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**SECRETARY OF STATE**

# **Mississippi Securities Act Rules**

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## **Title 1: Secretary of State**

### **Part 14: Securities Regulation**

#### **Part 14 Chapter 1: GENERAL PROVISIONS**

*Introduction:* The following Rules are hereby adopted by the Secretary of State by the authority granted in Miss. Code Ann. Section 75-71-605 and other rule-making provisions contained in Sections 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 of 2010 and the procedure and practice of the Securities 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.

*Rule 1.01 Address and Office Hours.* The Securities Division is located in the office of the Secretary of State, 125 South Congress Street, Jackson, Mississippi 39201. The Division's mailing address is 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.

Source: Miss. Code Ann. § 7-3-3 (2020).

*Rule 1.03 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** means the Mississippi Securities Act as codified at Sections 75-71-101 *et seq.*, Mississippi Code of 1972.
- 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 a notice filing or an application for registration or exemption.
- D. **Application** includes any notice filing, application of registration, or application for exemption.

- E. **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).
- F. **Commission** or **Remuneration** means 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.
- G. **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 or policies of a person, whether through the ownership of voting securities, by contract, or otherwise.
- H. **CRD** means Central Registration Depository.
- I. **Custody** means holding, directly or indirectly, client funds or securities or having any authority to obtain possession of them (or having the ability to appropriate them) in connection with services provided to clients.
- J. **Division** means the Securities Division of the Secretary of State.
- K. **FINRA** means the Financial Industry Regulatory Authority, formerly NASD.
- L. **IARD** means Investment Adviser Registration Depository.
- M. **Material Information** or **Material** (when used to qualify a requirement for the furnishing of information as to any subject) means such information about the company and/or its securities that would enable a prudent individual to make an informed investment decision.
- N. **NASAA** means the North American Securities Administrators Association.
- O. **Officer** means 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.
- P. **Principal** means any person actively engaged in the management of the securities business, including supervision, solicitation, conduct of business, or the training of persons for any of these functions. Such persons shall include sole proprietors, partners, officers, directors, and branch managers.
- Q. **Promoter** means 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.

- R. **Registrant** means any person, natural or otherwise, holding a certification of registration or acknowledgment of exemption or notice filing issued by the Division. This also includes any person, natural or otherwise, whose registration through CRD or IARD has been approved by the Division.
- S. **Rules** refer 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.
- T. **SEC** means the United States Securities and Exchange Commission.
- U. **SEC Form D** means the document, as adopted by the United States Securities and Exchange Commission and in effect on January 1, 2010, as may be amended by the SEC from time to time, entitled "Form D."
- V. **Secretary of State** means the Secretary of State of Mississippi.

Source: Miss. Code Ann. § 75-71-605(a)(2) (2020).

*Rule 1.05 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.

Source: Miss. Code Ann. § 75-71-605(a)(2) (2020).

*Rule 1.07 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, unless electronic filing is required. The date on which papers, forms, fees, or other exhibits are actually received by the Division shall be the date of filing thereof. Any electronic filing is deemed to have been received on the date it was electronically submitted. An application is not considered complete and will not be further processed until all required documentation and fees have 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 and are not subject to refund.

Source: Miss. Code Ann. § 75-71-605(a)(1) (2020).

*Rule 1.09 Applications Generally.* All applications 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.

Source: Miss. Code Ann. § 75-71-605(a)(1) (2020).

*Rule 1.11 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 to cure the deficiency, the Division shall proceed in the following manner to determine whether the application 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 must be withdrawn.
- B. If the applicant fails to respond to such Notice within thirty (30) days from the date of the Notice, the Division may declare the application abandoned.
- C. The applicant may request, in writing, reinstatement of an abandoned application, and this request shall set forth the grounds upon which the applicant seeks reinstatement.
- D. When the Division declares an application abandoned, all papers comprising the application, with the exception of the application form and correspondence, may be removed from the files of the Securities 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.

Source: Miss. Code Ann. § 75-71-605(a)(1) (2020).

*Rule 1.13 Advertising and Sales Literature.* The use of any advertising or sales material in such a fashion as to be deceptive or misleading is prohibited.

Source: Miss. Code Ann. § 75-71-501 (2020).

*Rule 1.15 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.

Source: Miss. Code Ann. §§ 75-71-203, -307, -406(e), -412(e), -608(b) (2020).

*Rule 1.17 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.

Source: Miss. Code Ann. § 75-71-605(a)(1) (2020).

*Rule 1.19 Statement of Policy Regarding Public Access to Non-Investigatory Records.* Any information or document contained in or filed with (1) any application for the registration of securities, (2) application or notice filing for exemption from registration of securities, (3) any notice filing for federal covered securities, (4) any application for the transaction of business as a broker-dealer, the transaction of business as an agent, or the transaction of business as an investment adviser, (5) any notice filing for federal covered investment advisers, or (6) 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) filed with any such application or notice filing, or as a supplement or amendment thereto, against a broker-dealer, investment adviser, federal covered investment 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 investment adviser, or agent.

Source: Miss. Code Ann. §§ 75-71-605(a)(1), -606(a), -607(a), -607(b)(6)(B) (2020).

*Rule 1.21 Statement of Policy Regarding Investigative Information.* In conformity with the Public Records Act of 1983 (Miss. Code Ann. §§ 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 media if deemed to be in the public's best interest at the discretion of the Secretary of State.
- C. Copies of any administrative proceeding notices or orders issued by the Division or notices, pleadings, briefs, or recommendations issued by the parties or by the administrative hearing officer in connection with an administrative proceeding may be released to the public at the discretion of the Secretary of State.
- D. Information and documents may be released in order to comply with the Part 14, Chapter 8: Administrative Hearing Procedure rules.

Source: Miss. Code Ann. §§ 75-71-601(b)(2), -605(a)(1), -607, -608 (2020).

*Rule 1.23 Interpretations by the Division.* Pursuant to Section 75-71-605(d) 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 nonrefundable fee of Three Hundred Dollars (\$300.00) must accompany each inquiry. The Division may refuse to respond to any inquiry.

Source: Miss. Code Ann. § 75-71-605(d) (2020).

*Rule 1.25 Disposal of Unnecessary Filings.* Any filed documents and papers not expressly required to be filed with the Division pursuant to the Act or a Rule may be discarded at the discretion of the Division.

Source: Miss. Code Ann. § 75-71-605(a)(1) (2020).

## **Part 14 Chapter 2: NOTICE FILING AND REGISTRATION OF SECURITIES**

### **Subchapter 1: REGISTRATION BY COORDINATION AND QUALIFICATION**

*Rule 2.01 Coordination Application and Contents.* Application for registration of securities by coordination shall be submitted on NASAA Form U-1, the Uniform Application to Register Securities. The application shall include a registration statement submitted pursuant to Section 75-71-303 of the Act which shall contain all information and documents required by that Section, all information required by Section 75-71-303 of the Act, and the filing fee as set forth in Section 75-71-303(c) of the Act and Rule 4.03. However, upon written request, the twenty (20) day filing period requirement set out in Section 75-71-303(c)(2) of the Act may be waived.

A separate application and a separate registration fee must be filed for each type, kind, class, series, or portfolio of security offered. Any documents or exhibits previously on file may be incorporated by reference. Quarterly reports and semiannual reports shall not be filed unless requested by the Division. Advertising and sales material shall be filed with the Division.

Source: Miss. Code Ann. §§ 75-71-303, -305 (2020).

*Rule 2.03 Qualification Application and Contents.* Application for registration of securities by qualification shall be submitted on an Application for Registration by Qualification. The application shall include a registration statement submitted pursuant to Section 75-71-304 of the Act, which shall contain all information required by that Section; the information and documents required by Section 75-71-305 of the Act; and the filing fee as set forth in Section 75-71-310(c) of the Act and Rule 4.03.

Source: Miss. Code Ann. §§ 75-71-304, -305 (2020).

*Rule 2.04 Invest Mississippi Crowdfunding Simplified Registration Statement.* By authority delegated to the Secretary of State in Section 75-71-307 of the Act, and for the purposes of simplifying the registration statement for smaller offerings, the Division has adopted the Invest Mississippi Crowdfunding Simplified Registration Statement to be used as the registration statement for securities being registered under this Rule and sold in offerings in which the aggregate offering price does not exceed the maximum amount specified herein. This Rule offers an alternative method for state registration for issuers that are exempt from federal registration pursuant to Rule 504 of the SEC Regulation D, 17 C.F.R. Section 230.504, promulgated pursuant to the Securities Act of 1933, 15 U.S.C. Sections 77a, *et seq.*, and any amendments thereto.

- A. *Definitions.* The following terms, as used in this Rule, shall have the meaning ascribed to them below unless the context requires otherwise:

1. **Accredited investor** is defined in 17 C. F. R. Section 230.501(a) as currently enacted or as amended, and a non-accredited investor means an investor who does not meet the definition of an accredited investor.
2. **Annual Income** means:
  - a. For individuals, income is determined as the sum of the individual's:
    - i. Wages, salaries, commissions, bonuses, and tips from all jobs before deductions for taxes, dues, or other items;
    - ii. Self-employment net income (after business expenses);
    - iii. Retirement pensions from companies and unions; federal, state, and local governments; and the U.S. military;
    - iv. Monthly income from annuities, IRAs, or KEOGH retirement plans;
    - v. Interest, dividends, and rental income; and
    - vi. Partner, shareholder, and beneficiary income as reported to the Internal Revenue Service on Schedule K-1 (Form 1065) (a reported loss on Schedule K-1 is counted against the sum of income).
  - b. For entities, income is determined as the revenue in excess of expenses, including depreciation, determined before taxes and as filed with the Mississippi Department of Revenue or the Internal Revenue Service on the entity's last tax return.
3. **Bank** means a depository institution that is organized or chartered under the laws of this state or of the United States, is authorized to do business in this state, and is located in this state. For purposes of this Rule, a credit union is included in the definition of bank.
4. **IMC Statement** means the document, as adopted by the Division, entitled "Invest Mississippi Crowdfunding Simplified Registration Statement."
5. **Intermediary** means a person that is registered with the Division pursuant to this Rule as an intermediary who has been or will be retained by the issuer in conducting the offering and sales of securities through an Internet website. An intermediary can be a broker-dealer or agent that is registered with the Division or a bank or an intermediary funding portal.
6. **Intermediary Funding Portal** is a person operating an Internet website that is not a bank, broker-dealer, or agent registered under the Act.

7. **Intermediary Registration Form** means the document, as adopted by the Division, entitled “Invest Mississippi Crowdfunding Intermediary Registration Form.” A person registering as an Intermediary pursuant to this Rule must select on the form whether it is registering as a Bank, Broker-Dealer, or Intermediary Funding Portal.
  8. **Issuer** means a limited liability company or business corporation formed under the laws of this state that seeks to conduct an offering of securities in reliance on this Rule.
  9. **Minimum Target Offering Amount** means fifty percent (50%) of the total offering amount of an offering made by the issuer in reliance on this Rule which amount shall be set out on the IMC Statement.
  10. **Net Worth** means the amount by which an investor’s assets exceed liabilities, excluding the investor’s primary residence, as defined in 17 C.F.R. Section 230.501(a)(5)(i).
  11. **Offering Deadline** means the date stated in the IMC Statement by which the sum of the offering proceeds held in escrow will equal the minimum target offering amount or investors may request a refund of their investment
  12. **Qualified Purchaser** is defined in Section 2(a)(51) of the Investment Company Act of 1940, as currently enacted or as amended.
  13. **Rule 504** means Rule 504 of the SEC Regulation D, 17 C.F.R. Section 230.504, promulgated pursuant to the Securities Act of 1933, 15 U.S.C. Sections 77a, *et seq.*, and any amendments thereto.
- B. *Short-form registration statement.* For any offer or sale of securities offered or sold in compliance with Rule 504, the IMC Statement shall be used as the registration statement required to be filed with the Division under this Rule. A copy of the IMC Statement is available upon request. Any offer or sale of securities offered or sold in compliance with this Rule must satisfy the following conditions and limitations:
1. The issuer of the securities is a business corporation or limited liability company formed under the laws of this state, with a principal place of business in this state, and authorized to do business in this state;
  2. The issuer is not, either before or as a result of the offering, an investment company, as defined in Section 3 of the Investment Company Act of 1940, 15 U.S.C. Section 80a-3, or subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C Sections 78m and 78o(d);

3. The aggregate amount sold to all investors by the issuer, including any amount sold in reliance on the simplified registration provided under this Rule during twelve (12) month period preceding the date of such transaction, is not more than Five Million Dollars (\$5,000,000.00).
  - a. If the issuer has been in existence for twelve (12) months or more the issuer must provide to each prospective investor a balance sheet and statement of income and expense of its most recently completed fiscal year and interim quarterly financial statements if the issuer's fiscal year ended more than ninety (90) days prior to the date of the IMC Statement.
  - b. If the issuer has been in existence for less than twelve (12) months, the issuer must provide to each prospective investor a balance sheet and statement of income and expense for the time period since its existence.
  - c. The issuer shall include the issuer's financial projections of income and expense for two (2) years from the date of the IMC Statement.
  - d. The financial statements, which may be unaudited, shall be signed by the principal executive officer of the issuer who shall certify under penalties of perjury that the statements therein are true, complete, and correct in all material respects to the best of the signer's knowledge.
4. The aggregate amount sold to any single investor by multiple issuers in reliance on this Rule during the twelve (12) month period preceding the date of such transaction:
  - a. For accredited investors, the aggregate amount sold by multiple issuers to any single accredited investor does not exceed the greater of:
    - i. If the investor has had an annual income of at least Two Hundred Thousand Dollars (\$200,000.00) each year for the last two (2) years (or Three Hundred Thousand Dollars (\$300,000.00) together with a spouse if married) and have the expectation to make the same amount in the current year, five percent (5%) of the investor's annual income, not to exceed the aggregate amount of Fifty Thousand Dollars (\$50,000.00); or
    - ii. If the investor's net worth is at least One Million Dollars (\$1,000,000.00), five percent (5%) of the investor's net worth, not to exceed the aggregate amount of Fifty Thousand Dollars (\$50,000.00).
  - b. For non-accredited investors, the aggregate amount sold to a single non-accredited investor by multiple issuers does not exceed the greater of:

- i. Five Thousand Dollars (\$5,000.00);
    - ii. If the investor has had an annual income of less than Two Hundred Thousand Dollars (\$200,000.00) each year for the last two (2) years (or less than Three Hundred Thousand Dollars (\$300,000.00) together with a spouse if married), five percent (5%) of the investor's annual income; or
    - iii. If the investor's net worth is less than One Million Dollars (\$1,000,000.00), five percent (5%) of the investor's net worth.
  - c. For investors that are qualified purchasers, there shall be no aggregate limit on the amount the qualified purchaser investor can purchase from a single issuer or multiple issuers in offerings conducted pursuant to this Rule.
5. No remuneration shall be paid or given, directly or indirectly, for any person's participation in the offer or sale of the securities for the issuer unless the person is registered as an intermediary as such term is defined in Subsection(A)(5) of this Rule.
6. All funds received from investors shall be deposited into a Bank and all the funds shall be used in accordance with the representations made to investors and in accordance with the terms of an escrow agreement which provides that:
- a. The investor funds will be deposited into an escrow amount in a Bank, with the Bank acting as escrow agent;
  - b. For each investment, the issuer will provide to the escrow agent a copy of the subscription agreement setting forth the names, addresses, and respective amounts paid by each investor whose funds comprise each deposit;
  - c. The issuer must raise the minimum target offering amount specified as necessary to implement the business plan by the offering deadline before the escrow agent may release the offering proceeds to the issuer upon joint written notice from the issuer and the intermediary;
  - d. If the issuer does not raise the minimum target offering amount by the offering deadline, investors will have the option to obtain a refund of their investment by providing written notice, including electronic mail, to the intermediary, which shall provide written notice to the issuer and the escrow agent at which time the escrow agent shall return the amount contributed by the investor;

- e. All offering proceeds not returned to the investor by the escrow agent after the offering deadline, as provided above, will be released to the issuer when the escrow agent has received written notice from the issuer or the intermediary to release the remaining proceeds to the issuer, or when the intermediary provides written notice to the escrow agent authorizing and instructing the escrow agent to return the remaining amounts contributed by investors;
  - f. All offering proceeds not returned to the investor or released to the issuer after twelve (12) months from date of receipt may be returned to the investor by the escrow agent to the last known address of the investor, or if not, shall be submitted to the State Treasurer in accordance with the unclaimed property laws; and
  - g. The escrow agent may contract with the issuer to collect reasonable fees for its escrow services regardless of whether the minimum target offering amount is reached.
- 7. No offerings or sales of securities shall be made in reliance on this Rule until the issuer files the IMC Statement in writing or in electronic form with the Division, completed with specificity as required by the instructions in the Statement, and as required by the Division, in writing or in electronic form as specified by the Division and the issuer is issued a Certification of Invest Mississippi Crowdfunding Registration from the Division. The issuer must also include with such filing a copy of the escrow agreement as required by Subsection (B)(6) above and all other exhibits to the IMC Statement as otherwise specified by the Division may require to administer and enforce the requirements of this Rule.
  - 8. Registration by this Rule shall become effective on the issuance of a Certification of Invest Mississippi Crowdfunding Registration by the Division which shall be issued within five (5) business days of receiving the completed IMC Statement and all other exhibits to the IMC Statement, except as otherwise specified by the Division.
  - 9. The completed IMC Statement, including exhibits, shall be provided to the relevant intermediary and shall be made available to potential investors after the Certification of Invest Mississippi Crowdfunding Registration has been issued by the Division.
  - 10. The issuer shall inform all investors under this Rule that the securities have not been registered under federal securities law.
  - 11. Prior to the consummation of a sale, the issuer shall require the prospective investor to certify in writing or electronically as follows:

- a. The investor's name, address, Social Security number, annual income, net worth, state of residency, and, if applicable, that the investor is either an accredited investor or a qualified purchaser;
  - b. The aggregate amount of securities sold to the investor in reliance on this Rule during the twelve (12) month period preceding the date of the purchase, together with the securities to be sold by the issuer to the investor:
    - i. For accredited investors that are not qualified purchasers, that the investor has not invested more than the greater of:
      - (A) If the investor has had an annual income of at least Two Hundred Thousand Dollars (\$200,000.00) each year for the last two (2) years (or Three Hundred Thousand Dollars (\$300,000.00) together with a spouse if married) and have the expectation to make the same amount in the current year, five percent (5%) of the investor's annual income, not to exceed the aggregate amount of Fifty Thousand Dollars (\$50,000.00); or
      - (B) If the investor's net worth is at least One Million Dollars (\$1,000,000.00), five percent (5%) of the investor's net worth, not to exceed the aggregate amount Fifty Thousand Dollars (\$50,000.00).
    - ii. For non-accredited investors, that the investor has not invested more than the greater of:
      - (A) Five Thousand Dollars (\$5,000.00);
      - (B) If the investor has had an annual income of less than Two Hundred Thousand Dollars (\$200,000.00) each year for the last two (2) years (or less than Three Hundred Thousand Dollars (\$300,000.00) together with a spouse if married), five percent (5%) of the investor's annual income; or
      - (C) If the investor's net worth is less than One Million Dollars (\$1,000,000.00), five percent (5%) of the investor's net worth.
  - c. The issuer must maintain the above certifications and provide ready access to the records to the Division upon request. The Division may access, inspect, and review such records.
12. Securities may only be registered pursuant to this Rule if they meet the requirements set forth in Rule 504.

- C. Offers and sales of securities pursuant to this Rule shall be made exclusively through an Internet website that is operated by an intermediary. Each issuer and intermediary shall comply with the following:
1. Before any offer or sale of securities, the issuer must provide evidence to the intermediary that the issuer is organized under the laws of this state with a principal place of business in this state and is authorized to do business in this state.
  2. An intermediary is not required to register as a broker-dealer under the Act if all the following apply with respect to the Internet website and its operator:
    - a. They do not offer investment advice or recommendations;
    - b. They do not solicit purchases, sales, or offers to buy the securities offered or displayed on the Internet website;
    - c. They do not compensate employees, agents, or other persons for the solicitation or based on the sale of securities displayed or referenced on the Internet website;
    - d. They do not hold, manage, possess, or otherwise handle investor funds or securities, unless it is a bank operating as an escrow agent for the offering;
    - e. They do not identify, promote, or otherwise refer to any individual security offered on the Internet website in any advertising for the Internet website; and
    - f. Neither the intermediary, nor any director, executive officer, general partner, twenty percent (20%) or greater beneficial owner, managing member, or other person with management authority over the intermediary, has been subject to any conviction, order, judgement, decree, or other action specified in Rule 506(d)(1) adopted under the Securities Act of 1933 (17 C.F.R. § 230.506(d)(1)) that would disqualify an issuer under Rule 506(d) adopted under the Securities Act of 1933 (17 C.F.R. § 230.506(d)) from claiming an exemption specified in Rule 506(a) to Rule 506(c) adopted under the Securities Act of 1933 (17 C.F.R. § 230.506(a)-(c)).
  3. Subject to Subsection (12) below, persons desiring to be an Intermediary must register as an Intermediary with the Division.
    - a. Registered broker-dealers may register to be an intermediary by filing the Intermediary Registration Form with the Division, a copy of which is available upon request. No filing fee shall be required for registered

broker-dealers acting as intermediaries. The Form shall include the following information:

- i. The identity, contact information, and location for the broker-dealer, including the broker-dealer's CRD number;
  - ii. Confirmation that the broker-dealer is authorized to do business in this state; and
  - iii. Confirmation that the broker-dealer is using an Internet website to offer and sell securities pursuant to this Rule.
- b. A bank may register to be an Intermediary by filing the Intermediary Registration Form with the Division, a copy of which is available upon request. No filing fee shall be required for banks acting as intermediaries. The Form shall include the following information:
  - i. The identify, contact information, and location for the bank;
  - ii. The bank is authorized to do business in this state;
  - iii. The bank is using an Internet website to offer and sell securities pursuant to this Rule; and
  - iv. The bank meets the requirements set forth in Subsection (C)(2) of this Rule.
- c. An Internet website operator may register to be an intermediary by filing the Intermediary Registration Form, a copy of which is available upon request, that includes the following information:
  - i. The identity, contact information, and location for the intermediary funding portal;
  - ii. Confirmation that the intermediary funding portal is authorized to do business in this state;
  - iii. Confirmation that the intermediary funding portal is using an Internet website to offer and sell securities pursuant to this Rule;
  - iv. Confirmation that the intermediary funding portal meets the requirements set forth in Subsection (C)(2) of this Rule; and
  - v. Any other information the Division considers necessary or appropriate in the public interest and for the protection of investors, including the financial responsibility, business repute or qualifications of the Internet website operator and to determine

whether the operator can carry out the requirements of this Rule and will comply with this Rule.

