FINRA and was registered in this state prior to January 1, 2010, and has remained continuously registered in this state without interruption with no break in registration longer than a two (2) year period.

Source: *Miss. Code Ann.* § 75-71-412(e) (2016).

Rule 5.31 Issuers and Issuer Agents.

- 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; and
 4. Stock Certificate Books.
- B. Agents of issuers required to register under the Act may do so by submitting applications to the Division on Form U-4 along with the registration fee as specified in Rule 4.17. Agent terminations shall be filed with the Division on Form U-5 within fifteen (15) days of such termination.

Source: *Miss. Code Ann.* §§ 75-71-406, 409, 605(a)(3) (2016).

Rule 5.33 Registration Exemption – Canadian Cross-Border Trading. Pursuant to Sections 75-71-401(d), 75-71-402(b)(9), and 75-71-605(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 Sections 75-71-401 and 75-71-402 of the Act:

- A. A broker-dealer who is registered 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-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;

- b. With or for an individual from Canada who is temporarily present in this state and with whom the broker-dealer had a bona fide customer relationship before the individual entered the United States;
 - c. With or for an individual from Canada who is present in this state and whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the individual is the holder or contributor; or
 - d. An individual who is present in this state and with whom the broker-dealer customer relationship arose while the individual was temporarily or permanently residing in Canada; 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 is 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;
 6. Is not in violation of Sections 75-71-501 or 75-71-502 of the Act and all Rules promulgated thereunder; and
 7. Submits to the Division the fee set forth in Rule 4.13.
- B. An agent who represents a broker-dealer exempted from registration pursuant to Subsection (A) of this Rule, is also exempted from the registration requirements of Sections 75-71-401 and 75-71-402 of the Act, provided that such agent complies with the same conditions in Subsection (A) of this Rule, and maintains his or her provincial or territorial registration in good standing.

Source: *Miss. Code Ann.* §§ 75-71-401(d), 402(b)(9), 605(a) (2016).

Rule 5.35 Registration Exemption for Merger and Acquisition Brokers

- A. Except as provided in Subsections (B) and (C), a Merger and Acquisition Broker shall be exempt from registration under this section. Nothing in this Rule shall be construed to limit any other authority the Secretary of State has to exempt any person, or any class of persons, from any provision of the Act or from any rule thereunder.
- B. Excluded Activities – A Merger and Acquisition Broker is not exempt from registration under this Rule if such broker does any of the following:

1. Directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties to the transaction.
 2. Engages on behalf of an issuer in a public offering of any class of securities that is registered, or is required to be registered, with the United States Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934, 15 U.S.C. § 781, or with respect to which the issuer files, or is required to file, periodic information, documents, and reports under the Securities Exchange Act of 1934 Section 15 Subsection (d), 15 U.S.C. § 78o(d).
 3. Engages on behalf of any party in a transaction involving a public shell company.
- C. Disqualifications – A Merger and Acquisition Broker is not exempt from registration under this Rule if such broker is subject to any of the following:
1. Suspension or revocation of registration under Section 15(b)(4) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(b)(4);
 2. A statutory disqualification described in Section 3(a)(39) of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(39);
 3. A disqualification under the rules adopted by the United States Securities and Exchange Commission under Section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. § 77d note); or
 4. A final order described in paragraph (4)(H) of Section 15(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(b)(4)(H).
- D. Definitions – For purposes of this Rule:
1. **Control** means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. There is a presumption of control for any person who is a director, general partner, member, or manager of a limited liability company, or officer exercising executive responsibility (or has similar status or functions); has the right to vote twenty (20) percent or more of a class of voting securities or the power to sell or direct the sale of twenty (20) percent or more of a class of voting securities; or in the case of a partnership or limited liability company, has the right to receive upon dissolution, or has contributed, twenty (20) percent or more of the capital.
 2. **Eligible privately held company** means a company meeting both of the following conditions:
 - a. The company does not have any class of securities registered, or required to be registered, with the United States Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934, 15 U.S.C. § 781, or with

respect to which the company files, or is required to file, periodic information, documents, and reports under subsection (d), 15 U.S.C. § 78o(d); and