4. The intermediary funding portal is not required to register as a broker-dealer under Subsection (3) above if the intermediary funding portal is a funding portal registered under the Securities Act of 1933 (15 U.S.C. 77d-1) and the SEC rules under authority of Section 3(h) of the Securities Exchange Act of 1934 (15U.S.C. 78c(h)) and P.L. 112-106, § 304, governing funding portals.
5. Registration as an intermediary expires at the close of the calendar year, but subsequent registration for the succeeding year shall be issued upon filing of a renewal form, a copy of which is available upon request.
6. The issuer must maintain records of all offers and sales of securities effected through the intermediary and must provide the Division, upon request, ready access to the records.
7. The intermediary shall maintain and preserve for a period of five (5) years from either the date of the document or communication or the date of the closing or termination of the securities offering, whichever is later, the following records related to offers and sales made of the issuer's securities effected by the intermediary through the intermediary's Internet website and related to transactions in which the intermediary receives compensation from the issuer for such services, including but not limited to:
  - a. Records of compensation received for acting as an intermediary for an issuer, including the name of the payor, the date of payment, and name of the issuer;
  - b. For each offering effected by the intermediary through the intermediary's Internet website, the issuer's name and the name, address, and amount of purchase for each investor in such offering;
  - c. Copies of information provided by the intermediary to investors, prospective purchasers, and issuers offering securities through the intermediary;
  - d. Any agreements and/or contracts between the intermediary and an issuer, prospective purchaser, or investor;
  - e. Any information used to establish that an issuer is a resident of the state;
  - f. Any information used to establish the residency of a prospective purchaser or investor;

- g. Any information used to establish that a prospective purchaser or investor is an accredited investor or qualified purchaser;
  - h. Any correspondence or other communications with issuers, prospective purchasers, and/or investors;
  - i. Any information made available through the Internet website relating to an offering; and
  - j. Ledgers (or other records) that reflect all assets and liabilities, income and expenses, and capital accounts of the intermediary.
8. The records and the Internet website portal of an Intermediary or Intermediary applicant under this Rule are subject to reasonable, periodic, special, or other audits or inspections by the Division, in or outside this state, as the Division considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The Division may copy and remove for audit or inspection copies of all records the Division reasonably considers necessary or appropriate to conduct the audit or inspection. The Division may assess a reasonable charge for conducting an audit or inspection under this Rule.
9. The intermediary:
- a. Shall not hold, manage, possess, or handle investor funds or securities unless it is a bank operating as an escrow agent for the offering;
  - b. Shall perform a background and securities enforcement regulatory history check on each person holding a position listed in Subsection (I) of this Rule to determine if such person is subject to any disqualification described in Subsection (I) of this Rule;
  - c. Shall ensure that all offering proceeds are only provided to the issuer when the aggregate capital raised from all investors is equal to or greater than the minimum target offering amount and shall allow investors to cancel their commitments to invest and obtain a refund if the minimum target offering amount is not raised by the offering deadline;
  - d. Shall ensure that each investor answers questions demonstrating:
    - i. An understanding of the level of risk generally applicable to investments in startups and small issuers; and
    - ii. An understanding of the risk of illiquidity, including an acknowledgment that there is no ready market for the sale of the securities acquired from an offering under this Rule; that it may be

difficult or impossible for the investor to sell or otherwise dispose of an investment under this Rule and the investor may be required to hold and bear the financial risks of this investment indefinitely.

10. The intermediary shall not purchase or receive more than fifteen percent (15%) of the securities in the offering and shall prohibit its directors, officers, or partners (or any person occupying a similar status or performing a similar function) from having any financial interest in an issuer using its services as an intermediary, unless the financial interest in the aggregate does not exceed fifteen percent (15%) of the ownership of the issuer.
  11. All communications between the issuer, prospective purchasers, or investors taking place during the offer of securities pursuant to this Rule must occur through the intermediary's Internet website. Notwithstanding the foregoing, the issuer or the intermediary may distribute a notice limited to the statement that the issuer is conducting an offering, the name of the intermediary through which the offering is being conducted, and a link directing the potential investor to the intermediary's website.
  12. If any change occurs that affects the intermediary's registration, the intermediary must notify the Division within thirty (30) days after the change occurs. Within thirty (30) days of the delivery of the notice to the Division, the intermediary shall, unless otherwise permitted or directed by the Division, cease and desist from operating as an intermediary pursuant to this Rule and shall, within five (5) business days, notify each issuer for which it is conducting offerings that the intermediary's registration has been revoked.
- D. *Report.* For so long as securities registered under this Rule are outstanding, the issuer shall provide a quarterly report to the issuer's investors. The report required by this Rule shall be free of charge. An issuer may satisfy the reporting requirement of this Rule if the information is made available within forty-five (45) days of the end of each fiscal quarter and remains available until the succeeding quarterly report is issued. The issuer must provide a written copy of the report to any investor upon request. The issuer shall make each such quarterly report available to the Division upon request. The report must contain each of the following:
1. Compensation received by each director and executive officer, including cash compensation earned since the previous report and on an annual basis and any bonuses, stock options, other rights to receive securities of the issuer or any affiliate of the issuer, or other compensation received; and
  2. An analysis by management of the issuer of the business operations and financial condition of the issuer, such as a recent financial statement and profit and loss statement.

- E. The Division and every investor or prospective purchaser shall be notified within thirty (30) days of any material change in the issuer's information submitted in accordance with this Rule.
- F. A Certificate of Invest Mississippi Crowdfunding Registration is effective for one (1) year after its effective date. Applicants for registration under this Rule may re-register a security by submitting a report for sales of the securities sold in this state for the preceding twelve (12) month period.
- G. The issuer must file a sales report with the Division within thirty (30) days of termination, expiration, abandonment, withdrawal, or completion of the offering in a form prescribed by the Division.
- H. Offers and sales to controlling persons shall not count toward the limitation in Subsection (B)(4) of this Rule. A controlling person is an officer, director, partner, trustee, or individual occupying similar status or performing similar functions with respect to the issuer or to a person owning ten percent (10%) or more of the outstanding shares of any class or classes of securities of the issuer.
- I. *Disqualification.* The simplified registration allowed by this Rule shall not apply if the issuer, any of its executive officers, directors, managing members, persons with twenty percent (20%) or greater beneficial ownership, persons with management authority over the issuer, promoters, or selling agents, or any officer, director, or partner of any selling agent has been subject to any conviction, order, judgement, decree, or other action specified in Rule 506(d)(1) adopted under the Securities Act of 1933 (17 C.F.R. § 230.506(d)(1)) that would disqualify the person under Rule 506(d) adopted under the Securities Act of 1933 (17 C.F.R. § 230.506(d)) from claiming an exemption specified in Rule 506(a) to Rule 506(c) adopted under the Securities Act of 1933 (17 C.F.R. § 230.506(a)-(c)).
- J. Nothing in this Rule shall be construed to alleviate any person from the anti-fraud provisions of the Act, nor shall such simplified registration be construed to provide relief from any other provisions of the Act other than as expressly stated.
- K. The Division may deny, refuse to renew, condition, limit, suspend, or revoke the registration of an intermediary for any reason as determined by the Secretary of State in his sole discretion.
- L. The Secretary of State may by order waive any of the conditions of registration of the offering or the intermediary or other requirements set forth in this Rule.

Source: Miss. Code Ann. § 75-71-307 (2020).

*Rule 2.05 Prospectus.*

- A. An applicant for registration of securities by coordination or qualification must file a prospectus with the Division 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 must be provided to a prospective purchaser prior to the consummation of the sale of any securities offered thereby.

Source: Miss. Code Ann. §§ 75-71-303(b)(1), -304(e), -605 (2020).

*Rule 2.07 Legend Requirement.*

- A. Every submitted prospectus must carry the following legend displayed in a prominent manner:  
  
“THESE SECURITIES ARE OFFERED PURSUANT TO A CERTIFICATION 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.

Source: Miss. Code Ann. § 75-71-605(a)(1) (2020).

*Rule 2.09 Solicitation of Interest/Preliminary Prospectus.*

- A. A preliminary prospectus may be distributed in this state 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 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.

Source: Miss. Code Ann. §§ 75-71-202(17)(B), -605(a)(1) (2020).

*Rule 2.11 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.

Source: Miss. Code Ann. § 75-71-605(a)(1) (2020).

*Rule 2.13 Expenses 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.

Source: Miss. Code Ann. §§ 75-71-605(a); -608(b), -608(c)(9) (2020).

*Rule 2.15 NASAA Statements of Policy.* In cooperation with the securities administrators of other states, and with a view to effectuating a policy to achieve maximum uniformity of regulations regarding the registration of securities and investment advisory registrants and enforcement of anti-fraud laws, unless a specific rule promulgated herein or a state statute conflicts with the NASAA Policy, in which case the specific rule or statute will control, NASAA Statements of Policy, as published, will provide the basis for review for transactions or activities set forth in the Statements of Policy. Other NASAA Statements, as published, shall be applied as needed unless such Policy conflicts with a specific rule promulgated herein or a state statute.

Source: Miss. Code Ann. §§ 75-71-605(a), -608(b), -608(c)(9) (2020).

*Rule 2.17 Certification of Registration/Re-registration of Securities*

- A. Registration in this state by coordination of qualification shall become effective upon the earlier of the time prescribed in Section 75-71-303(c) or Section 75-71-304(c) of the Act or the date of the issuance of a Certification of Registration by the Division.
- B. A Certification of Registration is effective for one (1) year after its effective date. Applicants for registration by coordination or qualification may re-register a security by submitting a report for sales of the securities sold in this state for the preceding twelve (12) month period and paying the filing fee as set forth in Section 75-71-310(c) of the Act and Rule 4.03(B) of these Rules.

Source: Miss. Code Ann. §§ 75-71-304(c), -310 (2020).

*Rule 2.19 Amended Certification of Registration*

- A. To amend a registration, the following must be submitted:
  - 1. An amended NASAA Form U-1 which shows:
    - 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; and
  - 2. A sales report on the securities initially registered.
- B. To amend the name on the Certification of Registration, a complete NASAA Form U-1, NASAA Form U-2 (Uniform Consent to Service of Process), and NASAA Form U-2A (Uniform Form of Corporate Resolution) must be filed with the Division. The exhibits to NASAA 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 Certification of Registration will be issued having the same effective date as the original Certification of Registration.

Source: Miss. Code Ann. § 75-71-305(j) (2020).

*Rule 2.21 Notice of Withdrawal or Completion of Offering of Securities under Registration by Coordination or Qualification.*

- A. Notices of withdrawal of an offering must be made in writing and filed with the Division along with the required fee set forth in Section 75-71-310(e) of the Act and Rule 4.03(C).
- B. Whenever an offering of securities under Sections 75-71-303 or 304 of the Act 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 this state, (3) the aggregate amount of securities registered in this state, (4) the aggregate amount of securities sold in this state, and (5) the date the offering was completed.

Source: Miss. Code Ann. §§ 75-71-305(i), -605 (2020).

*Rule 2.23 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.

Source: Miss. Code Ann. § 75-71-305(g) (2020).

## Subchapter 2: FILING OF FEDERAL COVERED SECURITIES

### *Rule 2.25 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, including securities issued by an open-end management investment company, a face-amount certificate company, or a unit investment trust, 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, signed either manually or electronically; and
  - 3. A fee as set forth in Section 75-71-310(a) of the Act and Rule 4.01(A)(1).
- 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 requires a separate notice filing for each portfolio, series, type, kind, or class of securities to be offered or sold in this state. Each portfolio, series, type, kind, or class of securities offered in this state in a single prospectus must pay a separate notice filing fee.
- D. An issuer who has filed a NASAA Form U-2 in connection with a previous notice filing need not file another.
- E. *Duration of Notice Filing.*
  - 1. Except as provided in Subsection (E)(2), a notice filing under Subsection (A) of this Rule is effective for the period of time as provided in Section 75-71-302(b) of the Act.
  - 2. To facilitate the coordination of expiration dates with other states, the issuer may request a specific term of effectiveness which does not exceed one (1) year.
- F. *Renewal.* On or before the expiration of the effective period, a notice filing may be renewed by submitting to the Division or its designee another notice and payment of the applicable fee in accordance with Section 75-71-310(d) of the Act and Rule 4.01(A)(2). Such notice must include: (1) the name of the issuer, (2) a description of the securities filed in this state, and (3) the aggregate amount of securities sold in this state over the preceding twelve (12) month period.

- G. *Termination.* Whenever an offering of securities under Section 75-71-302(a) of the Act has been completed or is terminated or withdrawn, notice of completion, termination, or withdrawal of the offering and a fee as set forth in Section 75-71-310(e) of the Act and Rule 4.01(A)(3) shall be filed within sixty (60) days of completion. The notice of completion shall state (1) the name of the issuer, (2) a description of the securities filed in this state, (3) the aggregate amount of securities sold in this state, and (4) the date the offering was completed.
- H. *Amendments.* The materials filed pursuant to Subsection (A) of this Rule 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.
- I. *Recognized designee.*
1. The Division may authorize and recognize a designee to receive notice filings under this Rule on behalf of the Division. Such filings include but are 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 notice filings, including but not limited to notices, fees, and all documents, 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.

Source: Miss. Code Ann. §§ 75-71-302(a)(b), -310(a) (2020).

*Rule 2.27 Reserved.*

*Rule 2.29 Notice Filings for Rule 506 Offerings.*

- A. *Electronic filing.* All filings or submissions under this Rule shall be made electronically through a state portal approved by the Division.
- B. *Initial.* An issuer offering a security that is a covered security under Section 18(b)(4)(E) of the Securities Act of 1933 must submit to the Division or its designee, no later than fifteen (15) days after the first sale of such federal covered security in this state unless the end of that period falls on a Saturday, Sunday, or state or federal holiday, in which case the due date would be the first business day following, a conformed copy of an electronically filed SEC Form D as filed with the SEC in the version of that form accepted at the time of filing by the SEC for filings made pursuant to the Securities Act of 1933, Regulation D, Rule 230.506, the fee set forth in Section 75-71-310(b) of the Act and Rule 4.01(B)(1); and any late fee (if applicable)

as set forth in Section 75-71-310(b) of the Act and Rule 4.01(B)(2). If the offering includes multiple issuers filing on the same Form D, a separate fee shall be paid for each issuer issuing securities in this state.

- C. *Renewal.* When an offering is not completed within twelve (12) months of the date of initial notice filing, a sales report and nonrefundable renewal fee as set forth in Section 75-71-310(d) of the Act and Rule 4.01(B)(3) must be submitted to the Division. The sales report must include: (1) the name of the issuer, (2) a description of the securities filed in this state, and (3) the aggregate amount of securities sold in this state.
- D. *Termination.* Whenever an offering of securities under Section 75-71-302(c) of the Act has been completed or is terminated, notice of termination of the offering and the fee set forth in Section 75-71-310(e) of the Act shall be filed within sixty (60) days of completion. The notice of termination shall state: (1) the name of the issuer, (2) a description of the securities filed in Mississippi, (3) the aggregate amount of securities sold in this state, and (4) the date the offering was completed.

Source: Miss. Code Ann. §§ 75-71-302(c), -310(b), -310(d) (2020).

*Rule 2.31 Notice Filings for Regulation A Tier 2 Offerings.* The following provisions apply to offerings made under Tier 2 of Federal Regulation A and Section 18(b)(4) of the Securities Act of 1933:

- A. *Initial filing:*
  - 1. An issuer that has sold securities in this state in an offering exempt under Tier 2 of federal Regulation A shall submit to the Division no later than fifteen (15) days after the first sale of such security in this state the following:
    - a. A completed Regulation A-Tier 2 notice filing form or copies of all documents filed with the SEC;
    - b. A consent to service of process on Form U-2 if not filing on the Regulation A Tier 2 notice filing form;
    - c. The filing fee prescribed by Section 75-71-310(b) of the Act; and
    - d. Any late fee (if applicable) as set forth in Section 75-71-310(b) of the Act.
  - 2. The initial notice filing is effective for the twelve (12) months from the date of the filing with the Division.
- B. *Renewal.* For each additional twelve (12) month period in which the same offering is continued, an issuer conducting a Tier 2 offering under Federal Regulation A may renew its notice filing by filing with the Division on or before the expiration of the

notice filing the Regulation A Tier 2 notice filing form marked “renewal” and/or a cover letter requesting renewal along with the fee as set forth in Section 75-71-310(d) of the Act.

- C. *Amendment.* An issuer may increase the amount of securities offered in this state by submitting to the Division a Regulation A Tier 2 notice filing form marked “amendment” or other document describing the transaction.
- D. *Termination.* Whenever an offering of securities under Section 75-71-302(e) of the Act has been completed or is terminated, notice of termination of the offering and the fee set forth in Section 75-71-310(e) of the Act shall be filed within sixty (60) days of completion. The notice of termination shall state: (1) the name of the issuer, (2) a description of the securities filed in Mississippi, (3) the aggregate amount of securities sold in this state, and (4) the date the offering was completed.
- E. All filings or submissions under this Rule may be made electronically through a portal approved by the Division.

Source: Miss Code Ann. §§ 75-71-302(e), -310(b), -310(d), -605 (2020).

*Rule 2.33 Notice Filings for Title III Federal Crowdfunding Offerings.* The following provisions apply to offerings made under federal Regulation Crowdfunding and Section 18(b)(4) of the Securities Act of 1933:

A. *Initial filing:*

- 1. An issuer that offers and sells securities in this state in an offering exempt under federal Regulation Crowdfunding shall file the following with the Division:
  - a. A completed Uniform Notice of Federal Crowdfunding Offering form or copies of all documents filed with the SEC;
  - b. A consent to service of process on Form U-2 if not filing on the Uniform Notice of Federal Crowdfunding Offering form;
  - c. The filing fee prescribed by Section 75-71-310(b) of the Act; and
  - d. Any late fee (if applicable) as set forth in Section 74-71-310(b) of the Act.
- 2. If the issuer has its principal place of business in this state, the filing required under Subsection (A) of this Rule shall be filed with the Division within fifteen days of when the issuer makes its initial Form C filing concerning the offering within the SEC. If the issuer does not have its principal place of business in this state but residents of this state have purchased fifty percent (50%) or greater of the aggregate amount of the offering, the filing required under Subsection (A) of

this Rule shall be filed with the Division when the issuer becomes aware that such purchases have met this threshold and in no event later than fifteen (15) days from the date of completion of the offering.

3. The initial notice filing is effective for twelve (12) months from the date of the filing with the Division.
- B. *Renewal.* For each additional twelve (12) month period in which the same offering is continued, an issuer conducting an offering under federal Regulation Crowdfunding may renew its notice filing by filing with the Division on or before the expiration of the notice filing a completed Uniform Notice of Federal Crowdfunding Offering form marked “renewal” and/or a cover letter requesting renewal along with the fee as set forth in Section 75-71-310(d) of the Act.
- C. *Amendment.* An issuer may increase the amount of securities offered in this state by submitting to the Division a completed Uniform Notice of Federal Crowdfunding Offering form marked “amendment” or other document describing the transaction.
- D. *Termination.* Whenever an offering of securities under Section 75-71-302(e) of the Act has been completed or is terminated, notice of termination of the offering and the fee set forth in Section 75-71-310(e) of the Act shall be filed within sixty (60) days of completion. The notice of termination shall state: (1) the name of the issuer, (2) a description of the securities filed in Mississippi, (3) the aggregate amount of securities sold in this state, and (4) the date the offering was completed.
- E. All filings or submissions under this Rule may be made electronically through a portal approved by the Division.

Source: Miss Code Ann. §§ 75-71-302(e), -310(b), -310(d), -605 (2020).

## **Part 14 Chapter 3: RESERVED**

## **Part 14 Chapter 4: FEE SCHEDULES**

### **Subchapter 1: NOTICE FILING AND REGISTRATION FEES FOR SECURITIES OFFERINGS**

#### *Rule 4.01 Notice Filers*

- A. Notice Filings for Federal Covered Securities Under Section 18(b)(2)

1. *Initial.* Filers shall submit to the Division a nonrefundable initial filing fee of One Thousand Dollars (\$1,000.00).
2. *Renewal.* Filers shall submit to the Division a nonrefundable renewal filing fee of Three Hundred Dollars (\$300.00) annually.
3. *Termination.* Filers shall submit to the Division a nonrefundable termination filing fee of Fifty Dollars (\$50.00).