- b. In the fiscal year ending immediately before the fiscal year in which the services of the Merger and Acquisition Broker are initially engaged with respect to the securities transaction, the company meets either or both of the following conditions (determined in accordance with the historical financial accounting records of the company):
 - i. The earnings of the company before interest, taxes, depreciation, and amortization are less than \$25,000,000.
 - ii. The gross revenues of the company are less than \$250,000,000.
3. **Merger and Acquisition Broker** means any broker and any person associated with a broker engaged in the business of effecting securities transactions solely in connection with the transfer of ownership of an eligible privately held company, regardless of whether that broker acts on behalf of a seller or buyer, through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the eligible privately held company:
 - a. If the broker reasonably believes that upon consummation of the transaction, any person acquiring securities or assets of the eligible privately held company, acting alone or in concert, will control and, directly or indirectly, will be active in the management of the eligible privately held company or the business conducted with the assets of the eligible privately held company; and
 - b. If any person is offered securities in exchange for securities or assets of the eligible privately held company, such person will, prior to becoming legally bound to consummate the transaction, receive or have reasonable access to the most recent fiscal year-end financial statements of the issuer of the securities as customarily prepared by its management in the normal course of operations and, if the financial statements of the issuer are audited, reviewed, or compiled, any related statement by the independent accountant; a balance sheet dated not more than 120 days before the date of the exchange offer; and information pertaining to the management, business, results of operations for the period covered by the foregoing financial statements, and any material loss contingencies of the issuer.
4. **Public shell company** means a company that at the time of a transaction with an eligible privately held company:
 - a. Has any class of securities registered, or required to be registered, with the United States Securities and Exchange Commission under Section 12, 15 U.S.C. § 78l, or with respect to which the company files, or is required to file, periodic information, documents, and reports under Subsection (d), 15 U.S.C. § 78o(d); and

- b. Has no or nominal operations; and
- c. Has no or nominal assets, assets consisting solely of cash and cash equivalents, or assets consisting of any amount of cash and cash equivalents and nominal other assets.

E. Inflation Adjustment

1. In General – On the date that is five (5) years after the date of the enactment of the rule, and every five years thereafter, each dollar amount in Subsection (D)(2)(b) shall be adjusted by:
 - a. Dividing the annual value of the Employment Cost Index For Wages and Salaries, Private Industry Workers (or any successor index), as published by the Bureau of Labor Statistics, for the calendar year preceding the calendar year in which the adjustment is being made by the annual value of such index (or successor) for the calendar year ending December 31, 2012; and
 - b. Multiplying such dollar amount by the quotient obtained under Subsection (E)(1)(a).
2. Rounding – Each dollar amount determined under Subsection (E)(1) shall be rounded to the nearest multiple of \$100,000.

Source: *Miss. Code Ann.* § 75-71-402(b)(9) (2016).

Part 14 Chapter 5: REGISTRATION OF BROKER-DEALERS AND AGENTS

Rule 5.01 ~~Broker-Dealer~~ Application for Broker-Dealer

- A. ~~In order~~ To apply for registration, FINRA-member broker-dealers shall submit the following information to the Division Secretary of State ~~via~~ through the CRD Central Registration Depository (CRD):
 1. Form BD, or a successor form.
 2. A ~~S~~statement of ~~N~~net ~~C~~capital or such financial statements as required by FINRA or the 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~~ of the person making such oath or affirmation ~~after a diligent inquiry~~. If the broker-dealer is a sole proprietorship, the oath or diligent inquiry.

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 FINRA or the SEC may be filed. In ~~either~~ any case, the financial information must be dated not more than ninety (90) days prior to the date of filing.

4. The registration fee as specified in Rule 4.13 shall be submitted to the CRD.

B. ~~In order~~ To apply for registration, non-FINRA-member broker-dealers shall submit the following information to the Division Secretary of State at the address set out in Rule 1.01504:

1. Form BD, or a successor form.

2. A s Surety bond as provided in Rule 5.05.

3. A s 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~~ of the person making such oath or affirmation after a diligent inquiry has been made. 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 registration fee as specified in Rule 4.13 440.

Source: *Miss. Code Ann.* §§ 75-71-401, 406 (~~Rev. 2009~~ 2016).

Rule 5.03 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 Rules 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)).

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 SEC promulgates changes to the above-referenced rules, dealers in compliance with such rules as amended shall not be subject to enforcement action by the Division for violation of this Rule to the extent that the violation results solely from the broker-dealer's compliance with the amended rule.

Source: *Miss. Code Ann.* § 75-71-411 (~~Rev. 2009~~ 2016).

Rule 5.05 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 Thirty Thousand Dollars (\$30,000.00) by a bonding company qualified to do business in this state.

Source: *Miss. Code Ann.* § 75-71-411(e) (~~Rev. 2009~~ 2016).