B. Notice Filings for Federal Covered Securities

1. *Initial.* Filers shall submit to the Division a nonrefundable filing fee of One Thousand Dollars (\$1,000.00).
2. *Late.* If the filing fee is not submitted to the Division on or before the date prescribed by the Rules, the Division may impose a late filing fee of one percent (1%) of the amount sold in this state up to a maximum penalty of Five Thousand Dollars (\$5,000.00).
3. *Renewal.* Filers shall submit to the Division a nonrefundable filing fee of Three Hundred Dollars (\$300.00) annually.
4. *Termination.* Filers shall submit to the Division a nonrefundable termination filing fee of Fifty Dollars (\$50.00).

Source: Miss. Code Ann. §§ 75-71-310, -605 (2020).

*Rule 4.03 Registration by Coordination or Qualification*

- A. *Initial.* Filers shall submit to the Division an initial registration fee of One Thousand Dollars (\$1,000.00).
- B. *Renewal.* Registration is effective for one (1) year after its effective date. Filers may re-register a security by paying the registration fee of One Thousand Dollars (\$1,000.00) annually.
- C. *Termination.* Filers shall submit to the Division a nonrefundable termination filing fee of Fifty Dollars (\$50.00).

Source: Miss. Code Ann. § 75-71-310(c)(1) (2020).

## **Subchapter 2: EXEMPTION FILING FEES FOR SECURITIES OFFERINGS**

*Rule 4.05 Reserved.*

*Rule 4.07 Reserved.*

*Rule 4.09 Reserved.*

*Rule 4.11 Reserved.*

## **Subchapter 3: SECURITIES PROFESSIONALS FILING FEES**

*Rule 4.13 Broker-Dealers.*

- A. Except for issuer agents as provided for in Rule 4.17, any person filing an initial application for registration as a broker-dealer and any person filing a renewal registration as a broker-dealer shall submit to the Division a registration or renewal fee of Two Hundred Dollars (\$200.00).
- B. Except for issuer agents as provided for in Rule 4.17, any person filing an application for registration as an agent and any person filing a renewal registration as an agent shall submit to the Division a registration or renewal fee of Fifty Dollars (\$50.00).
- C. Broker-dealers that are members of FINRA and agents who are associated with broker-dealers that are members of FINRA shall submit their initial filing and renewal fees through CRD.
- D. Any person notice filing as a broker-dealer pursuant to Rule 5.33 shall submit to the Division a notice filing or renewal fee of Two Hundred Dollars (\$200.00).
- E. Any person notice filing as a broker-dealer agent pursuant to Rule 5.33 shall submit to the Division a notice filing or renewal fee of Fifty Dollars (\$50.00).

Source: Miss. Code Ann. § 75-71-410 (2020).

*Rule 4.15 Investment Advisers.*

- A. Any person filing an application for registration as an investment adviser and any person filing a renewal registration as an investment adviser shall submit to the Division a registration or renewal fee of Two Hundred Dollars (\$200.00).
- B. Any person filing an application for registration as an investment adviser representative, any person filing a renewal registration as an investment adviser representative, and any person filing a change of registration as an investment adviser representative shall submit to the Division a registration, renewal, or change of registration fee of Fifty Dollars (\$50.00).
- C. Any person filing an initial fee or annual notice fee for a federal covered investment adviser required to file a notice under Section 75-71-405 of the Act shall submit to the Division an initial fee or annual notice fee of Two Hundred Dollars (\$200.00).
- D. Investment advisers and investment adviser representatives shall submit these fees through IARD.

Source: Miss. Code Ann. § 75-71-410 (2020).

*Rule 4.17 Issuer Agents.* Any person filing an application for registration as an issuer agent or any person filing a renewal registration as an issuer agent shall submit to the Division a registration or renewal fee of Fifty Dollars (\$50.00) and a copy of Form U4.

Source: Miss. Code Ann. § 75-71-410 (2020).

**Subchapter 4: MISCELLANEOUS FEES**

*Rule 4.19* Reserved.

*Rule 4.21* Reserved.

*Rule 4.23 Certificates of Authenticity.* Certificates of Authenticity and Certifications that a public record does not exist may be requested from the Division at a fee of Twenty-Five Dollars (\$25.00) per Certificate.

Source: Miss. Code Ann. § 75-71-606(c) (2020).

**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 (2020).

*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 (2020).

*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) (2020).

*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 (2020).

*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) (2020).

*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) (2020).

*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) (2020).

*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) (2020).

*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) (2020).

*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) (2020).

*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 (2020).

*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 (2020).

*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) (2020).

*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) (2020).

*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) (2020).

*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) (2020).

*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) (2020).

## Part 14 Chapter 6: INVESTMENT ADVISERS

### *Rule 6.01 Definitions.*

- A. **Custody** means holding directly or indirectly, client funds or securities, or having any authority to obtain possession of them (or having the ability to appropriate them). The investment adviser has custody if a related person holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of them, in connection with advisory services the investment adviser provides to clients.
- B. **Cybersecurity** means the protection of investor and firm information from compromise through the use, in whole or in part, of electronic digital media, (e.g., computers, mobile devices, or Internet protocol-based telephony systems). “Compromise” refers to a loss of data confidentiality, integrity, or availability.
- C. **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 75-71-102(15) of the Act.
- D. **Investment Adviser Representative:** Notwithstanding Section 75-71-102(16) of the Act, the term investment adviser representative as it applies to a person who is employed by or associated with a federal covered investment adviser only includes an individual who has a place of business in this jurisdiction, as that term is defined in Subsection (E) below, and who either:
  - 1. Is a supervised person of a federal covered adviser, as defined in Subsection (F) below; or
  - 2. Is not a supervised person as defined in Subsection (F) below, but solicits, offers, or negotiates for the sale of or sells investment advisory services on behalf of a federal covered investment adviser.
- E. **Place of Business** means:
  - 1. An office at which the investment adviser representative regularly provides investment advisory services, solicits, meets with, or otherwise communicates with clients; or
  - 2. Any other location that is held out to the general public as a location at which the investment adviser representative provides investment advisory services, solicits, meets with, or otherwise communicates with clients.
- F. **Supervised Person** means any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser,

or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.

Source: Miss. Code Ann. § 75-71-605 (2020).

*Rule 6.03 Electronic Filing with Designated Entity.*

- A. Pursuant to the Act, the Division designates the web-based IARD operated by FINRA 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, as required, shall affix his electronic signature to the filing by typing his 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) above, 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 electronically 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 registered under the Act, or required to be registered under the Act, who experience unanticipated technical difficulties that prevent submission of an electronic filing to IARD may request a temporary hardship exemption from filing electronically with IARD. To request a temporary hardship extension, the investment adviser must:

1. File Form ADV-H in paper format with the Division no later than one (1) 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.
- F. 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.
- G. 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.
- H. The exemption is effective upon approval by the Division. The time period of the exemption may be no longer than one (1) 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.
- I. 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.

Source: Miss. Code Ann. § 75-71-406(e) (2020).

*Rule 6.05 Application for Investment Adviser Registration.*

- A. *Initial Application.* The application for initial registration as an investment adviser pursuant to Section 75-71-406 of the Act shall be made by filing Form ADV Parts 1 and 2 (Uniform Application for Investment Adviser Registration) electronically with IARD and paying the applicable fee. The application for initial registration shall also include the following filed directly with the Division:

1. A copy of the entity's formation documents currently in effect, certified by the governmental agency where filed;
2. Where the adviser does not have custody of client funds or securities or does not require payment of advisory fees six (6) months or more in advance and in excess of Twelve Hundred Dollars (\$1,200.00), a balance sheet as of the end of the investment adviser's most recent fiscal year. Each balance sheet filed pursuant to this Rule must be:
  - a. Prepared in conformity with generally accepted accounting principles;
  - b. Certified with an original notarized signature by an officer of the adviser as true, accurate, and prepared in conformity with generally accepted accounting principles; and
  - c. Dated not more than forty-five (45) days prior to submission of Form ADV.
3. Where the adviser has custody of client funds or securities or requires payment of advisory fees six (6) months or more in advance and in excess of Twelve Hundred Dollars (\$1,200.00), each balance sheet filed pursuant to this Rule must be:
  - a. Audited in accordance with Rule 6.11(C)(1)-(3);
  - b. Dated no more than forty-five (45) days prior to submission of Form ADV; and
  - c. If the audited balance sheet is dated more than forty-five (45) days prior to submission of Form ADV, a current certified unaudited balance sheet must also be submitted.
  - d. An adviser in existence less than a year at the time of initial filing must submit a current certified unaudited balance sheet accompanied by a designation of the accountant who will perform the applicant's first annual audit.
4. A copy of the surety bond required by Rule 6.07, if applicable;
5. Copies of all standard advisory contracts;
6. A list of persons, including their CRD numbers, whom the adviser intends to register as investment adviser representatives in this state; and
7. Any other information the Division may reasonably require.

- B. *Annual Renewal.* The application for annual renewal registration as an investment adviser shall be filed electronically with IARD and shall include the fee required by Rule 4.15. The application for annual renewal registration shall also include, if applicable, a copy of the surety bond required by Rule 6.07 and financial statements required by Rule 6.11 to be filed directly with the Division.
- C. *Updates and 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.
1. Events requiring notification shall include, but are not limited to, those described in Rule 6.17.
  2. An investment adviser must file electronically with IARD any amendments to the investment adviser's Form ADV.
  3. An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment.
  4. Within ninety (90) days of the end of the investment adviser's fiscal year, an investment adviser must file electronically with IARD an Annual Updating Amendment to the Form ADV.
- D. *Withdrawal of Investment Adviser Registration.*
1. Withdrawal of registration as an investment adviser shall be completed by filing Form ADV-W electronically with IARD.
  2. Any investment adviser who is no longer in existence or is not engaged in business as an investment adviser shall, within thirty (30) days of such cessation, file Form ADV-W electronically with IARD.
- E. *Completion of Filing.*
1. An application for initial or renewal registration is not considered filed for purposes of Section 75-71-403(a) of the Act until the required fee and all required submissions have been received by the Division.
  2. The Division is not required to issue a certification, license, or permit.

Source: Miss. Code Ann. §§ 75-71-403(a), -406 (2020).

*Rule 6.07 Bonding Requirements for Investment Advisers.*

- A. Every investment adviser registered or required to be registered under the Act having custody of or discretionary authority over client funds or securities shall be bonded in an amount determined by the Division based upon the number of clients and the total assets under management of the investment adviser and which shall be at a minimum of Thirty Thousand Dollars (\$30,000.00) for investment advisers having custody of client funds, or requiring payment of advisory fees six (6) months or more in advance and in excess of Twelve Hundred Dollars (\$1,200.00), and Ten Thousand Dollars (\$10,000.00) for investment advisers with discretionary authority over client funds.
- B. Any bond required by this Rule shall be issued by a company qualified to do business in this state in the form determined by the Division and shall be subject to the claims of all clients of such investment adviser regardless of the client's state of residence.
- C. The requirements of this Rule shall not apply to those applicants or registrants who comply with the minimum financial requirements of Rule 6.09.
- D. An investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of Subsection (A) of this Rule, provided that the investment adviser is registered or licensed 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 and/or minimum financial requirements.

Source: Miss. Code Ann. § 75-71-411(e) (2020).

*Rule 6.09 Minimum Financial Requirements for Investment Advisers.*

- A. An investment adviser registered or required to be registered under the Act who has custody of client funds or securities or requires payment of advisory fees six (6) months or more in advance and in excess of Twelve Hundred Dollars (\$1,200.00) shall maintain at all times a minimum net worth of Thirty-Five Thousand Dollars (\$35,000.00) except:
  - 1. An investment adviser posts a bond pursuant to Rule 6.07.
  - 2. Pursuant to these Rules, an investment adviser is otherwise exempted from complying with the bonding and net worth requirements.
- B. An 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 Ten Thousand Dollars (\$10,000.00) except:
  - 1. An investment adviser posts a bond pursuant to Rule 6.07.

2. Pursuant to these Rules, an investment adviser is otherwise exempted from complying with the bonding and net worth requirements.
- C. An investment adviser registered or required to be registered under the Act shall maintain at all times a positive net worth.
- D. Unless otherwise exempted, as a condition of the right to transact business in this state, 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 net worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next business day a report with the Division of its financial condition, including the following:
1. A trial balance of all ledger accounts;
  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.
- E. **Net Worth**, for the purposes of this Rule, 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 assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature; home, home furnishings, 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.
- F. **Discretionary Authority**, for the purposes of this Rule, 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.
- G. For the purposes of this Rule, an investment adviser shall not be deemed to be exercising discretion when it places trade orders with a broker-dealer pursuant to a third-party trading agreement if:
1. The investment adviser has executed a separate investment adviser contract exclusively with its client which acknowledges that a third-party trading agreement will be executed to allow the investment adviser to effect securities transactions for the client in the client's broker-dealer account;

2. The investment adviser contract specifically states that the client does not grant discretionary authority to the investment adviser and the investment adviser in fact does not exercise discretion with respect to the account; and
  3. A third-party trading agreement is executed between the client and a broker-dealer which specifically limits the investment adviser's authority in the client's broker-dealer account to the placement of trade orders and deduction of investment adviser fees.
- H. The Division may require that a current appraisal be submitted in order to establish the worth of any asset.
- I. Every investment adviser that has its principal place of business in a state other than this state shall maintain only such minimum net worth as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is registered or licensed in such state and is in compliance with such state's minimum capital requirements.

Source: Miss. Code Ann. § 75-71-411(a) (2020).

*Rule 6.11 Financial Reporting for Investment Advisers.*

- A. Every investment adviser that has its principal place of business in a state other than this state shall file only such reports as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is registered or licensed in such state and is in compliance with such state's financial reporting requirement.
- B. Unless an investment adviser is otherwise exempted from complying with the financial reporting requirements of this Rule, every registered investment adviser who has custody of client funds or securities or requires payment of advisory fees six (6) months or more in advance and in excess of Twelve Hundred Dollars (\$1,200.00) for any client shall annually file with the Division an audited balance sheet as of the end of the investment adviser's most recent fiscal year.
- C. The audited balance sheet filed pursuant to this Rule must be:
1. Examined and prepared in conformity with generally accepted accounting principles;
  2. Audited by an independent certified public accountant;

3. Accompanied by an opinion of the accountant as to the report of financial position, and by a note stating the principles used to prepare it, the basis of included securities, and any other explanations required for clarity; and
  4. Filed with the Division within ninety (90) days following the end of the investment adviser's fiscal year.
- D. The Division may reasonably require additional financial documentation to assess the financial soundness of the investment adviser.

Source: Miss. Code Ann. § 75-71-411(b) (2020).

*Rule 6.13 Investment Adviser Representative: Registration, Renewal, and Withdrawal Requirements.*

A. *Examination Requirements.*

1. An investment adviser representative shall take and pass within the two (2) year period immediately preceding the date of the application:
  - a. The Uniform Investment Adviser State Law Examination (S65); or
  - b. The Uniform Combined State Law Examination (S66) and the General Securities Representative Examination (S7).
2. Any individual who is registered as an investment adviser representative in any jurisdiction in the United States on or before January 1, 2000, and has not had a continuous two (2) year break of registration as an investment adviser representative thereafter shall not be required to satisfy the examination requirements set forth in Subsection(A)(1) of this Rule.
3. Any individual who has been registered as an investment adviser representative in any jurisdiction in the United States requiring the licensing, registration, and qualification of investment adviser representatives within the two (2) year period immediately preceding the date of filing an application shall not be required to comply with the examination requirement set forth in Subsection (A)(1) of this Rule.
4. The examination requirements shall not apply to any individual who provides proof of holding and maintaining a current professional designation in good standing from one of the following:
  - a. CERTIFIED FINANCIAL PLANNER <sup>TM</sup>/CFP <sup>®</sup> certification awarded by the Certified Financial Planner Board of Standards, Inc.

- b. Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania.
  - c. Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants.
  - d. Chartered Financial Analyst (CFA) awarded by the CFA Institute.
  - e. Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.
  - f. Such other professional designation as the Division may by order recognize.
5. The Division may require additional examinations for any individual found to have violated the Act.
6. *Loss of Professional Designations.* An investment adviser representative exempt from examination requirements under Subsection (A)(4) above who subsequently loses or allows the lapse of such professional designation shall provide written notice to the Division immediately upon loss or lapse of such designation. Upon loss or lapse, the representative is no longer exempt, and his registration may be summarily suspended.
- B. *Initial Application.* The application for initial registration as an investment adviser representative pursuant to Section 75-71-404(a) of the Act shall be made by:
- 1. Filing Form U4 (Uniform Application for Securities Industry Registration or Transfer) electronically with IARD and paying the applicable registration fee required by Rule 4.15; and
  - 2. Providing proof of compliance with the examination requirements of Subsection (A) of this Rule.
- C. *Registration Renewal Requirements.*
- 1. All registrations expire on December 31 of each year.
  - 2. The application for annual renewal registration as an investment adviser representative shall be made by filing electronically with IARD and paying the renewal fee required by Rule 4.15.
- D. *Termination of Investment Adviser Representative Registration.* The application for termination of registration as an investment adviser representative shall be completed by filing Form U5 (Uniform Termination Notice for Securities Industry Registration) electronically with IARD within thirty (30) days of the date of termination.

- E. *Updates and 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.
1. The investment adviser representative is under a continuing obligation to update information required by Form U4 as changes occur.
  2. Events requiring notification shall include, but are not limited to, those described in Rule 6.17.
  3. An investment adviser representative and the investment adviser must electronically file promptly with IARD any amendments to the representative's Form U4.
  4. An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment.
- F. *Completion of Filing.*
1. An application for initial or renewal registration is not considered filed for purposes of Section 75-71-404(a) of the Act until the required fee and all required submissions have been received by the Division.
  2. The Division is not required to issue a certificate, license, or permit.
- G. *Dual Registration.* An investment adviser representative, only under the conditions set forth below, may associate with two (2), but not more than two, investment adviser firms at the same time, provided:
1. The two investment adviser firms are affiliated, and both investment adviser firms agree in writing on the form prescribed by the Division ("Joint Supervisory Agreement") to assume full supervisory responsibility for the investment adviser representative; or
  2. The two investment adviser firms are not affiliated, but one of the investment adviser firms is affiliated with a broker-dealer firm with which the investment adviser representative is also registered as a broker-dealer agent, and both investment adviser firms agree in writing on forms prescribed by the Secretary of State to assume full supervisory responsibility for the investment adviser representative.
  3. For purposes of Subsection (G) of this Rule, **affiliated** means one investment adviser or broker-dealer firm controls another investment adviser or broker-

dealer firm, is controlled by another investment adviser or broker-dealer firm, or is under common control with another investment adviser or broker-dealer firm.

Source: Miss. Code Ann. §§ 75-71-404(a)(d), -408(a), -412(e) (2020).

*Rule 6.14 Investment Adviser Representative Continuing Education.*

- A. *Investment Adviser Representative Continuing Education.* Every investment adviser representative registered under Section 75-71-404 of the Act must complete the following continuing education requirements each Reporting Period:
1. *IAR Ethics and Professional Responsibility Requirement.* An investment adviser representative must complete six (6) Credits of IAR Ethics and Professional Responsibility Content offered by an Authorized Provider, with at least three (3) hours covering the topic of ethics; and
  2. *IAR Products and Practice Requirement.* An investment adviser representative must complete six (6) Credits of IAR Products and Practice Content offered by an Authorized Provider.
- B. *Agent of FINRA-Registered Broker-Dealer Compliance.* An investment adviser representative who is also registered as an agent of a FINRA member broker-dealer and who complies with FINRA's continuing education requirements is considered to be in compliance with Subsection (A)(2) for each applicable Reporting Period so long as FINRA continuing education content meets all of the following baseline criteria as determined by NASAA:
1. The continuing education content focuses on compliance, regulatory, ethical, and sales practices standards.
  2. The continuing education content is derived from state and federal investment advisory statutes, rules and regulations, securities industry rules and regulations, and accepted standards and practices in the financial services industry.
  3. The continuing education content requires that its participants demonstrate proficiency in the subject matter of the educational materials.
- C. *Credentialing Organization Continuing Education Compliance.* Credits of continuing education completed by an investment adviser representative who was awarded and currently holds a credential that qualifies for an examination waiver under Rule 6.13 (A)(4) comply with Subsection (A)(1) and (A)(2) of this rule provided all of the following are true:

1. The investment adviser representative completes the credits of continuing education as a condition of maintaining the credential for the relevant Reporting Period.
  2. The credits of continuing education completed during the relevant Reporting Period by the investment adviser representative are mandatory to maintain the credential.
  3. The continuing education content provided by the credentialing organization during the relevant Reporting Period is Approved IAR Continuing Education Content.
- D. *IAR Continuing Education Reporting.* Every investment adviser representative is responsible for ensuring that the Authorized Provider reports the investment adviser representative's completion of the applicable IAR continuing education requirements.
- E. *No Carry-Forward.* An investment adviser representative who completes Credits of continuing education in excess of the amount required for the Reporting Period may not carry forward excess credits to a subsequent Reporting Period.
- F. *Failure to Complete or Report.* An investment adviser representative who fails to comply with this rule by the end of a Reporting Period will renew as "CE Inactive" at the close of the calendar year in this state until the investment adviser representative completes and reports all required continuing education Credits for all Reporting Periods as required by this rule. An investment adviser who is CE inactive at the close of the next calendar year is not eligible for investment adviser representative registration or renewal of an investment adviser representative registration.
- G. *Discretionary Waiver by the Administrator.* The administrator may, in its discretion, waive any requirements of this rule.
- H. *Home State.* An investment adviser representative registered or required to be registered in this state who is registered as an investment adviser representative in the individual's Home State is considered to be in compliance with this rule provided that both of the following are true:
1. The investment adviser representative's Home State has continuing education requirements that are at least as stringent as the NASAA Model Rule on Investment Adviser Representative Education.
  2. The investment adviser representative is in compliance with the Home State's investment adviser representative continuing education requirements.
- I. *Unregistered Periods.* An investment adviser representative who was previously registered under the Act and became unregistered must complete continuing education for all reporting periods that occurred between the time that the investment adviser

representative became unregistered and when the person became registered again under the Act unless the investment adviser representative takes and passes the examination or receives an examination waiver as required by Rule 6.13 in connection with the subsequent application for registration.