Rule 5.07 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 FINRA-member broker-dealers shall be filed through the CRD. Amendments for non-FINRA-member broker-dealers shall be submitted directly to the Division. Events requiring notice shall include, but are not limited to, the following:

- A. A change in ownership, management, form of organization or state of organization, or incorporation 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 this state Mississippi;
- D. A change in the name of a broker-dealer;
- E. If applicable, any necessary modifications to ensure compliance with Subsections~~subparagraph~~ (B)(2) of Rule 5.01(~~B~~) shall be made;
- F. 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;
- G. Termination of business or discontinuance of activities as a broker-dealer; and
- H. 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:
 - 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.
6. Judgments, liens, and bankruptcy filing proceedings.

Source: *Miss. Code Ann.* § 75-71-407 (~~Rev. 2009~~ 2016).

Rule 5.09 Financial Reporting.

- A. Upon request, each broker-dealer must file ~~with the Division~~ audited financial statements with the Division as of the end of ~~its~~ the broker-dealer's fiscal year. The statements must meet the requirements of Subsection (B) of this Rule. ~~509(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, and these should be accompanied by appropriate notes stating the accounting principles and practices followed in their preparation, the basis ~~at~~ on 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; and
 - 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 fiscal year.
- C. For a broker-dealer registered with the SEC, the financial reporting requirements of this Rule shall be limited ~~for a broker-dealer registered with the SEC~~ to the financial reporting requirements in the Securities Exchange Act of 1934.

Source: *Miss. Code Ann.* § 75-71-411(b) (~~Rev. 2009~~ 2016).

Rule 5.11 Renewal of Registration.

- A. The registration of a broker-dealer who is a member of FINRA shall be renewed through the 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 FINRA may be renewed by submitting the following to the Division:
 1. A letter requesting renewal, and
 2. The renewal fee specified in Rule 4.13.
- 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 registration fee must be filed.

Source: *Miss. Code Ann.* § 75-71-406(d) (~~Rev. 2009~~ 2016).

Rule 5.13 Withdrawal of Registration. If a registered broker-dealer should withdraw its registration for any reason, written notice on Form BDW shall be submitted by the broker-dealer within thirty (30) days to the Division. FINRA member broker-dealers shall file the Form BDW through the CRD. A non-member broker-dealer shall submit ~~ff~~Form BDW directly with the Division.

Source: *Miss. Code Ann.* § 75-71-409 (~~Rev. 2009~~ 2016).

Rule 5.15 Record Keeping Requirements of Broker-Dealers.

- A. Unless otherwise provided by order of the SEC, each broker-dealer registered or required to be registered under this Act shall make, maintain, and preserve books and records in compliance with SEC 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 SEC promulgates changes to the above-referenced rules, broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the Division for violation of this Rule to the extent that the violation results solely from the broker-dealer's compliance with the amended rule.

Source: *Miss. Code Ann.* § 75-71-411(c)(1) (~~Rev. 2009~~ 2016).

Rule 5.17 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.

Source: *Miss. Code Ann.* § 75-71-411(c)(2) (~~Rev. 2009~~ 2016).

Rule 5.19 Supervision. All broker-dealers shall establish and keep current a set of written supervisory-compliance 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 or be immediately accessible.

Source: *Miss. Code Ann.* §§ 75-71-406(e), 411(c) (~~Rev. 2009~~ 2016).

Rule 5.21 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, conduct, 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, a bar, 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 that~~ is excessive in size or frequency in view of the financial resources, investment objectives of the customer, and character of the account;

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, age, financial situation, risk tolerance, ~~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 for 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 ~~s~~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~~ with similar investment objectives 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 to a customer that the broker-dealer is controlled by, controlling, affiliated with, or under common control with the issuer of any security before entering into any contract with or for a such 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 of~~ 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; or
23. Violating any laws or rules of the SEC or a national securities exchange or any 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 ~~s~~Subsections (A) (1), (2), (3), (4), (5), (6), (8), (11), (12), (16), (17), (18), (19), or (23) of this Rule.

The conduct set forth above is not ~~inclusive~~ exhaustive. 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.

Source: *Miss. Code Ann.* §§ 75-71-412(d)(13), 605(a)(2) (~~Rev. 2009~~ 2016).

Rule 5.23 Agent Registration and Termination (FINRA). Registration, renewal, and termination of agents associated with members of FINRA shall be made to the Division through the CRD according to the CRD administrative rules governing the registration process with the CRD system.