J. *Definitions.* As used in this rule, the following terms mean:

1. **Approved IAR Continuing Education Content** means the materials, written, oral, or otherwise that have been approved by NASAA or its designee and which make up the educational program provided to an investment adviser representative under this rule.
2. **Authorized Provider** means a person that NASAA or its designee has authorized to provide continuing education content required by this rule.
3. **Credit** means a unit that has been designated by NASAA or its designee as at least 50 minutes of educational instruction.
4. **Home State** means the state in which the investment adviser representative has its principal office and place of business.
5. **IAR Ethics and Professional Responsibility Content** means Approved IAR Continuing Education Content that addresses an investment adviser representative's ethical and regulatory obligations.
6. **IAR Products and Practice Content** means Approved IAR Continuing Education Content that addresses an investment adviser representative's continuing skills and knowledge regarding financial products, investment features, and practices in the investment advisory industry.
7. **Reporting Period** means one twelve-month (12) period as determined by NASAA. An investment adviser representative's initial Reporting Period with this state commences the first day of the first full Reporting Period after the individual is registered or required to be registered with this state.

Source: Miss. Code Ann. §§ 75-71-406, -411 (2020).

*Rule 6.15 Notice Filing Requirements for Federal Covered Advisers.*

- A. *Notice Filing.* The notice filing for a federal covered investment adviser pursuant to Section 75-71-405(a) of the Act shall be filed electronically with IARD on an executed Form ADV (Uniform Application for Investment Adviser Registration). A notice filing of a federal covered investment adviser shall be deemed filed when the fee required by Rule 4.15 and the Form ADV are filed electronically with and accepted by IARD on behalf of the Division.

- B. *Form ADV Part 2.* The Division may:
1. Accept a copy of Part 2 of Form ADV as filed electronically with IARD; or
  2. Deem Part 2 of Form ADV filed 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 Form ADV to be filed, a federal covered investment adviser is not required to submit Part 2 of Form ADV to the Division unless requested.
- C. *Renewal.* The annual renewal of the notice filing for a federal covered investment adviser pursuant to Section 75-71-405(c) of the Act shall be filed electronically with IARD. The renewal of the notice filing for a federal covered investment adviser shall be deemed filed when the fee required by Rule 4.15 is filed with and accepted by IARD on behalf of the Division.
- D. *Updates and Amendments.* A federal covered investment adviser must file electronically with IARD any amendments to the federal covered investment adviser's Form ADV.
- E. *Terminations and Withdrawals.* Terminations and withdrawals of notice filings shall be completed by following the instructions on Form ADV-W and filing Form ADV-W with IARD.
- F. A federal covered investment adviser may submit a notice filing for a successor, whether or not the successor is then in existence, for the unexpired portion of the notice filing. There shall be no filing fee.

Source: Miss. Code Ann. §§ 75-71-405(a), -407(a) (2020).

*Rule 6.17 Change of Material Information; Amendment.* 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 this state. 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, investment adviser representative, principal, officer, and/or employee as a defendant or respondent in one or 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, certification, registration, or charter;
    - b. The imposition of a fine or other penalty; or
    - c. An expulsion or barring from membership in a self-regulatory association or organization; or
  - 6. Judgements, liens, and bankruptcy filing proceedings.

Source: Miss. Code Ann. § 75-71-406(b) (2020).

*Rule 6.19 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 disbursement 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 or 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 book, 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, and internal audit working papers relating to the investment adviser's business.
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 ten (10) persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if the notice, circular or advertisement is distributed to persons

named on any list, the investment adviser shall retain with the copy of the notice, circular, or advertisement a memorandum describing the list and its source.

8. A list or other record of all accounts which identifies the accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities, or transactions of any client.
9. A copy of all powers of attorney and other evidence 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 (2) or more persons (other than persons connected with the investment adviser). 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 shall also be included.
12. 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.
  - a. 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 ten (10) days after the end of the calendar quarter in which the transaction was effected.
  - b. The investment adviser or advisory representative shall not be required to keep records of:

- 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.
  - c. For purposes of Subsection (A)(12) of this Rule the following definitions will apply:
    - i. 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:
      - (A) Any person in a control relationship to the investment adviser,
      - (B) Any affiliated person of a controlling person, and
      - (C) Any affiliated person of an affiliated person.
    - ii. **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 twenty-five percent (25%) 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 Subsection (A)(12) of this Rule 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 promptly obtain reports of all transactions required to be recorded.
13. Notwithstanding the provisions of Subsection (A)(12) above, where the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, 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.

- a. The investment adviser or any advisory representative shall not be required to keep records of:
  - 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 ten (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 (3) fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived, on an unconsolidated basis, more than fifty percent (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 the purposes of Subsection (A)(13) of this Rule, the following definitions will apply:

- i. 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. The term shall also apply to

any of the follow 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:

- (A) Any person in a control relationship to the investment adviser;
- (B) Any affiliated person of a controlling person; and
- (C) Any affiliated person of an affiliated person.

ii. **Control** shall mean the power to exercise a controlling influence over the management 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 twenty-five percent (25%) 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 Subsection (A)(13) of this Rule 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 promptly obtain reports of all transactions required to be recorded.

14. A copy of each written statement, amendment, or revision given or sent to any client or prospective client of the investment adviser in accordance with the provisions of Rule 6.29 and a record of the dates that each written statement, amendment, or revision was 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 in compliance if such documents are in compliance with Rule 6.31.

For the purposes of this Rule, the term **Solicitor** is defined in Rule 6.31(A).

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 (2) 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 Subsection.
17. A file containing a copy of all written communications received or sent (1) regarding any litigation involving the investment adviser or any investment adviser representative or employee and (2) 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 that 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 Subsection (A)(12)(b) of this Rule. The 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; Each amendment to Disclosure 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. When the adviser inadvertently held or obtained a client's securities or funds and returned them to the client within three (3) business days of receiving them or has forwarded checks drawn by clients and made payable to third parties within three (3) business days of receipt, the adviser will be considered as not having custody but shall keep the following records:

- a. For receipt of client securities or funds, a ledger or other listing of all securities or funds received and returned, including the following information:
  - i. Issuer;
  - ii. Type of security and series;
  - iii. Date of issue;
  - iv. For debt instruments, the denomination, interest rate, and maturity date;
  - v. Certificate number, including alphabetical prefix or suffix;
  - vi. Name in which registered;
  - vii. Date received by the adviser;
  - viii. Date returned to client or sender;
  - ix. Form of delivery to client or sender, or copy of the form of delivery to client or sender;
  - x. Mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.
- b. For checks made payable to a third party, a ledger or other listing of all checks received and forwarded, including the following information:
  - i. Payor;
  - ii. Type of check (personal, corporate, etc.);
  - iii. Date of check;
  - iv. Amount of check;
  - v. Check number;
  - vi. Payee;
  - vii. Date received by the adviser;
  - viii. Date forwarded to the third party;

- ix. Form of delivery to client or sender, or copy of the form delivery to client or sender; and
  - x. Mail confirmation number, if applicable, or confirmation by the third party of the check's receipt.
  - xi. A copy of the check will suffice for items (b)(i)-(vi) above.
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 6.35(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, the records required to be made and kept under Subsection (A) of this Rule shall also include:
  - a. A copy of any and all documents executed by the client (including 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 accounts;
  - c. A separate ledger account for each client showing all purchases, sales, receipts, and deliveries of securities, as well as 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; such 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, as well as financial statements and a 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; and
  - 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 6.35(D)(2), the adviser shall also keep the following records:
  - a. True, accurate, and current account statements;
  - b. Where the adviser complies with Rule 6.35(B)(4), 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 financials to all limited partners, members, or other beneficial owners within one hundred twenty (120) days of the end of its fiscal year.
- 3. Where the adviser complies with Rule 6.35(A)(5)(b), the records required to be made and kept shall include:
  - a. A copy of the written agreement with the independent party reviewing all fees and expenses, indicating the responsibilities of the independent third party; and
  - b. Copies of all invoices and receipts showing approval by the independent party for payment through the qualified custodian.
- 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 for each separate client the securities purchased and sold as well as 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 Section (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 Subsections (A) through (C) of this Rule (except for books and records required to be made under the provisions of Subsections (A)(11) and (A)(16)), shall be maintained and preserved in an easily accessible place for a period of not less than five (5) years from the end of the fiscal year during which the last entry was made on record. The first two (2) years they shall be kept 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 (3) years after termination of the enterprise.
  3. Books and records required to be made under the provisions of Subsections (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 (5) years, the first two (2) 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 Subsections (A) (17)-(20) of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five (5) years from the end of the fiscal year during which the last entry was made on such record or for the time period during which the investment adviser was registered or required to be registered

in the state, if less. The first two (2) years they shall be kept in the principal office of the investment adviser.

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 Subsections (A)(3), (7)-(10), (14)-(15), (17)-(19); (B); and (C) of this Rule, inclusive; and
  - b. The records or copies required under the provision of Subsections (A)(11) and (A)(16) when such records or related records identify the name of the investment adviser representative providing investment advice from that business location, or 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 this Subsection (E).
- F. An investment adviser subject to Subsection (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 it 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. Pursuant to this Rule, the records required to be maintained and preserved may be immediately produced or reproduced, and maintained and preserved for the required time, by an investment adviser on:
    - a. Paper or hard copy form, as those records are kept in their original form; or
    - b. Micrographic media, including microfilm, microfiche, or any similar medium; or
    - c. Electronic storage media, including any digital storage medium or system that meets the terms of this Rule.
  2. The investment adviser must:
    - a. Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

- b. Provide promptly any of the following that the Division (by its examiners or other representatives) may request:
        - i. A legible, true, and complete copy of the record in the medium and format in which it is stored;
        - ii. A legible, true, and complete printout of the record; and
        - iii. Means to access, view, and print the records; and
      - c. Separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this Rule.
  - 3. In the case of records created or maintained on electronic storage media, the investment adviser must establish and maintain procedures:
    - a. To maintain and preserve the records so as to reasonably safeguard them from loss, alteration, or destruction;
    - b. To limit access to the records to properly authorized personnel and the Division (including its examiners and other representatives); and
    - c. To reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.
- H. For the 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 SEC 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 this state shall be exempt from the requirements of this Rule, provided the investment adviser is licensed or registered in such state and is in compliance with such state's recordkeeping requirements.

- K. 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)).

Source: Miss. Code Ann. § 75-71-411(c) (2020).

*Rule 6.21 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 its clients are to be effected through one (1) 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.

Source: Miss. Code Ann. §§ 75-71-411(c)(1), -411(f) (2020).

*Rule 6.23 Compliance-Supervision.*

- A. It is unlawful for an investment adviser registered or required to be registered pursuant to the Act to provide investment advice to clients unless the investment adviser establishes, maintains, and enforces written policies and procedures tailored to the investment adviser's business model, taking into account the size of the firm, type(s) of services provided, and the number of locations of the investment adviser. The written policies and procedures must provide for at least the following:
  - 1. *Compliance Policies and Procedures.* The investment adviser must establish, maintain, and enforce written compliance policies and procedures reasonably designed to prevent and detect any violations of the Act and Rules promulgated thereunder.
  - 2. *Supervisory Policies and Procedures.* The investment adviser must establish, maintain, and enforce written supervisory policies and procedures reasonably

designed to prevent violations by the investment adviser's supervised persons of the Act and the Rules promulgated thereunder.

3. *Proxy Voting Policies and Procedures.*

- a. If the investment adviser has the authority to vote client securities:
  - i. The investment adviser must establish, maintain, and enforce written proxy voting policies and procedures that are reasonably designed to ensure that the investment adviser votes client securities in the best interest of clients. These procedures must include how the investment adviser addresses material conflicts that may arise between its interests and those of the investment adviser's clients;
  - ii. Disclose to clients how they may obtain information from the investment adviser about how it voted with respect to their securities; and
  - iii. Describe to clients the investment adviser's proxy voting policies and procedures and, upon request, furnish a copy of the policies and procedures to the requesting client.
- b. If the investment adviser does not have the authority to vote client securities, then this information must be disclosed to clients.

4. *Physical Security and Cybersecurity Policies and Procedures.* The investment adviser must establish, implement, update, and enforce written physical security and cybersecurity policies and procedures reasonably designed to ensure the confidentiality, integrity, and availability of physical and electronic records and information. The policies and procedures must be tailored to the investment adviser's business model, taking into account the size of the firm, type(s) of services provided, and the number of locations of the investment adviser.

- a. The physical security and cybersecurity policies and procedures must:
  - i. Protect against reasonably anticipated threats or hazards to the security or integrity of client records and information;
  - ii. Ensure that the investment adviser safeguards confidential client records and information; and
  - iii. Protect any records and information the release of which could result in harm or inconvenience to any client.
- b. The physical security and cybersecurity policies and procedures must cover at least five functions:

- i. *Identify*. Develop the organizational understanding to manage information security risk to systems, assets, data, and capabilities.
    - ii. *Protect*. Develop and implement the appropriate safeguards to ensure delivery of critical infrastructure services.
    - iii. *Detect*. Develop and implement the appropriate activities to identify the occurrence of an information security event.
    - iv. *Respond*. Develop and implement the appropriate activities to take action regarding a detected information security event; and
    - v. *Recover*. Develop and implement the appropriate activities to maintain plans for resilience and to restore any capabilities or services that were impaired due to an information security event.
  - c. *Privacy Policy*. The investment adviser must deliver upon the investment adviser's engagement by a client, and on an annual basis thereafter, a privacy policy to each client that is reasonably designed to aid in the client's understanding of how the investment adviser collects and shares, to the extent permitted by state and federal law, non-public personal information. The investment adviser must promptly update and deliver to each client an amended privacy policy if any of the information in the policy becomes inaccurate.
5. *Material Nonpublic Information Policy and Procedures*. The investment adviser must establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by the investment adviser or any person associated with the investment adviser.
6. *Business Continuity and Succession Plan*. The investment adviser must establish, maintain, and enforce written policies and procedure relating to a business continuity and succession plan. The plan must provide for at least the following:
- a. The protection, backup, and recovery of books and records.
  - b. Alternate means of communications with customers, key personnel, employees, vendors, service providers (including third-party custodians), and regulators, including, but not limited to, providing notice of a significant business interruption or the death or unavailability of key personnel or other disruptions or cessation of business activities.
  - c. Office relocation in the event of temporary or permanent loss of a principal place of business.

- d. Assignment of duties to qualified responsible persons in the event of the death or unavailability of key personnel.
  - e. Otherwise minimizing service disruptions and client harm that could result from a sudden significant business interruption.
- B. Annual Review. The investment adviser must review, no less frequently than annually, the adequacy of the policies and procedures established pursuant to this section and the effectiveness of their implementation.
  - C. Chief Compliance Officer. The investment adviser must designate a supervised person as the chief compliance officer responsible for administering the investment adviser's policies and procedures.

Source: Miss. Code Ann. §§ 75-71-411 (2020).

*Rule 6.25 Standards of Conduct.* A person who is an investment adviser, an investment adviser representative, or a federal covered investment adviser is a fiduciary and has a duty to act primarily for the benefit of its clients. Acts, conduct, and practices, including, but not limited to, the following, are considered contrary to such duty and may constitute grounds for denial, suspension, revocation of registration, a bar, imposition of fines, or such other action authorized by statute:

- A. Recommending to a client to whom investment advisory, 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, risk tolerance, financial situation, and needs, and any other information known or acquired by the investment adviser investment adviser representative or federal covered investment adviser.
- B. Placing an order to purchase or sell a security for a client's account without authority to do so.
- C. Placing an order to purchase or sell a security for a client's account upon instruction from 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. Lending money to a client unless the investment adviser is a financial institution engaged in the business of lending funds or the client is an affiliate of the investment adviser.
- F. Publishing, circulating or distributing any advertisement which directly or indirectly does any one of the following:
  - 1. Refers to any testimonial of any kind concerning the investment adviser, investment adviser representative or federal covered investment adviser, or concerning any advice, analysis, report, or other service rendered by such investment adviser or investment adviser representative.
  - 2. Refers to past specific recommendations of the investment adviser, investment adviser representative, or federal covered investment adviser that were or would have been profitable to any person; except that an investment adviser or investment adviser representative may furnish or offer to furnish a list of all recommendations made by the investment adviser, investment adviser representative or federal covered investment adviser within the immediately preceding period of not less than one (1) year if the advertisement or list also includes both of the following:
    - a. The name of each security recommended, the date and nature of each recommendation, the market price at that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each such security.
    - b. A legend on the first page in prominent print or type that states that the reader should not assume that recommendations made in the future will be profitable or will equal the performance of the securities in the list.
  - 3. Represents that any graph, chart, formula, or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making that person's own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to its use.
  - 4. Represents that any report, analysis, or other service will be furnished for free or without charge, unless such report, analysis, or other service actually is or will be furnished entirely free and without any direct or indirect condition or obligation.
  - 5. Represents that the Administrator has approved any advertisement.

6. Contains any untrue statement of a material fact, or that is otherwise false or misleading.
  7. For the purposes of this section, the term “advertisement” shall include any notice, circular, letter, or other written communication addressed to more than one person, or any notice or other announcement in any electronic or paper publication, by radio or television, or by any medium, that offers any one of the following:
    - a. Any analysis, report, or publication concerning securities.
    - b. Any analysis, report, or publication that is to be used in making any determination as to when to buy or sell any security or which security to buy or sell.
    - c. Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell.
    - d. Any other investment advisory service with regard to securities.
- G. Failure to enter into, extend, or renew any investment advisory contract with an investment advisory client without a written advisory contract which provides:
1. The services to be provided, the term of the contract, the investment advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of termination or non-performance of the contract, and whether any discretionary power is granted to the investment adviser or investment adviser representative;
  2. That no direct or indirect assignment or transfer of the contract may be made by the investment adviser or investment adviser representative without the consent of the client or other party to the contract;
  3. That the investment adviser or investment adviser representative will not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client; and
  4. That the investment adviser, if a partnership, shall notify the client or other party to the investment contract of any change in the membership of the partnership within a reasonable time after the change.
- H. It is unlawful for any investment adviser or investment adviser representative to:
1. Include in any advisory contract a “hedge clause” or any other language which may lead a client to believe that legal rights have been restricted or waived;

2. Include in an advisory contract any condition, stipulation, or provisions binding any person to waive compliance with any provision of this act or of the Investment Advisers Act of 1940, or any other practice contrary to the provisions of Section 215 of the Investment Advisers Act of 1940; or
  3. Enter into, extend, or renew any advisory contract contrary to the provisions of Section 205 of the Investment Advisers Act of 1940. This provision shall apply to all investment advisers and investment adviser representatives registered or required to be registered under this Act, notwithstanding whether such adviser or representative would be exempt from federal registration pursuant to Section 203(b) of the Investment Advisers Act of 1940.
- I. *Performance Fees.* It is unlawful for any investment adviser or investment adviser representative to enter into, extend, or renew an investment advisory contract which provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds, or any portion of the funds, of the client unless the following conditions are met.
1. The client entering into the contract must be:
    - a. A natural person or a company who, immediately after entering into the contract, has at least Seven Hundred Fifty Thousand Dollars (\$750,000.00) under the management of the investment adviser; or
    - b. A person who the investment adviser and its investment adviser representatives reasonably believe, immediately before entering into the contract, is a natural person or a company whose net worth, at the time the contract is entered into, exceeds One Million Five Hundred Thousand Dollars (\$1,500,000.00). The net worth of a natural person may include assets held jointly with that person's spouse.
  2. The compensation paid to the investment adviser with respect to the performance of any securities over a given period must be based on a formula with the following characteristics:
    - a. In the case of securities for which market quotations are readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940 (Definition of "Current Net Asset Value" for Use in Computing Periodically the Current Price of Redeemable Security), the formula must include the realized capital losses and unrealized capital depreciation of the securities over the period;
    - b. In the case of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940, the formula must include:

- i. The realized capital losses of securities over the period; and
    - ii. If the unrealized capital appreciation of the securities over the period is included, the unrealized capital depreciation of the securities over the period; and
  - c. The formula must provide that any compensation paid to the investment adviser under this Rule is based on the gains less the losses (computed in accordance with Subsections (I)(2)(a) and (b) of this Rule) in the client's account for a period of not less than one (1) year.
3. Before entering into the advisory contract and in addition to the requirements of Form ADV, the investment adviser must disclose in writing to the client or the client's independent agent all material information concerning the proposed advisory arrangement, including the following:
- a. That the fee arrangement may create an incentive for the investment adviser to make investments that are riskier or more speculative than would be the case in the absence of a performance fee;
  - b. Where relevant, that the investment adviser may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's account;
  - c. The periods that will be used to measure investment performance throughout the contract and their significance in the computation of the fee;
  - d. The nature of any index that will be used as a comparative measure of investment performance, the significance of the index, and the reason the investment adviser believes that the index is appropriate; and
  - e. Where the investment adviser's compensation is based in part on the unrealized appreciation of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940, how the securities will be valued and the extent to which the valuation will be independently determined.
4. The investment adviser (and any investment adviser representative) who enters into the contract must reasonably believe, immediately before entering into the contract, that the contract represents an arm's length arrangement between the parties and that the client (or in the case of a client which is a company as defined in Rule 6.25(L)(4), the person representing the company), alone or together with the client's independent agent, understands the proposed method of compensation and its risks. The representative of a company may be a

partner, director, officer, employee of the company or the trustee, where the company is a trust, or any other person designated by the company or trustee, but must satisfy the definition of client's independent agent set forth in Rule 6.25(L)(3).

- J. Any person entering into or performing an investment advisory contract under this Rule is not relieved of any obligations under Section 75-71-502(b) of the Act or any other applicable provision of the Act or any rule or order thereunder.
- K. Nothing in this Rule shall relieve a client's independent agent from any obligation to the client under applicable law.
- L. The following definitions apply for the purposes of this Rule:
  - 1. **Affiliate** shall have the same definition as in Section 2(a)(3) of the Investment Company Act of 1940.
  - 2. **Assignment**, as used in Subsection (G)(2) of this Rule, includes, but is not limited to, any transaction or event that results in any change to the individuals or entities with the power, directly or indirectly, to direct the management or policies of or to vote more than fifty percent (50%) of any class of voting securities of, the investment adviser or federal covered investment adviser as compared to the individuals or entities who had such power as of the date when the contract was first entered into, extended or renewed.
  - 3. **Client's Independent Agent** means any person who agrees to act as an investment advisory client's agent in connection with the contract; the definition does not include:
    - a. The investment adviser relying on this Rule;
    - b. An affiliated person of the investment adviser or an affiliated person of an affiliated person of the investment adviser including an investment adviser representative;
    - c. An interested person of the investment adviser;
    - d. A person who receives, directly or indirectly, any compensation in connection with the contract from the investment adviser, an affiliated person of the investment adviser, an affiliated person of an affiliated person of the investment adviser or an interested person of the investment adviser; or
    - e. A person with any material relationship between himself (or an affiliated person of that person) and the investment adviser (or an affiliated person

of the investment adviser) that exists or has existed at any time during the past two (2) years.

4. **Company** means a corporation, partnership, association, joint stock company, trust, any organized group of persons, whether incorporated or not, or any receiver, trustee in a case under Title 11 of the United States Code, or similar official or any liquidating agent for any of the foregoing, in his capacity as such. The term shall not include:
  - a. A company required to be registered under the Investment Company Act of 1940 but which is not so registered;
  - b. A private investment company (for purposes of this Subsection (L)(4)(b), a private investment company is a company which would be defined as an investment company under Section 3(a) of the Investment Company Act of 1940 but for the exception from that definition provided by Section 3(c)(1) of that Act);
  - c. An investment company registered under the Investment Company Act of 1940; or
  - d. A business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940, unless each of the equity owners of any such company, other than the investment adviser entering into the contract, is a natural person or a company within the meaning of Subsection (L)(4) of this Rule.
5. **Interested Persons** means:
  - a. Any member of the immediate family of any natural person who is an affiliated person of the investment adviser;
  - b. A business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940, unless each of the equity owners of any such company, other than the investment adviser entering into the contract, is a natural person or a company within the meaning of Subsection (L)(4) of this Rule.
    - i. One-tenth (1/10) of one percent (1%) of any class of outstanding securities of the investment adviser or a controlling person of the investment adviser; or
    - ii. Five percent (5%) of the total assets of the person seeking to act as the client's independent agent; or

- c. Any person or partner or employee of any person who, at any time since the beginning of the last two (2) fiscal years, has acted as legal counsel for the investment adviser.
- M. 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 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.
- N. 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.
- O. Misrepresenting to any client or prospective client the qualifications of the investment adviser, investment adviser representative, federal covered investment adviser, or any employee or person affiliated with the investment adviser, investment adviser representative, or federal covered investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or to omit 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.
- P. Providing a report or recommendation to any client prepared by someone other than the investment adviser, investment adviser representative, or federal covered investment adviser without disclosing that fact. This prohibition does not apply to a situation where the investment adviser, investment adviser representative, or federal covered investment adviser uses published research reports or statistical analyses to render advice or where an investment adviser, investment adviser representative, or federal covered investment adviser orders such a report in the normal course of providing service.
- Q. 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.
- R. Failing to disclose to clients in writing before any advice is rendered, any material conflict of interest relating to the investment adviser, investment adviser representative, or federal covered investment adviser, or any employees of the same, or affiliated persons which could reasonably be expected to impair the rendering of unbiased and objective advice including, but not limited to:
  - 1. Compensation arrangements connected with advisory services to clients that are in addition to compensation from such clients for such services; and

2. Charging a client an investment advisory fee for rendering investment advice when compensation for effecting securities transactions pursuant to such advice will be received by the investment adviser, investment adviser representative, or federal covered investment adviser, or its employees, or affiliated persons.
- S. Guaranteeing a client that a specific result will be achieved with advice rendered.
- T. Disclosing the identity, investments, or other financial information of any client or former client to a third party unless required by law to do so or unless consented to by the client or former client.
- U. 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 Subsections 6.35(A)(1) through (7).
- V. Paying a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities in a manner which does not comply with Rule 6.31.
- W. 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 hereafter amended.
- X. While acting as principal for its own advisory account, to knowingly sell any security to or purchase any security from a client, or while acting as broker-dealer for a person other than the client, to knowingly effect any sale or purchase of any security for the account of the client, without disclosing to the client in writing before the completion of the transaction the capacity in which it is acting and obtaining the client's consent to the transaction.
1. The prohibitions of this Subsection shall not apply to any transaction with a customer of a broker-dealer if the broker-dealer is not acting as an investment adviser in relation to the transaction.
  2. The prohibitions of this Subsection shall not apply to any transaction with a customer of a broker-dealer if the broker-dealer acts as an investment adviser solely:
    - a. By means of publicly distributed written materials or publicly made oral statements;
    - b. By means of written materials or oral statements not purporting to meet the objectives or needs of specific individuals or accounts;

- c. Through the issuance of statistical information containing no expressions of opinion as to the investment merits of a particular security; or
  - d. Any combination of the foregoing services.
- 3. Publicly distributed written materials or publicly made oral statements shall disclose that if the purchaser of the advisory communication uses the investment adviser's services in connection with the sale or purchase of a security which is a subject of the communication, the investment adviser may act as principal for its own account or as agent for another person. Compliance by the investment adviser with the foregoing disclosure requirement shall not relieve it of any other disclosure obligations under the Act.
- 4. The following definitions apply for purposes of this Rule:
  - a. **Publicly Distributed Written Materials** means written materials which are distributed to thirty-five (35) or more persons who pay for those materials.
  - b. **Publicly Made Oral Statements** means oral statements made simultaneously to thirty-five (35) or more persons who pay for access to those statements.
- 5. The prohibitions of this Rule shall not apply to an investment adviser effecting an agency cross transaction for an advisory client provided the following conditions are met:
  - a. The advisory client executes a written consent prospectively authorizing the investment adviser to effect agency cross transactions for such client;
  - b. Before obtaining such written consent from the client, the investment adviser makes full written disclosure to the client that, with respect to agency cross transactions, the investment adviser will act as broker-dealer for, receive commissions from, and have a potentially conflicting division of loyalties and responsibilities regarding both parties to the transactions;
  - c. At or before the completion of each agency cross transaction, the investment adviser or any other person relying on this Rule sends the client a written confirmation. The written confirmation shall include:
    - i. A statement of the nature of the transaction;
    - ii. The date the transaction took place;
    - iii. An offer to furnish, upon request, the time when the transaction took place; and

- iv. The source and amount of any other remuneration the investment adviser received or will receive in connection with the transaction. In the case of a purchase, if the investment adviser was not participating in a distribution, or, in the case of a sale, if the investment adviser was not participating in a tender offer, the written confirmation may state whether the investment adviser has been receiving or will receive any other remuneration and that the investment adviser will furnish the source and amount of such remuneration to the client upon the client's written request;
  - d. At least annually, and with or as part of any written statement or summary of the account from the investment adviser, the investment adviser or any other person relying on this Rule sends each client a written disclosure statement identifying:
    - i. The total number of agency cross transactions during the period for the client since the date of the last such statement or summary; and
    - ii. The total amount of all commissions or other remuneration the investment adviser received or will receive in connection with agency cross transactions for the client during the period.
6. Each written disclosure and confirmation required by this Rule must include a conspicuous statement that the client may revoke the written consent required under Subsection (X)(5)(a) of this Rule at any time by providing written notice to the investment adviser.
7. No agency cross transaction may be effected in which the same investment adviser recommended the transaction to both any seller and any purchaser.
8. For purposes of this Rule, **agency cross transaction for an advisory client** means a transaction in which a person acts as an investment adviser in relation to a transaction in which the investment adviser, or any person controlling, controlled by, or under common control with such investment adviser, including an investment adviser representative, acts as a broker-dealer for both the advisory client and another person on the other side of the transaction. When acting in such capacity, such person is required to be registered as a broker-dealer in this state unless excluded from the definition.
9. Nothing in this Rule shall be construed to relieve an investment adviser or investment adviser representative from acting in the best interests of the client, including fulfilling his duty with respect to the best price and execution for the particular transaction for the client, nor shall it relieve any investment adviser or investment adviser representative of any other disclosure obligations imposed by the Act.

- Y. Failing to establish, maintain, and enforce written policies and procedures reasonable designed to prevent the misuse of material nonpublic information in violation of Section 204A of the Investment Advisers Act of 1940.
- Z. 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.
- AA. 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.
- BB. Engaging in any act, practice, or course of business which is deceptive, unethical, dishonest, 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.
- CC. Making, in the solicitation of clients, any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statement made, in light of the circumstances under which they are made, not misleading.
- DD. Engaging in other conduct such as forgery, embezzlement, non-disclosure, incomplete disclosure, misstatement of material facts, or manipulative or deceptive practices.
- EE. Accessing a client's account by using the client's own unique identifying information (such as username and password). This rule amendment is not intended to apply to data aggregation software where:
  - 1. The investment adviser does not know, or have access to, the client's password(s),
  - 2. There is an agreement between the data aggregation software company and the custodian(s)/online account platform which permits this "back-door" access; and
  - 3. The data is read-only (i.e., the investment adviser can only view the information and cannot effectuate any changes to the client's underlying account(s)).
  - 4. Failing to establish, maintain, and enforce a required policy or procedure.

Source: Miss. Code Ann. § 75-71-502(b) (2020).

*Rule 6.27 Commingling of Accounts Prohibited.* An investment adviser engaged in more than one (1) enterprise or activity shall maintain separate books of account and records relating to its advisory business. The assets of the advisory 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.

Source: Miss. Code Ann. § 75-71-411(c) (2020).

*Rule 6.29 Brochure Rule.*

- A. *General Requirements.* Unless otherwise provided in this Rule, an investment adviser registered or required to be registered pursuant to Section 75-71-403 of the Act shall, in accordance with the provisions of this section, furnish each advisory client and prospective advisory client with:
1. A brochure which may be a copy of Part 2A of its Form ADV or written documents containing the information required by Part 2A of Form ADV;
  2. A copy of its Part 2B brochure supplement for each individual
    - a. Providing investment advice and having direct contact with clients in this state; or
    - b. Exercising discretion over assets of clients in this state, even if no direct contact is involved;
  3. A copy of its Part 2A Appendix 1 wrap fee brochure if the investment adviser sponsors or participates in a wrap fee account;
  4. A summary of material changes, which may be included in Form ADV Part 2 or given as a separate document; and
  5. Such other information as the Division may require.
  6. The brochure must comply with the language, organizational format, and filing requirements specified in the Instructions to Form ADC Part 2.
- B. *Delivery.*
1. *Initial Delivery.* An investment adviser, except as provided in Subsection (B)(3) of this Rule, shall deliver the Part 2A brochure and any brochure supplements required by this section to a prospective advisory client:
    - a. Not less than forty-eight (48) hours prior to entering into any advisory contract with such client or prospective client; or

- b. At the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract.
- 2. *Annual Delivery.* An investment adviser, except as provided in Subsection (B)(3) of this Rule, must:
  - a. Deliver within one hundred twenty (120) days of the end of its fiscal year a free, updated brochure and related brochure supplements which include or are accompanied by a summary of material changes; or
  - b. Deliver a summary of material changes that includes an offer to provide a copy of the updated brochure and supplements and information on how the client may obtain a copy of the brochures and supplements.
  - c. Advisers do not have to deliver a summary of material changes or a brochure to clients if no material changes have taken place since the last summary and brochure delivery.
- 3. Delivery of the brochure and related brochure supplements required by Subsections (B)(1) and (2) of this Rule need not to be made to:
  - a. Clients who receive only impersonal advice and who pay less than \$500 in fees per year; or
  - b. An investment company registered under the Investment Company Act of 1940; or
  - c. A business development company as defined in the Investment Company Act of 1940 and whose advisory contract meets the requirements of section 15(c) of that Act.
- 4. Delivery of the brochure and related supplements may be made electronically if the investment adviser:
  - a. In the case of an initial delivery to a potential client, obtains a verification that a readable copy of the brochure and supplements were received by the client;
  - b. In the case of all other deliveries, obtains each client's prior consent to provide the brochure and supplements electronically;
  - c. Prepares the electronically delivered brochure and supplements in the format prescribed in Section (A) and instructions to Form ADV Part 2;

- d. Delivers the brochure and supplements in a format that can be retained by the client in either electronic or paper form; and
  - e. Establishes procedures to supervise personnel transmitting the brochure and supplements and prevent violations of this Rule.
- C. *Other Disclosures.* Nothing in this Rule shall relieve any investment adviser from any obligation pursuant to any provision of the Act or the rules and regulations thereunder or other federal or state law to disclose any information to its advisory clients or prospective advisory clients not specifically required by this Rule.
- D. *Definitions.* For the purpose of this Rule:
  - 1. **Contract for impersonal advisory services** means any contract relating solely to the provision of investment advisory services:
    - a. By means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts;
    - b. Through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or
    - c. Any combination of the foregoing services.
  - 2. Entering into, in reference to an advisory contract, does not include an extension or renewal without material change of any such contract that is in effect immediately prior to such extension or renewal.

Source: Miss. Code Ann. § 75-71-605 (2020).

*Rule 6.31 Solicitor Rule.*

- A. The following definitions apply for purposes of this Rule:
  - 1. **Solicitor** means any individual, person, or entity with a place of business in this state who directly or indirectly receives a cash fee or any other economic benefit for soliciting, referring, offering, or otherwise negotiating for the sale or selling of investment advisory services to clients on behalf of an investment adviser.
  - 2. **Client** includes any prospective client.
- B. It shall be unlawful for any investment adviser, registered or required to be registered, to pay a cash fee or any other economic benefit, directly or indirectly, in connection with solicitation activities unless:

1. The solicitor is registered as an investment adviser representative; and
2. The solicitor to whom a cash fee or any other economic benefit is paid for such referral is not a person:
  - a. Subject to an order of the SEC issued under Section 203(f) of the Investment Advisers Act of 1940;
  - b. Subject to an order of the Mississippi Secretary of State, the securities administrator of any other state, the SEC, or any self-regulatory organization denying, suspending, or revoking registration as a broker-dealer, agent, investment adviser, or investment adviser representative barring the person from the securities or advisory industry or associating or affiliating with the securities or advisory industry, entered after notice and opportunity for hearing;
  - c. Convicted within the previous ten (10) years of any felony;
  - d. Convicted within the previous ten (10) years of any misdemeanor involving conduct described in Section 203(e)(2)(A) through (D) of the Investment Advisers Act of 1940;
  - e. Convicted within the previous ten (10) years of any misdemeanor involving conduct described in Section 75-71-412(d)(3) of the Act;
  - f. Found by the SEC to have engaged, or has been convicted of engaging in, any of the conduct specified in Section 203(e)(1), (5), or (6) of the Investment Advisers Act of 1940;
  - g. Found by the Secretary of State to have engaged, or has been convicted of engaging in, any of the conduct specified in Sections 75-71-412(d)(1), (2), and (6) of the Act;
  - h. Subject to an order, judgement, or decree described in Section 203(e)(4) of the Investment Advisers Act of 1940; or
  - i. Subject to an order, judgement, or decree described in Section 75-71-412(d)(4) of the Act; and
3. The cash fee or any other economic benefit is paid by the investment adviser with respect to solicitation activities that are impersonal in nature in that they are provided solely by means of:
  - a. Written material or oral statements which do not purport to meet the objectives or needs of the specific client;

- b. Statistical information containing no expressions of opinions as to the merits of particular securities or investment advisers; or
  - c. Any combination of the foregoing services; and
- 4. The cash fee or any other economic benefit is paid pursuant to a written agreement to which the investment adviser is a party and all of the following conditions are met:
  - a. The written agreement:
    - i. Describes the solicitation or referral activities to be engaged in by the solicitor on behalf of the investment adviser and the cash fee or any other economic benefit to be received for such activities;
    - ii. Contains an undertaking by the solicitor to perform its duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of the Act and Rules thereunder; and
    - iii. Requires that the solicitor, at the time of any solicitation or referral activities for which a cash fee or any other economic benefit is paid or to be paid by the investment adviser, provide the client with a current copy of the investment adviser's disclosure document required under Subsection (B)(4)(b) of this Rule and a separate disclosure statement as described in Subsection (C) of this Rule.
  - b. The investment adviser receives from the client, prior to or at the time of entering into any written investment advisory contract, a signed and dated acknowledgment of receipt of both the investment adviser's written disclosure statement and the solicitor's written disclosure document; and
  - c. The investment adviser makes a bona fide effort and has a reasonable basis for believing that the solicitor has complied with the agreement.
  - d. The foregoing requirements of Subsections (B)(4)(a), (b), and (c) of this Rule shall not apply where the solicitor is:
    - i. A partner, officer, director, or employee of such investment adviser; or
    - ii. A partner, officer, director, or employee of a person that controls, is controlled by, or is under common control with such investment adviser, provided the status of the solicitor is disclosed to the client at the time of the solicitation or referral.

- C. The separate written disclosure document required to be furnished by the solicitor to the client pursuant to Subsection (B)(4)(b) of this Rule shall contain the following information:
1. The name of the solicitor;
  2. The name of the investment adviser;
  3. The nature of the relationship, including any affiliation, between the solicitor and the investment adviser;
  4. A statement that the solicitor will be compensated for solicitation or referral services by the investment adviser;
  5. The terms of the compensation arrangement, including a description of the cash fee or any other economic benefit paid or to be paid to the solicitor; and
  6. The amount of compensation the client will pay, if any, in addition to the advisory fees, and whether the cash fee or any other economic benefit paid to the solicitor will be added to the advisory fee, creating a differential with respect to the amount charged to other advisory clients who are not subject to the solicitor compensation arrangement.
- D. Nothing in this Rule shall be deemed to relieve any person of any fiduciary or other obligation to which such person may be subject under any law.

Source: Miss. Code Ann. §§ 75-71-102(16), -605 (2020).