Source: *Miss. Code Ann.* §§ 75-71-406, 409 (~~Rev. 2009~~ 2016).

Rule 5.25 Agent Registration and Termination (non-FINRA).

- A. Application for registration as an agent not associated with members of FINRA shall be submitted directly to the Division on Form U-4 along with the registration fee specified in Rule 4.13. ~~directly to the Division.~~
- B. If an agent's relationship with a broker-dealer is terminated for any reason, ~~the Division shall be notified by the broker-dealer~~ shall notify the Division on Form U-5 within fifteen (15) days of such termination.
- C. Renewal of the permit of an agent not associated with members of FINRA must be requested, ~~along with the renewal fee,~~ and the renewal fee must be submitted 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.

Source: *Miss. Code Ann.* §§ 75-71-406, 409 (~~Rev. 2009~~ 2016).

Rule 5.27 Dual Registration. Registration of any broker-dealer 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.

Source: *Miss. Code Ann.* § 75-71-402(e) (~~Rev. 2009~~ 2016).

Rule 5.29 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. Each broker-dealer principal and each broker-dealer agent applicant must satisfy two (2) examination requirements to obtain a license:
 1. An examination on state securities law, which will be satisfied by passing either the Uniform Securities Agent State Law Examination (USASLE) (S-63) or the Uniform Combined State Law Examination (UCSLE) (S-66) administered by FINRA; and
 2. An examination of general or limited knowledge of securities principles, which will be satisfied by passing the appropriate examination required by FINRA for the activity in which applicant will be engaged.
- C. Applicants successfully completing a limited knowledge examination as provided under ~~Rule~~ Subsection 533(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 Subsections 533(B)(1) and (2) of this Rule are administered by FINRA at various regional testing sites. Any fees required by FINRA 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 ~~FINRA~~ 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 ~~FINRA~~ the NASD and was registered in this State prior to January 1, 2010, and has remained continuously registered in this state without interruption with no break in registration longer than a two (2) year period.

Source: *Miss. Code Ann.* § 75-71-412(e) (~~Rev. 2009~~ 2016).

Rule 5.31 Issuers and Issuer Agents.

- 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; and
 4. Stock Certificate Books.
- B. Agents of issuers required to ~~register~~ be registered under the Act may do so by submitting applications to the Division on Form U-4 along with the registration fee as specified in Rule 4.17. Agent terminations shall be filed with the Division on Form U-5 within fifteen (15) days of such termination.

Source: *Miss. Code Ann.* §§ 75-71-406, 409, 605(a)(3) (~~Rev. 2009~~ 2016).

Rule 5.33 Registration Exemption – Canadian Cross-Border Trading. Pursuant to Sections 75-71-401(d), 75-71-402(b)(9), and 75-71-605(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 Sections 75-71-401 and 75-71-402 of the Act:

- A. A broker-dealer who is registered 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-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;
 - b. With or for an individual from Canada who is temporarily present in this state; and with whom the broker-dealer had a bona fide customer relationship before the individual entered the United States;
 - c. With or for an individual from Canada who is present in this state; and whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the individual is the holder or contributor; or

- d. An individual who is present in this state, and with whom the broker-dealer customer relationship arose while the individual was temporarily or permanently ~~resident~~ in Canada; 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 is 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 75-71-502 of the Act and all Rules promulgated thereunder-; and
 7. Submits to the Division the fee set forth in Rule 4.13.
- B. An agent who represents a broker-dealer exempted from registration pursuant to Subsection (A) of this Rule, is also exempted from the registration requirements of Sections 75-71-401 and 75-71-402 of the Act, provided that such agent complies with the same conditions in Subsection (A) of this Rule, and maintains his or her provincial or territorial registration in good standing.

Source: *Miss. Code Ann.* §§ 75-71-401(d), 402(b)(9), 605(a) (~~Rev. 2009~~ 2016).

Rule 5.35 Registration Exemption for Merger and Acquisition Brokers

- A. Except as provided in Subsections (B) and (C), a Merger and Acquisition Broker shall be exempt from registration under this section. Nothing in this Rule shall be construed to limit any other authority the Secretary of State has to exempt any person, or any class of persons, from any provision of the Act or from any rule thereunder.
- B. Excluded Activities – A Merger and Acquisition Broker is not exempt from registration under this Rule if such broker does any of the following:
 1. Directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties to the transaction.
 2. Engages on behalf of an issuer in a public offering of any class of securities that is registered, or is required to be registered, with the United States Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934,

15 U.S.C. § 78l, or with respect to which the issuer files, or is required to file, periodic information, documents, and reports under the Securities Exchange Act of 1934 Section 15 Subsection (d), 15 U.S.C. § 78o(d).