*Rule 6.33 Reserved.*

*Rule 6.35 Custody of Client Funds or Securities by Investment Advisers.*

- A. *Safekeeping required.* If an investment adviser is registered or required to be registered, it is unlawful for the investment adviser 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 either:

- a. In a separate account for each client under that client's name; or
  - b. In accounts that contain only the adviser's clients' funds and securities, under the adviser's name as agent or trustee for the clients.
3. *Notice to clients.* If an investment adviser opens an account with a qualified custodian on its client's behalf, either under the client's name or under the name of the investment adviser as agent, the investment adviser must notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information.
4. Account statements must be sent to clients, either:
- a. By a qualified custodian. The investment adviser has reasonable basis for believing that the qualified custodian sends an account statement, at least quarterly, to each client for which it maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period; or
  - b. By the investment adviser.
    - i. The investment adviser sends an account statement, at least quarterly, to each client for whom the investment adviser has custody of funds or securities, identifying the amount of funds and of each security of which the investment adviser has 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 special examination report with the Division within thirty (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 (1) 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 the adviser is a general partner of a limited partnership (or managing member of a limited liability company or holds a comparable position for another type of pooled investment vehicle), the account statements required under Subsection (A)(4) of this Rule 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 Subsections (A)(3) and (A)(4) of this Rule.
- 6. *Direct fee deduction.* An adviser who has custody as defined in Subsections (C)(1)(c) of this Rule by having fees directly deducted from client accounts must, in addition to the safekeeping requirements set forth in Subsections (A)(1) through (4) of this Rule, also comply with the following additional 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 an invoice 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 additional safeguards provided above. Such notification is required to be given on Form ADV.
  - d. *Waiver of Bonding, Net Worth, or Financial Reporting Requirements.* An investment adviser having custody solely because it meets the definition of custody as defined in Subsection (C)(1)(c) of this Rule and who complies with the safekeeping requirements in Subsections (A)(1) through (4) of this Rule and employs the additional safeguards of Subsections (A)(6)(a) through (c) of this Rule will not be required to meet the Bonding, Net Worth, and Financial Reporting Requirements for custodial advisers as set forth in Rules 6.07, 6.09, and 6.11.
- 7. *Pooled investments.* An investment adviser who has custody as defined in Subsection (C)(1)(d) of this Rule and who does not meet the exception provided

under Subsection (B)(3) of this Rule must, in addition to the safekeeping requirements set forth in Subsections (A)(1) through (4) of this Rule, also comply with the following additional safeguards:

- 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 the purposes of this Rule, an **Independent Party** means a person who:
    - i. Is engaged by the investment adviser 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 the investment adviser; and
    - iii. Does not have and has not had within the past two (2) years a material business relationship with the investment adviser.
  - d. *Notice of safeguards.* The investment adviser notifies the Division in writing that the investment adviser intends to use the additional safeguards provided above. Such notification is required to be given on Form ADV.
  - e. *Waiver of bonding, net worth, or financial reporting requirements.* An investment adviser having custody solely because it meets the definition of custody as defined in Subsection(C)(1)(d) of this Rule and who complies with the safekeeping requirements in Subsections (A)(1) through (4) of this Rule and the additional safeguards of Subsections (A)(7)(a) through (c) of this Rule will not be required to meet the bonding, net worth, and financial reporting requirements for custodial advisers as set forth in Rules 6.05, 6.07, and 6.09.
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 additional safeguards provided below. Such notification is required to be given on Form ADV.
- b. *Invoice requirement.* The investment 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 the investment adviser, investment adviser representative, or employee, director or owner of the investment adviser) or a defined beneficiary of the trust, at the same time that it sends any invoice to the qualified custodian, an invoice showing the amount of the trustees' fee or investment management or advisory 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 investment 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 the investment adviser, any investment adviser representative or employee, or director or owner of the investment adviser, nor will it transmit any funds to the investment adviser, any investment adviser representative, or employee, director, or owner of the investment adviser, except that the qualified custodian may pay trustees' fees to the trustee and investment management or advisory fees to investment adviser, provided that:
    - (A) The grantor of the trust or attorneys for the trust, if it is a testamentary trust; the co-trustee (other than the investment adviser; investment adviser representative; or employee, director or owner of the investment adviser), or a defined beneficiary of the trust has authorized the qualified custodian in writing to pay those fees;
    - (B) The statements for those fees show the amount of the fees for the trustee and, in the case of statements for investment management or advisory fees, show the value of the trust assets on which the fee is based and the manner in which the fee was calculated; and
    - (C) 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) (other than the investment adviser; investment adviser representative; or

employee, director or owner of the investment 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.* Except as otherwise set forth in Subsection (A)(8)(c)(ii)(A) of this Rule below, that 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; investment adviser representative; or employee, director, or owner of the investment adviser), who the investment adviser has duly accepted as an authorized signatory.

The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co-trustee (other than the investment adviser; investment adviser representative; or employee, director, or owner of the investment 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 only be made to the following:

- (A) 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;
  - (B) To the named grantors or to the named beneficiaries of the trust;
  - (C) To a third party independent of the adviser in payment of the fees or charges of the third person, including, but not limited to, (1) attorney's, accountant's, or custodian's fees for the trust; and (2) taxes, interest, maintenance or other expenses, if there is property other than securities or cash owned by the trust;
  - (D) To third parties independent of the adviser for any other purpose legitimately associated with the management of the trust; or
  - (E) 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 bonding, net worth, or financial reporting requirements.* An investment adviser who has custody solely because it meets the definition of custody as defined in Subsection (C)(1)(d) of this Rule and who complies with the safekeeping requirements in Subsections (A)(1) through

(4) of this Rule and the additional safeguards of Subsections (A)(8)(a) through (c) of this Rule will not be required to meet the bonding, net worth, and financial reporting requirements for custodial advisers as set forth in Rules 6.05, 6.07, and 6.09 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”), the investment adviser may use the mutual fund’s transfer agent in lieu of a qualified custodian for purposes of complying with Subsection (A) of this Rule;
2. *Certain privately offered securities.*
  - a. The investment adviser is not required to comply with Subsection (A) of this Rule 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 Subsection (B)(2)(i) of this Rule, the provisions of Subsection (B)(2) of this Rule 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 Subsection (B)(3) of this Rule and the investment adviser notifies the Division in writing that the investment adviser intends to provide audited financial statements, as described above. Such notification is required to be given on Form ADV.
3. *Limited partnerships subject to annual audit.* An investment adviser is not required to comply with Subsections (A)(3) through (4) 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 one hundred twenty (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.* The investment adviser is not required to comply with this Rule with respect to the account of an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 to 80a-64].
5. *Beneficial trusts.* The investment adviser is not required to comply with safekeeping requirements of Subsections (A)(1) through (4) of this Rule or the bonding, net worth and financial reporting requirements of Rules 6.07, 6.09, and 6.11 if the investment adviser has custody solely because the investment adviser, investment adviser representative or employee, director or owner of the investment adviser is a 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 Subsection (B)(5)(i) of this Rule the investment adviser complies with the following:
    - i. The investment adviser provides a written statement to each beneficial owner of the account setting forth a description of the requirements of Subsection (A) of this Rule and the reasons why the investment adviser will not be complying with those requirements.
    - ii. The investment adviser obtains from each beneficial owner a signed and dated statement acknowledging the receipt of the written statement required under Subsection (B)(5)(i) of this Rule above.
    - iii. The investment adviser maintains a copy of both documents described in Subsections (B)(5)(i) and (ii) of this Rule above until the account is closed or the investment adviser is 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 Subsection (C)(3) of this Rule must first obtain approval from the Division and must comply with all of the applicable safekeeping requirements under Subsections (A)(1) through (4) of this Rule including taking responsibility for those provisions that are designated to be performed by a qualified custodian.

C. *Definitions.* The following definitions apply for the purposes of this Rule:

1. **Custody** means holding directly or indirectly, client funds or securities, or having any authority to obtain possession of them or 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 (3) business days of receiving them and the investment adviser maintains the records required by Rule 6.19(A)(22).
  - 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 twenty-four (24) hours three (3) business days of receipt and the adviser maintains the records required under Rule 6.19(A)(22);
  - c. Any arrangement (including a general power of attorney) under which the investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser's instruction to the custodian; and
  - 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 the investment adviser or its 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 the investment adviser; and
  - c. Does not have and has not had within the past two (2) years a material business relationship with the investment adviser.
3. **Qualified Custodian** means the following independent institutions or entities that are not affiliated with the investment adviser by any direct or indirect common control and have not had a material business relationship with the investment adviser in the previous two (2) years:

- 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.

Source: Miss. Code Ann. § 75-71-411(f) (2020).

## **Part 14 Chapter 7: EXEMPTIONS**

*Rule 7.01 Reserved.*

*Rule 7.03 Exemption from Registration for Certain Offerings by Domestic Issuers.* By authority delegated to the Secretary of State in Section 75-71-203 of the Act, transactions pursuant to the following requirements 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 that the issuer reasonably believes that the purchasers are acquiring the securities for investment purposes only and not for the purpose of resale. Purchasers of the issuer's securities which are registered pursuant to Section 75-71-303 or Section 75-71-304 of the Act shall not be considered in computing the number of purchasers during the twelve (12) month period.
- B. Prior to the receipt of consideration or the delivery of a subscription agreement by an investor which results from an offer being made in reliance upon this exemption, the issuer shall file with the Division:
  - 1. A notice on a form prescribed by the Division; and

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.
- 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 prior to the initial purchase under this exemption, that such commission, compensation, or remuneration is allowable.
  - 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 by 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 AGENCY OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

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

- F. Neither the issuer nor any person acting on its behalf shall offer, offer to sell, offer for sale, or sell the securities by means of any form of general solicitation or general advertising, including, but not limited to, the following:
  1. Any advertisement, article, notice, or other communication published in any newspaper, magazine, or similar medium or broadcast over television or radio;
  2. Any seminar or meeting unless otherwise approved by the Division; or

3. Any letter, circular, notice, or other written communication unless the communication contains the information required by this Rule or unless otherwise ordered by the Division.
- G. For the purposes of computing the number of investors under this Rule:
1. There shall be counted as one investor any corporation, partnership, association, joint stock company, trust, or unincorporated organization, unless such entity was organized for the specific purpose of acquiring the securities offered, in which case each beneficial owner of equity interests or equity securities in such entity shall count as a separate purchaser;
  2. A purchase by a husband and wife in the joint names of both husband and wife shall be deemed to be made by a single investor; and
  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 the 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 of termination or completion of the offering.

Source: Miss. Code Ann. §§ 75-71-203, -605(a)(3) (2020).

*Rule 7.05 Securities Markets Exemption.* Only Tier I (or the equivalent thereof) securities listed on the following securities markets are entitled to exemption from registration pursuant to Section 75-71-201(6) of the Act:

- A. American Stock Exchange (excluding Emerging Company Marketplace (ECM) listings);
- B. Boston Stock Exchange;
- C. Chicago Board Options Exchange;
- D. Chicago Stock Exchange;
- E. New York Stock Exchange;
- F. Philadelphia Stock Exchange;
- G. NASDAQ/National Market System.

Source: Miss. Code Ann. §§ 75-71-201(6) (2020).

*Rule 7.07 Recognized Securities Manuals.* A recognized securities manual shall be deemed to include the following:

- A. Mergent's Industrial Manual;
- B. Mergent's Municipal and Government Manual;
- C. Mergent's Transportation Manual;
- D. Mergent's Public Utility Manual;
- E. Mergent's Bank and Finance Manual;
- F. Mergent's OTC Industrial Manual;
- G. Mergent's International Manual;
- H. OTCQX Market and OTCQB Market; and
- I. Periodic supplements to each recognized securities manual.

Source: Miss. Code Ann. § 75-71-202(2)(D) (2020)

*Rule 7.09 NASDAQ/NMS Exemption.* By authority delegated to the Secretary of State in Section 75-71-203 of the Act to promulgate rules exempting certain transactions from the registration requirements of the Act, the following shall be exempt from Section 75-71-301 of the Act: An

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

Source: Miss. Code Ann. §75-71-202(2)(E)(i) (2020).

*Rule 7.11 Internet Solicitations Exemption.*

- A. **Internet** means the global information system comprised of independent computer networks which are interconnected and share information without the use of a central processing center by use of the Transmission Control Protocol/Internet Protocol (TCP/IP) suite, to include without limitation, the World Wide Web, proprietary or “common carrier” electronic delivery systems, or similar medium.
- B. **Internet Offer** means a communication regarding the offering of securities within the meaning of Sections 75-71-102(19), (26), and 75-71-105 of the Act, made on the Internet and directed generally to anyone who has access to the Internet, including persons in this state.
- 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 this state;
  - 2. The Internet Offer is not specifically directed to any person in this state by, or on behalf of, the issuer of the securities; and
  - 3. No sales of the issuer's securities are made in this state as a result of the Internet Offering.

Source: Miss. Code Ann. § 75-71-203 (2020).

*Rule 7.13 Exemption of Certain Cooperative Securities.* By authority delegated to the Secretary of State in Section 75-71-203 of the Act to promulgate rules, the Secretary of State finds that it is not in the public interest or necessary for the protection of investors to require registration under Section 75-71-301 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 nonprofit corporation organized under the cooperative,

business corporation, or nonprofit corporation laws, respectively, of any state, and operated as a nonprofit membership cooperative (collectively a “cooperative”), if

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

Source: Miss. Code Ann. §75-71-201, -203 (2020).

*Rule 7.15 Exemption of Certain Securities of Cross-Border Transactions.* Pursuant to Section 75-71-203 of the Act, the Secretary of State finds that it is not in the public interest or necessary for the protection of investors to require registration under Section 75-71-301 of the Act of an offer or sale of a security effected by a person exempted from the broker-dealer registration requirements under Rule 5.33.

Source: Miss. Code Ann. § 75-71-203 (2020).

*Rule 7.17 Accredited Investor Exemption.* By authority delegated to the Secretary of State in Section 75-71-203 of the Act to promulgate rules, the following transaction involving any offer or sale of a security by an issuer in a transaction that meets the requirements of this Rule is exempt from the registration requirements of the Act:

- A. Sales of securities shall be made only to persons who are or the issuer reasonably believes are accredited investors. "Accredited investor" is defined in 17 C.F.R. Section 230.501(a) as currently enacted or as amended.
- B. The exemption is not available to an issuer in the development stage that either has no specific business plan or purpose or had indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies or other entity or person.
- C. The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within twelve (12) months of sale shall be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under Article 3 of the Act or to an accredited investor pursuant to an exemption available under the Act.
- D. The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of ten percent (10%) or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director, or officer of such underwriter:
  - 1. Within the last five (5) years, has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the SEC;
  - 2. Within the last five (5) years, has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;
  - 3. Is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five (5) years, finding fraud or deceit in connection with the purchase or sale of any security; or
  - 4. Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five (5) years, temporarily, preliminarily, 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.
- E. Subsection (D)(1) of this Rule shall not apply if:
  - 1. 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;

2. 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
  3. 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 Subsection.
- F. A general announcement of the proposed offering may be made by any means. The general announcement shall include only the following information, unless additional information is specifically permitted by the Secretary of State.
1. The name, address, and telephone number of the issuer of the securities;
  2. The name, a brief description, and price (if known) of any security to be issued;
  3. A brief description of the business of the issuer in twenty-five (25) words or less;
  4. The type, number, and aggregate amount of securities being offered;
  5. The name, address, and telephone number of the person to contact for additional information; and;
  6. A statement that:
    - a. Sales will only be made to accredited investors;
    - b. No money or other consideration is being solicited or will be accepted by way of this general announcement; and
    - c. The securities have not been registered with or approved by any state securities agency or the SEC and are being offered and sold pursuant to an exemption from registration.
- G. The issuer, in connection with an offer, may provide information in addition to the general announcement under Subsection (E) of this Rule, if such information:
1. Is delivered through an electronic database that is restricted to persons who have been prequalified as accredited investors; or
  2. Is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

- H. 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.
- I. Dissemination of the general announcement of the proposed offering to persons who are not accredited investors shall not disqualify the issuer from claiming the exemption under this Rule.
- J. The issuer shall file with the Division a notice of transaction, a consent to service of process and a copy of the general announcement within fifteen (15) days after the first sale in this state.

Source: Miss. Code Ann. §§ 75-71-203, -401-404, -605(a)(1),(3), -605(b), -608(c), -610(e) (2020).

*Rule 7.19 Broker-Dealers, Investment Advisers, Broker-Dealer Agents, and Investment Adviser Representatives Using the Internet.* Broker-dealers, investment advisers, broker-dealer agents (hereinafter “BD agents”), and investment adviser agents/representatives (hereinafter “IA reps”) who use the Internet, the World Wide Web, and similar proprietary or common carrier electronic systems (collectively, hereinafter the “Internet”) to distribute information on available products and services through certain communications made on the Internet directed generally to anyone having access to the Internet, and transmitted through postings on Bulletin Boards, displays on “Home Pages” or similar methods (hereinafter “Internet Communications”) shall not be deemed to be “transacting business” in this state for purposes of Sections 75-71-401 and 75-71-404 of the Act based solely on that fact if the following conditions are observed:

- A. The Internet Communication contains a legend in which it is clearly stated that:
  - 1. The broker-dealer, investment adviser, BD agent, or IA rep in question may only transact business in this state if first registered, excluded or exempted from state broker-dealer, investment adviser, BD agent, or IA rep registration requirements, as may be; and
  - 2. Follow-up, individualized responses to persons in this state by such broker-dealer, investment adviser, BD agent, or IA rep that involve either the effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, as may be, will not be made absent compliance with state broker-dealer, investment adviser, BD agent, or IA rep registration requirements, or an applicable exemption or exclusion;
- B. The Internet Communication contains a mechanism, including and without limitation, technical “firewalls” or other implemented policies and procedures, designed to reasonably 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 Subsection (B) 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, anti-fraud, or related provisions;
- F. Nothing in this Rule shall be construed to affect the activities of any broker-dealer, investment adviser, BD agent, or 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.

Source: Miss. Code Ann. §§ 75-71-203; -401-404; -605(a)(1),(3); -605(b); -608(c); -610(e) (2020).

*Rule 7.21 Invest Mississippi Crowdfunding Intrastate Exemption.* By authority delegated to the Secretary of State in Section 75-71-203 of the Act, the Division has adopted an exemption from the registration requirements of the Act for any offer or sale of securities offered or sold in compliance with Section 3(a)(11) of the Securities Act of 1933, 15 U.S.C. Section 77c(a)(11), and SEC Rule 147, 17 C.F.R. Section 230.147 or such federal laws as are enacted or rules that are adopted by the SEC that govern intrastate Internet crowdfunding offerings and any

amendments thereto, which also satisfy the further conditions and limitations set forth in this Rule below.

A. *Definitions.* The following terms, as used in this Rule, shall have the meaning ascribed to them below unless the context requires otherwise:

1. **Accredited Investor** is defined in 17 C.F.R. Section 230.501(a), as currently enacted or as amended, and a non-accredited investor means an investor who does not meet the definition of an accredited investor.
2. **Annual Income** means:
  - a. For individuals, income is determined as the sum of the individual's:
    - i. Wages, salaries, commissions, bonuses, and tips from all jobs before deductions for taxes, dues or other items;
    - ii. Self-employment net income (after business expenses);
    - iii. Retirement pensions from companies and unions; federal, state, and local governments; and the U.S. military;
    - iv. Monthly income from annuities, IRAs, or KEOGH retirement plans;
    - v. Interest, dividends, and rental income; and
    - vi. Partner, shareholder, and beneficiary income as reported to the Internal Revenue Service on Schedule K-1 (Form 1065) (a reported loss on Schedule K-1 is counted against the sum of income).
  - b. For entities, income is determined as the revenue in excess of expenses, including depreciation, determined before taxes and as filed with the Mississippi Department of Revenue or the Internal Revenue Service on the entity's last tax return.
3. **Bank** means a depository institution that is organized or chartered under the laws of this state or of the United States, is authorized to do business in this state, and is located in this state. For the purposes of this Rule, a credit union is included in the definition of bank.
4. **IMC Form** means the document, as adopted by the Division, entitled "Invest Mississippi Crowdfunding Form."
5. **Intermediary** means a person that is registered with the Division pursuant to this Rule to be an intermediary who has been or will be retained by the issuer in conducting the offering and sales of securities through an Internet website. An

intermediary can be a broker-dealer or agent that is registered with the Division or a bank or an intermediary funding portal.

6. **Intermediary Funding Portal** is a person operating an Internet website that is not a bank, broker-dealer, or agent registered under the Act.
  7. **Intermediary Registration Form** means the document, as adopted by the Division, entitled “Invest Mississippi Crowdfunding Intermediary Registration Form.” A person registering as an Intermediary pursuant to this Rule must select on the form whether registering as a Bank, Broker-Dealer, or Intermediary Funding Portal.
  8. **Issuer** means a limited liability company or business corporation formed under the laws of this state that seeks to conduct an offering of securities in reliance on the exemption provided in this Rule.
  9. **Minimum Target Offering Amount** means fifty percent (50%) of the total offering amount of an offering made by the issuer in reliance on the exemption provided in this Rule which amount shall be set out on the IMC Form.
  10. **Net Worth** means the amount by which an investor’s assets exceed liabilities, excluding the investor’s primary residence, as defined in 17 C.F.R. Section 230.501(a)(5)(i).
  11. **Offering Deadline** means the date stated in the IMC Form by which the sum of the offering proceeds held in escrow will equal the minimum target offering amount or investors may request a refund of their investment.
  12. **Qualified Purchaser** is defined in Section 2(a)(51) of the Investment Company Act of 1940, as currently enacted or as amended.
- B. In order to comply with this Rule, the following conditions and limitations are required in order to be exempt from the registration requirements of the Act:
1. The securities must be sold only to persons who are residents of this state at the time of purchase.
  2. The issuer of the securities is a business corporation or limited liability company with a principal place of business in this state and authorized to do business in this state.
  3. The issuer is not, either before or as a result of the offering, an investment company, as defined in Section 3 of the Investment Company Act of 1940, 15 U.S.C. Section 80a-3, or subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. Sections 78m and 78o(d).

4. The aggregate amount sold to all investors by the issuer, including any amount sold in reliance on the exemption provided under this Rule during the twelve (12) month period preceding the date of such transaction, is not more than:
  - a. One Million Dollars (\$1,000,000.00), if the issuer has not undergone and made available to each prospective investor the documentation resulting from a financial audit of its most recently completed fiscal year; or
  - b. Two Million Dollars (\$2,000,000.00), if the issuer has undergone and made available to each prospective investor the documentation resulting from a financial audit of its most recently completed fiscal year.

The documentation in a financial audit to be made available to each prospective investor shall consist of a balance sheet and a statement of income and expense for the issuer's most recently completed fiscal year if the issuer has been in existence for twelve (12) months or more and shall be certified by an independent certified public accountant. The financial statements must be prepared in accordance with Generally Accepted Accounting Principles ("US GAAP"), complete with footnote disclosure. If the issuer has been in existence for fewer than twelve (12) months, the issuer must provide to each prospective investor a balance sheet and statement of income and expense for the time period since its existence. If the issuer is not providing a financial audit, then the issuer must provide to each prospective investor an unaudited balance sheet and statement of income and expense of its most recently completed fiscal year. In addition, regardless of whether the annual financial statements are audited or unaudited, the documentation to be made available to each prospective investor shall also include interim unaudited quarterly financial statements if the issuer's fiscal year ended more than ninety (90) days prior to the date of the IMC Form; and shall include the issuer's financial projections of income and expense for two (2) years from the date of the IMC Form. The non-audited financial statements shall be signed by the principal executive officer of the issuer who shall certify under penalties of perjury that the statements therein are true, complete and correct in all material respects to the best of the signer's knowledge.

5. The aggregate amount sold to any single investor by multiple issuers in reliance on the exemption provided in this Rule during the twelve (12) month period preceding the date of such transaction:
  - a. For accredited investors, the aggregate amount sold by multiple issuers to any single accredited investor does not exceed the greater of:
    - i. If the investor has had an annual income of at least Two Hundred Thousand Dollars (\$200,000.00) each year for the last two (2) years (or Three Hundred Thousand Dollars (\$300,000.00) together with a spouse if married) and have the expectation to make the same amount in the current year, five percent (5%) of the investor's

annual income, not to exceed the aggregate amount of Fifty Thousand Dollars (\$50,000.00); or

- ii. If the investor's net worth is at least One Million Dollars (\$1,000,000.00), five percent (5%) of the investor's net worth, not to exceed the aggregate amount of Fifty Thousand Dollars (\$50,000.00).
  - b. For non-accredited investors, the aggregate amount sold to a single non-accredited investor by multiple issuers does not exceed the greater of:
    - i. Five Thousand Dollars (\$5,000.00);
    - ii. If the investor has had an annual income of less than Two Hundred Thousand Dollars (\$200,000.00) each year for the last two (2) years (or less than Three Hundred Thousand Dollars (\$300,000.00) together with a spouse if married), five percent (5%) of the investor's annual income; or
    - iii. If the investor's net worth is less than One Million Dollars (\$1,000,000.00), five percent (5%) of the investor's net worth.
  - c. For investors that are qualified purchasers there shall be no aggregate limit on the amount the qualified purchaser investor can purchase from a single issuer or multiple issuers in offerings conducted pursuant to this Rule.
6. No remuneration shall be paid or given, directly or indirectly, for any person's participation in the offer or sale of the securities for the issuer unless the person is registered as an intermediary as such term is defined in Subsection (A)(5) of this Rule.
7. All funds received from investors shall be deposited into a bank and all the funds shall be used in accordance with the representations made to investors and in accordance with the terms of an escrow agreement which provides that:
- a. The investor funds will be deposited into an escrow account in a Bank, with the Bank acting as escrow agent;
  - b. For each investment, the issuer will provide to the escrow agent a copy of the subscription agreement setting forth the names, addresses, and respective amounts paid by each investor whose funds comprise each deposit;
  - c. The issuer must raise the minimum target offering amount specified as necessary to implement the business plan by the offering deadline before

the escrow agent may release the offering proceeds to the issuer upon joint written notice from the issuer and the intermediary;

- d. If the issuer does not raise the minimum target offering amount by the offering deadline, investors will have the option to obtain a refund of their investment by providing written notice to the intermediary, which shall provide written notice to the issuer and the escrow agent, at which time the escrow agent shall return the investor's amount contributed. Written notice includes electronic mail;
  - e. All offering proceeds not returned to the investor by the escrow agent after the offering deadline as provided above will be released to the issuer when the escrow agent has received written notice from the issuer or the intermediary to release the remaining proceeds to the issuer, or they may be returned to the investors at the issuer's option if the issuer or the intermediary provides written notice to the escrow agent authorizing and instructing the escrow agent to return the remaining investors amounts contributed; and
  - f. All offering proceeds not returned to the investor or released to the issuer after twelve (12) months from the date of receipt may be returned to the investor by the escrow agent to the last known address of the investor, or if not, shall be submitted to the state treasurer in accordance with the unclaimed property laws;
  - g. The escrow agent may contract with the issuer to collect reasonable fees for its escrow services regardless of whether the minimum target offering amount is reached.
8. No offerings or sales of securities shall be made in reliance on this exemption until the issuer files the IMC Form in writing or in electronic form with the Division, completed with specificity as required by the instructions in the IMC Form, and the issuer receives an Acknowledgment of Completed Invest Mississippi Crowdfunding Form from the Division. The issuer must also include in such filing a copy of the escrow agreement as required by Subsection (B)(7) above, all other exhibits to the IMC Form except as otherwise specified by the Division, and any other documents or information the Division may require. A copy of the IMC Form is available upon request.
9. The Division will issue a written Acknowledgment of Completed Invest Mississippi Crowdfunding Exemption Form within five (5) business days after receiving the completed IMC Form and all other exhibits to the IMC Form except as otherwise specified by the Division. Incomplete IMC Forms, IMC Forms with responses that are not specific as required by this Rule and the instructions, or IMC Forms with missing exhibits will be returned to the issuer

for completion and/or resubmission. No offerings or sales may be made in this state until the written Acknowledgment has been issued.

10. The completed IMC Form, including exhibits, shall be provided to the relevant intermediary and shall be made available to potential investors after the Acknowledgment of Completed Invest Mississippi Crowdfunding Exemption Form has been issued by the Division.
11. The issuer shall inform all investors that the securities have not been registered under federal or state securities law and the securities are subject to limitations on resale.
12. Prior to the consummation of a sale, the issuer shall require the prospective investor to certify in writing or electronically as follows:
  - a. The investor's name, address, social security number, annual income, and net worth, that each investor is a resident of this state and, if applicable, either an accredited investor or a qualified purchaser; and
  - b. The aggregate amount of securities sold to the investor in reliance on the exemption provided in this Rule during the twelve (12) month period preceding the date of the purchase, together with the securities to be sold by the issuer to the investor:
    - i. For accredited investors that are not qualified purchasers the investor has not invested more than the greater of:
      - (A) If the investor has had an annual income of at least Two Hundred Thousand Dollars (\$200,000.00) each year for the last two (2) years (or Three Hundred Thousand Dollars (\$300,000.00) together with a spouse if married) and have the expectation to make the same amount in the current year, five percent (5%) of the investor's annual income, not to exceed the aggregate amount of Fifty Thousand Dollars (\$50,000.00); or
      - (B) If the investor's net worth is at least One Million Dollars (\$1,000,000.00), five percent (5%) of the investor's net worth, not to exceed the aggregate amount of Fifty Thousand Dollars (\$50,000.00).
    - ii. For non-accredited investors, that the investor has not invested more than the greater of:
      - (A) Five Thousand Dollars (\$5,000.00);

- (B) If the investor has had an annual income of less than Two Hundred Thousand Dollars (\$200,000.00) each year for the last two (2) years (or less than Three Hundred Thousand Dollars (\$300,000.00) together with a spouse if married), five percent (5%) of the investor's annual income; or
    - (C) If the investor's net worth is less than One Million Dollars (\$1,000,000.00), five percent (5%) of the investor's net worth.
  - c. The issuer must maintain the above certifications and provide ready access to the records to the Division, upon request. The Division may access, inspect, and review such records.
- 13. Offers and sales of securities pursuant to this Rule must be made in compliance with any rules adopted by the SEC that govern intrastate Internet crowdfunding offerings and any amendments thereto.
- C. Offers and sales of securities pursuant to this Rule shall be made exclusively through an Internet website that is operated by an intermediary. Each issuer and intermediary shall comply with the following:
  - 1. Before any offer or sale of securities, the issuer must provide to the intermediary evidence of the issuer's state of organization, evidence that the issuer has a principal place of business in this state, and evidence that the issuer is authorized to do business in this state.
  - 2. An intermediary is not required to register as a broker-dealer under the Act if all the following apply with respect to the Internet website and its operator:
    - a. It does not offer investment advice or recommendations;
    - b. It does not solicit purchases, sales, or offers to buy the securities offered or displayed on the Internet website;
    - c. It does not compensate employees, agents, or other persons for the solicitation or based on the sale of securities displayed or referenced on the Internet website;
    - d. It does not hold, manage, possess, or otherwise handle investor funds or securities, unless it is a bank operating as an escrow agent for the offering;
    - e. It does not identify, promote, or otherwise refer to any individual security offered on the Internet website in any advertising for the Internet website; and

- f. Neither the intermediary, nor any director, executive officer, general partner, twenty percent (20 %) or greater beneficial owner, managing member, or other person with management authority over the intermediary has been subject to any conviction, order, judgment, decree, or other action specified in Rule 506(d)(1) adopted under the Securities Act of 1933 (17 C.F.R. § 230.506(d)(1)) that would disqualify an issuer under Rule 506(d) adopted under the Securities Act of 1933 (17 C.F.R. § 230.506(d)) from claiming an exemption specified in Rule 506(a) to Rule 506(c) adopted under the Securities Act of 1933 (17 C.F.R. § 230.506(a)-(c)).
- 3. Subject to Subsection (13) below, persons desiring to be an intermediary must register as an Intermediary with the Division.
  - a. Registered broker-dealers may register to be an intermediary by filing the Intermediary Registration Form with the Division, a copy of which is available upon request. No filing fee shall be required for registered broker-dealers acting as intermediaries. The Form shall include the following information:
    - i. The identity, contact information, and location for the broker-dealer, including the broker-dealer's CRD number;
    - ii. That the broker-dealer is authorized to do business in this state; and
    - iii. That the broker-dealer is using an Internet website to offer and sell securities pursuant to the exemption provided in this Rule.
  - b. A Bank may register to be an intermediary by filing the Intermediary Registration Form with the Division, a copy of which is available upon request. No filing fee shall be required for banks acting as intermediaries. The Form shall include the following information:
    - i. The identity, contact information, and location for the bank;
    - ii. That the bank is authorized to do business in this state;
    - iii. That the bank is using an Internet website to offer and sell securities pursuant to the exemption provided in this Rule; and
    - iv. That the bank meets the requirements set forth in Subsection (C)(2) of this Rule.
  - c. An Internet website operator may register to be an intermediary by filing the Intermediary Registration Form, a copy of which is available upon request, that includes the following information:

- i. The identity, contact information, and location for the intermediary funding portal;
  - ii. That the intermediary funding portal is authorized to do business in this state;
  - iii. That the intermediary funding portal is using an Internet website to offer and sell securities pursuant to the exemption provided in this Rule;
  - iv. That the intermediary funding portal meets the requirements set forth in Subsection (C)(2) of this Rule; and
  - v. Any other information the Division considers necessary or appropriate in the public interest and for the protection of investors, including the financial responsibility, business repute, or qualifications of the Internet website operator and to determine whether the operator can carry out the requirements of this Rule and will comply with this Rule.
- 4. The intermediary funding portal is not required to register as a broker-dealer under Subsection (3) above if the intermediary funding portal is a funding portal registered under the Securities Act of 1933 (15 U.S.C. 77d-1) and the SEC rules under authority of Section 3(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78c (h)) and P.L.112-106, Section 304, governing funding portals.
- 5. Registration as an intermediary expires at the close of the calendar year, but subsequent registration for the following year shall be issued upon filing of a renewal form, a copy of which is available upon request.
- 6. The issuer must maintain records of all offers and sales of securities effected through the intermediary and must provide to the Division, upon request, ready access to the records.
- 7. The intermediary shall maintain and preserve for a period of five (5) years from either the date of the document or communication or the date of the closing or termination of the securities offering, whichever is later, the following records related to offers and sales made of issuer securities effected by the intermediary through the intermediary's Internet website and related to transactions in which the intermediary receives compensation from the issuer for such services, including but not limited to:
  - a. Records of compensation received for acting as an intermediary, including the name of the payor, the date of payment, and name of the issuer;

- b. For each offering effected by the intermediary through the intermediary's Internet website, the issuer's name and the name, address, and amount of purchase for each investor in such offering;
  - c. Copies of information provided by the intermediary to issuers offering securities through the intermediary, prospective purchasers, and investors;
  - d. Any agreements and/or contracts between the intermediary and an issuer, to prospective purchaser, or investor;
  - e. Any information used to establish the issuer's state of organization, principal place of business, and its authorization to do business in this state;
  - f. Any information used to establish that a prospective purchaser or investor is a resident of this state;
  - g. Any information used to establish that a prospective purchaser or investor is an accredited investor or qualified purchaser;
  - h. Any correspondence or other communications with issuers, prospective purchasers, and/or investors;
  - i. Any information made available through the Internet website relating to an offering; and
  - j. Ledgers (or other records) that reflect all assets and liabilities, income and expense, and capital accounts.
8. The records and the Internet website portal of an intermediary or intermediary applicant under this Rule are subject to reasonable periodic, special, or other audits or inspections by the Division, in or outside this state, as the Division considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The Division may copy and remove for audit or inspection copies of all records the Division reasonably considers necessary or appropriate to conduct the audit or inspection. The Division may assess a reasonable charge for conducting an audit or inspection under this Rule.
9. The intermediary:
- a. Shall limit website access to the sale of securities conducted pursuant to this Rule to only residents of this state;
  - b. Shall not hold, manage, possess, or handle investor funds or securities, unless it is a bank operating as an escrow agent for the offering;

- c. Shall ensure that each investor answers questions demonstrating:
    - i. An understanding of the level of risk generally applicable to investments in startups and small issuers; and
    - ii. An understanding of the risk of illiquidity, including an acknowledgment that there is no ready market for the sale of the securities acquired from an offering under this Rule. It may be difficult or impossible for the investor to sell or otherwise dispose of an investment under this Rule and the investor may be required to hold and bear the financial risks of this investment indefinitely.
  - d. Shall perform a background and securities enforcement regulatory history check on each person holding a position listed in Subsection (J) of this Rule to determine if such person is subject to any disqualification as described in Subsection (J) of this Rule.
  - e. Shall ensure that all offering proceeds are only provided to the issuer when the aggregate capital raised from all investors is equal to or greater than the minimum target offering amount and allow investors to cancel their commitments to invest and obtain a refund if the minimum target offering amount is not raised by the offering deadline.
10. The intermediary shall not purchase or receive more than fifteen percent (15%) of the securities in the offering and shall prohibit its directors, officers, or partners (or any person occupying a similar status or performing a similar function) from having any financial interest in an issuer using its services as an intermediary, unless the financial interest in the aggregate does not exceed fifteen percent (15%) of the ownership of the issuer.
11. All communications between the issuer, prospective purchasers, or investors that take place during the offer of securities pursuant to this Rule must occur through the intermediary's Internet website. Notwithstanding the foregoing, the issuer or the intermediary may distribute a notice within this state limited to the statement that the issuer is conducting an offering, the name of the intermediary through which the offering is being conducted and a link directing the potential investor to the intermediary's website. The notice must contain a disclaimer reflecting that the offering is limited to residents of this state and that sales of the securities appearing on the Internet website are limited to persons that are residents of this state.
12. The website operated by the Intermediary must meet the following requirements:

- a. The website must contain a disclaimer reflecting that sales of the securities appearing on the website are limited to persons that are residents of this state;
  - b. Evidence of residency within this state is required before a sale is made to a prospective purchaser. An affirmative representation made by a prospective purchaser that the prospective purchaser is a resident of this state and proof of a valid Mississippi driver license or official personal identification card issued by the State of Mississippi will be considered sufficient evidence that the individual is a resident of this state.
- 13. If any change occurs that affects the intermediary's registration, the intermediary must notify the Division within thirty (30) days after the change occurs. Within thirty (30) days of the delivery of the notice to the Division, the intermediary shall, unless otherwise permitted or directed by the Division, cease and desist from operating as an intermediary pursuant to this Rule and shall, within five (5) business days, notify each issuer for which it is conducting offerings that the intermediary's registration has been revoked.
- D. *Report.* For so long as securities issued under the exemption provided in this Rule are outstanding, the issuer shall provide a quarterly report to the issuer's investors. The report required by this Rule shall be free of charge. An issuer may satisfy the reporting requirement of this Rule if the information is made available within forty-five (45) days of the end of each fiscal quarter and remains available until the succeeding quarterly report is issued. An issuer must provide a written copy of the report to any investor upon request. The issuer shall make each such quarterly report available to the Division upon request. The report must contain each of the following:
  - 1. Compensation received by each director and executive officer, including cash compensation earned since the previous report and on an annual basis and any bonuses, stock options, other rights to receive securities of the issuer or any affiliate of the issuer, or other compensation received; and
  - 2. An analysis by management of the issuer of the business operations and financial condition of the issuer, such as a recent financial statement and profit and loss statement.
- E. 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.
- F. The Division and every investor or prospective purchaser shall be notified within thirty (30) days of any material change in the issuer's information submitted in accordance with this Rule.

- G. For offerings that exceed one (1) year, notification that the offering is continuing must be filed with the Division annually.
- H. The issuer must file a sales report with the Division within thirty (30) days of termination, expiration, abandonment, or completion of the offering in a form prescribed by the Division.
- I. All sales that are part of the same offering and are made in reliance on this exemption must meet all of the terms and conditions of this exemption, except, offers and sales to controlling persons shall not count toward the limitation in Subsection (B)(4) of this Rule. A controlling person is an officer, director, partner, trustee, or individual occupying similar status or performing similar functions with respect to the issuer or to a person owning ten percent (10%) or more of the outstanding shares of any class or classes of securities of the issuer.
- J. *Disqualification.* The exemption allowed by this Rule shall not apply if an issuer, any of its executive officers, directors, managing members, persons with twenty percent (20%) or greater beneficial ownership, persons with management authority over the issuer, promoters, selling agents, or any officer, director or partner of any selling agent has been subject to any conviction, order, judgment, decree, or other action specified in Rule 506(d)(1) adopted under the Securities Act of 1933 (17 C.F.R. § 230.506(d)(1)) that would disqualify the person under Rule 506(d) adopted under the Securities Act of 1933 (17 C.F.R. § 230.506(d)) from claiming an exemption specified in Rule 506(a) to Rule 506(c) adopted under the Securities Act of 1933 (17 C.F.R. § 230.506(a)-(c)).
- K. Nothing in this exemption shall be construed to alleviate any person from the anti-fraud provisions of the Act, nor shall such exemption be construed to provide relief from any other provisions of the Act other than as expressly stated.
- L. The Division may deny, refuse to renew, condition, limit, suspend, or revoke the intermediary's registration as an intermediary for any reason as determined by the Secretary of State in his sole discretion.
- M. The Secretary of State may by order waive any conditions of registration of intermediaries or other requirements set forth in this Rule.

Source: Miss. Code Ann. §75-71-203 (2020).

*Rule 7.23 Invest Mississippi Crowdfunding Small Offering Exemption.* By authority delegated to the Secretary of State in Section 75-71-203 of the Act, the Division has adopted an exemption from the registration requirements of the Act for any offer or sale of securities offered or sold in compliance with Section 3(a)(11) of the Securities Act of 1933, 15 U.S.C. Section 77c(a)(11), and SEC Rule 147, 17 C.F.R. Section 230.147, or such federal laws as are enacted or rules that are adopted by the SEC that govern intrastate Internet crowdfunding offerings and any amendments thereto, which also satisfy the further conditions and limitations set forth in this Rule below.