3. Engages on behalf of any party in a transaction involving a public shell company.

C. Disqualifications – A Merger and Acquisition Broker is not exempt from registration under this Rule if such broker is subject to any of the following:

1. Suspension or revocation of registration under Section 15(b)(4) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(b)(4);

2. A statutory disqualification described in Section 3(a)(39) of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(39);

3. A disqualification under the rules adopted by the United States Securities and Exchange Commission under Section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. § 77d note); or

4. A final order described in paragraph (4)(H) of Section 15(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(b)(4)(H).

D. Definitions – For purposes of this Rule:

1. **Control** means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. There is a presumption of control for any person who is a director, general partner, member, or manager of a limited liability company, or officer exercising executive responsibility (or has similar status or functions); has the right to vote twenty (20) percent or more of a class of voting securities or the power to sell or direct the sale of twenty (20) percent or more of a class of voting securities; or in the case of a partnership or limited liability company, has the right to receive upon dissolution, or has contributed, twenty (20) percent or more of the capital.

2. **Eligible privately held company** means a company meeting both of the following conditions:

a. The company does not have any class of securities registered, or required to be registered, with the United States Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934, 15 U.S.C. § 78l, or with respect to which the company files, or is required to file, periodic information, documents, and reports under subsection (d), 15 U.S.C. § 78o(d); and

b. In the fiscal year ending immediately before the fiscal year in which the services of the Merger and Acquisition Broker are initially engaged with respect to the securities transaction, the company meets either or both of the

following conditions (determined in accordance with the historical financial accounting records of the company):

- i. The earnings of the company before interest, taxes, depreciation, and amortization are less than \$25,000,000.
 - ii. The gross revenues of the company are less than \$250,000,000.
3. **Merger and Acquisition Broker** means any broker and any person associated with a broker engaged in the business of effecting securities transactions solely in connection with the transfer of ownership of an eligible privately held company, regardless of whether that broker acts on behalf of a seller or buyer, through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the eligible privately held company:
 - a. If the broker reasonably believes that upon consummation of the transaction, any person acquiring securities or assets of the eligible privately held company, acting alone or in concert, will control and, directly or indirectly, will be active in the management of the eligible privately held company or the business conducted with the assets of the eligible privately held company; and
 - b. If any person is offered securities in exchange for securities or assets of the eligible privately held company, such person will, prior to becoming legally bound to consummate the transaction, receive or have reasonable access to the most recent fiscal year-end financial statements of the issuer of the securities as customarily prepared by its management in the normal course of operations and, if the financial statements of the issuer are audited, reviewed, or compiled, any related statement by the independent accountant; a balance sheet dated not more than 120 days before the date of the exchange offer; and information pertaining to the management, business, results of operations for the period covered by the foregoing financial statements, and any material loss contingencies of the issuer.
4. **Public shell company** means a company that at the time of a transaction with an eligible privately held company:
 - a. Has any class of securities registered, or required to be registered, with the United States Securities and Exchange Commission under Section 12, 15 U.S.C. § 78l, or with respect to which the company files, or is required to file, periodic information, documents, and reports under Subsection (d), 15 U.S.C. § 78o(d); and
 - b. Has no or nominal operations; and
 - c. Has no or nominal assets, assets consisting solely of cash and cash equivalents, or assets consisting of any amount of cash and cash equivalents and nominal other assets.

E. Inflation Adjustment

1. In General – On the date that is five (5) years after the date of the enactment of the rule, and every five years thereafter, each dollar amount in Subsection (D)(2)(b) shall be adjusted by:
 - a. Dividing the annual value of the Employment Cost Index For Wages and Salaries, Private Industry Workers (or any successor index), as published by the Bureau of Labor Statistics, for the calendar year preceding the calendar year in which the adjustment is being made by the annual value of such index (or successor) for the calendar year ending December 31, 2012; and
 - b. Multiplying such dollar amount by the quotient obtained under Subsection (E)(1)(a).
2. Rounding – Each dollar amount determined under Subsection (E)(1) shall be rounded to the nearest multiple of \$100,000.

Source: *Miss. Code Ann.* § 75-71-402(b)(9) (~~Rev. 2009~~ 2016).