- A. *Definitions.* This Rule incorporates the Definitions set forth in Rule 7.21.
- B. In order to comply with this Rule and be exempt from the registration requirements of the Act, the following conditions and limitations are required to be met:
1. The securities must be sold only to persons who are residents of this state at the time of purchase. Prior to making any sale under this exemption, the issuer must obtain reasonable documentation that the investor is a Mississippi resident. Reasonable documentation includes, but is not limited to:
    - a. A current Mississippi Driver's License or personal identification card;
    - b. A document that indicates the prospective purchaser owns or occupies property in the state as his principal residence, such as a current voter registration or official business mail from a state or federal agency.
  2. The issuer of the securities is a business corporation or limited liability company with a principal place of business in this state and authorized to do business in this state.
  3. The issuer is not, either before or as a result of the offering, an investment company, as defined in Section 3 of the Investment Company Act of 1940, 15 U.S.C. Section 8a-3, or subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. Sections 78m and 78o(d).
  4. The aggregate amount sold to all investors by the issuer, including any amount sold in reliance on the exemption provided under this Rule during the twelve (12) month period preceding the date of such transaction, is not more than Three Hundred Thousand Dollars (\$300,000.00).
  5. The aggregate amount sold to any single investor by multiple issuers in reliance on the exemption provided in this Rule during the twelve (12) month period preceding the date of such transaction:
    - a. For accredited investors, the aggregate amount sold by multiple issuers to any single accredited investor does not exceed the greater of:
      - i. If the investor has had an annual income of at least Two Hundred Thousand Dollars (\$200,000.00) each year for the last two (2) years (or Three Hundred Thousand Dollars (\$300,000.00) (together with a spouse if married) and have the expectation to make the same amount in the current year, five percent (5%) of the investor's annual income, not to exceed the aggregate amount of Fifty Thousand Dollars (\$50,000.00); or

- ii. If the investor's net worth is at least One Million Dollars (\$1,000,000.00), five percent (5%) of the investor's net worth, not to exceed the aggregate amount of Fifty Thousand Dollars (\$50,000.00).
  - b. For non-accredited investors, the aggregate amount sold to a single non-accredited investor by multiple issuers does not exceed Five Thousand Dollars (\$5,000.00).
  - c. For investors that are qualified purchasers, there shall be no aggregate limit on the amount the qualified purchaser investor can purchase from a single issuer or multiple issuers in offerings conducted pursuant to this Rule.
- 6. The number of investors in a single offering under this exemption shall not exceed five hundred (500) investors. For purposes of computing the number of investors under this Rule:
  - a. 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;
  - b. 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; and
  - c. An original member or shareholder of the issuer who purchased an interest in the entity primarily to enable the entity to be formed and whose interest will be extinguished once the offering has terminated shall not be considered to be a purchaser.
- 7. Securities issued under the provisions of this Rule shall be without payment of commission, compensation, or remuneration, directly or indirectly, except where it is reported to the Division and determined by the Division that such commission or compensation is allowable. Such determination must be made prior to the initial purchase under this Rule.
- 8. Offerings or sales of securities pursuant to this Rule shall be made only by duly elected and acting officers of the issuer; or by a broker-dealer and its agents registered under the Act.
- C. *Required Filings.* Prior to the receipt of consideration from an investor, or the delivery of a subscription agreement or other promissory note to an investor which results from an offer being made in reliance upon this exemption, the issuer shall file with the Division:

1. A notice on a form prescribed by the Division;
  2. The prospectus, private placement memorandum, offering circular, or similar document, which shall contain a full disclosure of material information to be furnished by the issuer to offerees, including the offering limitations set forth in Subsection (B)(1-7), above. 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 consent to service of process.
- D. *No Bank Escrow Agent Required.* An issuer relying on this exemption shall not be required to use a bank escrow agent. If the issuer chooses to use a bank escrow agent, the provisions of Rule 7.21(B)(7) apply.
- E. If the issuer elects to not use a bank escrow agent, it must use either (1) or (2) below:
1. A segregated account in a Bank. The segregated account must be exclusively for the investors' funds raised by use of this exemption and:
    - a. The total sum of investor funds shall be held in trust and shall not be deployed by the issuer until the Minimum Target Offering Amount is met by the Offering Deadline;
    - b. The issuer shall be responsible for the prudent processing, safeguarding, and accounting for the funds entrusted to it by the investors and placed in the segregated account;
    - c. No person who is not a duly elected and acting officer, if the issuer is a corporation, or member or manager, if the issuer is a limited liability company, of the issuer shall be a signatory on the segregated account;
    - d. The issuer shall keep and make readily available complete records of the transactions of the segregated account for inspection by the Division. The bank transaction records of an issuer under this Rule are subject to the reasonable periodic, special, or other audits, or inspections, access or review by the Division. The Division may copy, and remove for audit or inspection copies of, all records the Division reasonably considers necessary or appropriate to conduct the audit or inspection;
    - e. In the event the Minimum Target Offering Amount and/or Offering Deadline are not met, the issuer shall be responsible for the return of all investor funds upon request by the investor. The offer must provide a form for investors to request return of their investment if the Minimum Target Offering Amount and/or the Offering Deadline are not met;

- f. In no case, except for the very limited exception set forth below, prior to the expiration of the Offering Deadline, and the satisfaction of the Minimum Target Offering Amount, shall the investors' funds be commingled with the profits or operating or other capital of the Issuer. The only exception is the case of funds reasonably sufficient to pay for account fees, obtain a waiver of account fees, or to keep the account open. The issuer assumes the responsibility to pay for the costs of check orders, bank fees, credit card fees, insufficient fund fees and other fees that may be deducted from the account. These expenses should be anticipated in advance so a reasonable amount of money can be deposited into the account to cover the expenses prior to their deduction by the bank.
  2. All funds received by the issuer from investors under this exemption shall be held in trust by an attorney licensed to practice law in Mississippi who shall deposit the funds in a depository institution authorized to do business in Mississippi until such time as the Minimum Target Offering Amount is attained or the Offering Deadline has lapsed.
- F. *No Portal Required.* An issuer exempt under this Rule may, but shall not be required to, use an Intermediary Funding Portal. If the issuer elects to not use an Intermediary Funding Portal, the issuer:
1. Shall ensure that each investor answers questions demonstrating:
    - a. An understanding of the level of risk generally applicable to investments in startups and small issuers; and
    - b. An understanding of the risk of illiquidity, including an acknowledgment that there is no ready market for the sale of the securities acquired from an offering under this Rule; it may be difficult or impossible for the investor to sell or otherwise dispose of an investment under this Rule and the investor may be required to hold and bear the financial risks of this investment indefinitely.
  2. Shall perform a background and securities enforcement regulatory history check on each person holding a position listed in Subsection (S) of this Rule to determine if such person is subject to any disqualification as described in Subsection (S) of this Rule.
  3. Shall ensure that no offering proceeds are deployed as capital or otherwise used by the issuer until the aggregate capital raised from all investors is equal to or greater than the minimum target offering amount and shall allow investors to cancel their commitments to invest and obtain a refund if the minimum target offering amount is not raised by the offering deadline.

4. In addition to the record keeping required by Subsection (G) below, the issuer must keep a record of each deposit into the segregated account (or attorney trust account) representing the purchase of the issuer's securities for each investor. The records must be sufficient to verify that for each sale of securities the issuer made a corresponding deposit into the segregated account in the amount of the sale within two (2) business days of the sale.
- G. *Record Keeping.* The issuer shall maintain and preserve for a period of five (5) years from the date of the closing or termination of the securities offering the following records related to offers and sales made of the issuer's securities, including but not limited to:
1. Copies of information provided to prospective purchasers;
  2. All executed subscription agreements between the issuer and any purchaser;
  3. Any information used to establish the issuer's state of organization and principal place of business, and its authorization to do business in this state;
  4. Any correspondence or other communications with prospective purchasers, and/or investors, including any contracts or agreements secondary or pursuant to the subscription agreement;
  5. All advertisement or other forms of solicitation, including any information made available through the issuer's website or social media presence relating to an offering;
  6. Ledgers (or other records) that reflect all assets and liabilities, income and expense, and capital accounts; and
  7. All banking and deposit records.
- H. *Report.* For so long as securities issued under the exemption provided in this Rule are outstanding, the issuer shall provide a quarterly report to the issuer's investors. The report required by this Rule shall be free of charge. An issuer may satisfy the reporting requirement of this Rule if the information is made available by electronic means within forty-five (45) days of the end of each fiscal quarter and remains available until the succeeding quarterly report is issued. An issuer must provide a written copy of the report to any investor upon request. The issuer shall make each such quarterly report available to the Division upon request. The report must contain each of the following:
1. Compensation received by each director, executive officer or manager, including cash compensation earned since the previous report and on an annual basis and any bonuses, stock options, other rights to receive securities of the issuer or any affiliate of the issuer, or other compensation received; and

2. An analysis by management of the issuer of the business operations and financial condition of the issuer, such as a recent balance sheet and profit and loss statement.
- I. *General Solicitation.* A general announcement of the proposed offering may be made by any means, including social media or internet websites, subject to the following restrictions:
1. Advertising or soliciting on the issuer's own social media account or website is permitted, but the issuer shall construct the website or social media page so that potential investors "click through" to a dedicated internal website page solely for the purpose of explaining the limited offering; and
    - a. The issuer shall prominently indicate on the internal website page for soliciting investors the legend set forth in Subsection (K) below;
    - b. The dedicated internal website page shall provide means of contact between the issuer and potential investors to facilitate the actual investment, including the delivery of a written subscription agreement and all offering documents to the prospective investor for his review prior to the sale; the issuer shall not allow purchase of securities through its website;
    - c. The issuer may make available to all potential investors the documents referenced in Subsection (C)(2) in downloadable and printable form but must verify receipt and review by the prospective investor prior to executing any sale;
    - d. The dedicated internal website page shall inform all prospective purchasers that a segregated account (or attorney trust account) will hold all purchasers' funds in trust until the Minimum Target Offering Amount and Offering Deadline are met;
    - e. The dedicated internal website page shall set forth the Minimum Target Offering Amount (not less than 50% of the total offering amount) and Offering Deadline date;
    - f. The dedicated internal website page shall set forth the total offering amount made by the issuer in reliance on the exemption provided in this Rule, not to exceed Three Hundred Thousand Dollars (\$300,000.00);
    - g. The issuer shall also prominently display the general requirements of the exemption in some form on the dedicated internal website page:
      - i. That the offering is only made to Mississippi residents;

- ii. That the Minimum Target Offering Amount is at least 50% of the total Target Offering Amount;
  - iii. That all investors are entitled to a refund of their investment dollars if the Minimum Target Offering Amount is not met by the Offering Deadline;
  - h. The issuer shall include a printable form for investors to request the return of their investment if the Minimum Target Offering Amount is not met by the Offering Deadline.
- 2. Advertising or soliciting investment on social media or internet websites other than the social media accounts or internet website of the issuer shall be strictly limited to:
  - a. A general advertisement that the issuer is seeking investment;
  - b. A company name and/or logo;
  - c. A “click-through” link to the dedicated website page set forth above.
- 3. All other forms of general solicitation, whether print or other media, must provide the material disclosures as set forth in Subsection (C)(2) above and same disclosures and legends as set forth in Subsection (K) below; and
- 4. All radio, television, or other broadcast advertising or solicitation for investment shall be strictly limited to the following:
  - a. The issuer may announce that it is seeking investment for its enterprise;
  - b. The issuer may seek to direct potential investors to the dedicated page of its website, or to its telephone number;
  - c. These restrictions do not infringe on an issuer’s right to advertise its products or services and are only intended to restrict the advertisement or solicitation of investment.
- J. No offerings or sales of securities shall be made in reliance on this exemption until the issuer files the IMC Form, in writing or in electronic form with the Division, completed with specificity as required by the instructions in the IMC Form, and the issuer receives an Acknowledgment of Completed Invest Mississippi Crowdfunding Form from the Division. The issuer must also submit all exhibits to the IMC Form except as otherwise specified by the Division, and any other documents or information the Division may require. A copy of the IMC Form is available upon request.

1. The Division will issue a written Acknowledgment of Completed Invest Mississippi Crowdfunding Exemption Form within five (5) business days after receiving the completed IMC Form and all other exhibits to the IMC Form except as otherwise specified by the Division. Incomplete IMC Forms, Forms with responses that are not specific as required by this Rule and the instructions or Forms with missing exhibits will be returned to the issuer for completion and/or resubmission. No offerings or sales may be made in this state until the written Acknowledgment has been issued.
  2. The completed IMC Form, including exhibits, shall be provided to the issuer or intermediary and shall be made available to potential investors after the Acknowledgment of Completed Invest Mississippi Crowdfunding Exemption Form has been issued by the Division.
- K. The issuer shall inform all investors that the securities have not been registered under federal or state securities law and the securities are subject to limitations on resale. 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.

- L. Prior to the consummation of a sale, the issuer shall require the prospective investor to certify in writing or electronically as follows:
1. The investor's name, address, social security number, annual income, and net worth, that each investor is a resident of this state and, if applicable, either an accredited investor or a qualified purchaser; and
  2. The aggregate amount of securities sold to the investor in reliance on the exemption provided in this Rule during the twelve (12) month period preceding the date of the purchase, together with the securities to be sold by the issuer to

the investor has not exceeded the limitations set out in Subsection (B)(5) of this Rule.

3. The issuer must obtain and maintain the certifications, in addition to other records of investors' residence as set forth in Subsection A and provide ready access to the records to the Division, upon request. The Division may access, inspect, and review such records.
- M. Offers and sales of securities pursuant to this Rule must be made in compliance with any rules adopted by the SEC that govern intrastate Internet crowdfunding offerings and any amendments thereto.
- N. 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.
- O. The Division and every investor or prospective purchaser shall be notified within thirty (30) days of any material change in the issuer's information submitted in accordance with this Rule.
- P. For offerings that exceed one (1) year, notification that the offering is continuing, and a sales report must be filed with the Division annually.
- Q. The issuer must file a sales report with the Division within thirty (30) days of termination, expiration, abandonment, or completion of the offering in a form prescribed by the Division.
- R. All sales that are part of the same offering and are made in reliance on this exemption must meet all of the terms and conditions of this exemption, except, offers and sales to controlling persons shall not count toward the limitation in Subsection (B)(4) of this Rule. A controlling person is an officer, director, partner, manager, trustee, or individual occupying similar status or performing similar functions with respect to the issuer or to a person owning ten percent (10%) or more of the outstanding shares of any class or classes of securities of the issuer.
- S. The exemption allowed by this Rule shall not apply if an issuer, any of its executive officers, directors, managing members, persons with twenty percent (20%) or greater beneficial ownership, persons with management authority over the issuer, promoters, or selling agents, or any officer, director or partner of any selling agent has been subject to any conviction, order, judgment, decree, or other action specified in Rule 506(d)(1) adopted under the Securities Act of 1933 (17 C.F.R. § 230.506(d)(1)) that would disqualify the person under Rule 506(d) adopted under the Securities Act of 1933 (17 C.F.R. § 230.506(d)) from claiming an exemption specified in Rule 506(a) to Rule 506(c) adopted under the Securities Act of 1933 (17 C.F.R. § 230.506(a)-(c)).

- T. Nothing in this exemption shall be construed to alleviate any person from the anti-fraud provisions of the Act, nor shall such exemption be construed to provide relief from any other provisions of the Act other than as expressly stated.
- U. The Division may deny, refuse to renew, condition, limit, suspend, or revoke the issuer's Acknowledgment of Completed Invest Mississippi Crowdfunding Exemption Form for any reason as determined by the Secretary of State in his sole discretion.
- V. The Secretary of State may by order waive any conditions or other requirements set forth in this Rule.

Source: Miss. Code Ann. § 75-71-203 (2020).

#### **Part 14 Chapter 8: ADMINISTRATIVE HEARING PROCEDURES**

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

##### *Rule 8.01 RESERVED*

##### *Rule 8.03 Timely Request for a Hearing - Contents and Service of Summary Order.*

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

Source: Miss. Code Ann. §§ 75-71-306(2), -412(f), (g) (2020).

##### *Rule 8.05 Assignment of Hearing Officer - Setting of Hearing.*

- A. When a hearing is requested or ordered, the Secretary of State shall, within fifteen (15) days after receipt of the Request for Hearing or within fifteen (15) days of ordering a hearing, designate a Hearing Officer

- B. The Hearing Officer shall issue a Notice of Hearing which shall set the date, time, and place for the hearing on a date agreed to by the parties, and which shall be sent certified mail, return receipt requested, to each party.
- C. A Notice of Hearing may be given circulation by release to the public press.

Source: Miss. Code Ann. §§ 75-71-412(g); -604(b) (2020).

*Rule 8.07 Witnesses.* Each party shall, no later than ten (10) days prior to the hearing date, file with the Hearing Officer and the opposing party(s), a list of witnesses it may call to testify at the hearing. The list shall contain for each witness:

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

Source: Miss. Code Ann. § 75-71-602 (2020).

*Rule 8.09 Documents.* Upon request by any party, any documents, papers, or tangible things to be introduced by any party at the hearing shall be made available for inspection and copying by the requesting party no later than ten (10) business days prior to the hearing date.

Source: Miss. Code Ann. §§ 75-71-602(a)(2), (b) (2020).

*Rule 8.11 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 the Secretary of State may 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 summary order, and the Hearing Officer may declare null and void the summary order.

Source: Miss. Code Ann. § 75-71-602(c) (2020).

*Rule 8.13 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.

Source: Miss. Code Ann. § 75-71-604(c) (2020).

*Rule 8.15 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 8.07(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 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 under his 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.

Source: Miss. Code Ann. § 75-71-602(b) (2020).

*Rule 8.17 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; and
- B. Unless otherwise specified by law, the standard of proof at the hearing shall be by a preponderance of the evidence.

Source: Miss. Code Ann. § 75-71-503 (2020).

*Rule 8.19 Preservation 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:
- C. Arrange, on his or her own initiative, for a certified court reporter to make a stenographic recording of the hearing; and
- D. Pay all fees and expenses for such transcription directly to the court reporter.
- E. 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.

Source: Miss. Code Ann. § 75-71-605 (2020).

*Rule 8.21 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 proposed written findings of fact and conclusions of law and a proposed Decision and Final Order based thereon. The Secretary of State shall review the findings of fact and conclusions of law of the Hearing Officer, and may accept, modify, or reject,

in whole or in part, the findings of fact and conclusions of law. The Secretary of State shall thereafter issue a Final Order, a copy of which shall be sent promptly, via certified mail, return receipt requested, to all parties who appeared at the administrative hearing, or to their attorney(s) or authorized representative(s).

Source: Miss. Code Ann. § 75-71-604(f) (2020).

*Rule 8.23 Compliance with Order.* All parties shall promptly comply with all orders of the Hearing Officer.

Source: Miss. Code Ann. §§ 75-71-605(g), -605(e) (2020).

*Rule 8.25 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 75-71-609 of the 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 Secretary of State. Such ruling, in addition to the Bill of Exceptions and any response thereto, shall be made a part of the record of the appeal.

Source: Miss. Code Ann. § 75-71-609 (2020).

*Rule 8.27 Continuances.* Continuances requested by any party shall be granted within the discretion of the Hearing Officer only for good cause shown.

Source: Miss. Code Ann. § 75-71-609(b) (2020).

*Rule 8.29 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.

Source: Miss. Code Ann. § 75-71-602(b) (2020).

*Rule 8.31 Severability of Rules.* 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.

Source: Miss. Code Ann. § 75-71-605 (2020).

## **Part 14 Chapter 9: VIATICAL SETTLEMENT INVESTMENT CONTRACTS**

*Rule 9.01 Viatical Settlement Investment Contracts as Securities.*

- A. **Viatical Settlement Investment Contracts:** A viatical settlement investment contract is 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 or similar agreement” as used in the definition of “security” in the Act does not include:
1. 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 as codified at Miss. Code Ann. Sections 83-7-201 *et seq.*;
  2. 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
  3. 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 viatical settlement investment contract that is non-fractionalized or non-pooled, “issuer” means the person effecting the transactions with the investors in such contracts. With respect to a viatical settlement investment contract that is fractional or pooled, issuer means the person who creates the fractional or pooled interest.

Source: Miss. Code Ann. §§ 75-71-203, -204, -307, -502, -510, -605, -605(b), -608(c), -610(e), --404 (2020).

*Rule 9.03 Scope of Viatical Settlement Investment Contract Requirements.*

- A. The Provisions of this Chapter 9 set out the regulatory standards for the exemption of viatical settlement investment contracts from the registration requirement of the Act, renewal of the exemption from registration, effective dates, and related matters for viatical settlement investment contracts and issuers.
- B. Nothing in this Chapter shall:
  - 1. Provide an exemption from the fraud provisions of the Act;
  - 2. Relieve broker-dealers or agents from compliance with the Act; or
  - 3. Prohibit an issuer from using the registration procedures in the Act or from claiming an exemption available under the Act.

Source: Miss. Code Ann. § 75-71-605 (2020).

*Rule 9.05 Exemption from Registration.*

- A. Except as provided in Subsection (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 Act if the issuer:
  - 1. At least thirty (30) days prior to the date the initial offer is made, files a registration statement on the Division's Form V902 and the materials contained in Subsection (A)(2) of this Rule.
  - 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; and
    - 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 Division.
  - 3. All viatical settlement investment contracts sold in this state 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 Division 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 the purposes of this Subsection, 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 Division's Form VIAD, Part I. The issuer must provide in that document an address to which a notice of rescission may be sent; and
    - 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 the Division's 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 (3) fiscal years without a default 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 Chapter 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 ten percent (10%) 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 (5) 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 (5) 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 judgment in connection with the purchase, offer, or sale of a security;
4. Is currently subject to an order, judgment, 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; or
5. For any other reason that is in the public interest as determined by the Secretary of State.

Source: Miss. Code Ann. § 75-71-203 (2020).

*Rule 9.07 Effective Date and Expiration Date for Exemption of Viatical Settlement Investment Contracts.* Unless made effective earlier by the Division, an application for exemption from registration under this Rule becomes effective thirty-one (31) days after the Division receives the completed application, and the required documents unless the Division 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 Division 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 Chapter, the registration will be placed in pending status until such time as the Division 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 the Division's Form VR 903. Failure to timely renew will require the applicant to complete the process for application for exemption.

Source: Miss. Code Ann. §§ 75-71-203, -204 (2020).

*Rule 9.09 Revocation of Exemption.* The Secretary of State may, in his discretion, enter an order revoking an exemption granted pursuant to this Chapter. 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 Rule. 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 Chapter 8 of the Rules. If any of the interested parties fails 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.

Source: Miss. Code Ann. § 75-71-204 (2020).

*Rule 9.11 Right of Rescission Applicable to Sales of Viatical Settlement Interests*

- A. In addition to any other rights provided for under this Chapter 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 Subsection (A) of this Rule 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 Subsection (A) of this Rule, 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 (90th) 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 Division, 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 Division at its request.
- D. In this Rule, “**business day**” means a day other than Saturday, Sunday, or a state or federal holiday.

Source: Miss. Code Ann. § 75-71-510 (2020).

*Rule 9.13 Advertising.*

- A. The exemption contained in this Chapter 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 Chapter of the Rules if he determines that an issuer has engaged in false or misleading advertisement of viatical settlement investment contracts.
- B. False or 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.

Source: Miss. Code Ann. §§ 75-71-502, -610(e), (f) (2020).

*Rule 9.15 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 FINRA Series 7 examination;
- B. Proof of obtaining a passing grade on the FINRA Series 63 examination;
- C. An accurate, complete and signed Form U-4; and
- D. A filing fee as specified in Rule 4.11.

Source: Miss. Code Ann. § 75-71-404 (2020).

*Rule 9.17 Waiver of Viatical Settlement Requirements.* Upon the request of an issuer, the Secretary of State may, in his discretion, waive a requirement of this Chapter of the Rules 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.

Source: Miss. Code Ann. § 75-71-307, -407 (2020).

*Rule 9.19 Privacy.* Except as required for the Secretary of State to execute his responsibilities under the 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.

Source: Miss. Code Ann. § 75-71-605 (2020).