

**STATE OF VERMONT
DEPARTMENT OF BANKING, INSURANCE, SECURITIES
AND HEALTH CARE ADMINISTRATION
SECURITIES DIVISION**

In the Matter of:

Applying Provisions of Certain Regulations,)	
Bulletins, Policy Statements and Orders)	Docket 06-43-S
In Effect Prior to July 1, 2006)	
to the Vermont Uniform Securities Act)	

WHEREAS, the Vermont Uniform Securities Act (2002), codified at 9 V.S.A. chapter 150 (the "Vermont Securities Act" or the "Act"), is effective as of July 1, 2006 and supersedes the Securities Act codified at 9 V.S.A. chapter 131 (the "Predecessor Act"), which is repealed effective as of July 1, 2006 except to the extent provided in Section 3 of 2005 No. 11 § 3;

WHEREAS, the Commissioner of the Department of Banking, Insurance, Securities and Health Care Administration (the "Commissioner") is charged with the administration of the Vermont Securities Act;

WHEREAS, the Commissioner has promulgated certain regulations, bulletins, policy statements and orders pursuant to the Predecessor Act to implement the Predecessor Act (collectively, the "Existing Administrative Rules");

WHEREAS, the Act authorizes the Commissioner to issue orders and interpretive opinions as the Commissioner deems necessary and appropriate to carry out the provisions and purposes of the Act;

WHEREAS, the Commissioner has determined that certain provisions of the Existing Administrative Rules should continue to apply on and after the effective date of the Vermont Securities Act and until such time as such provisions are amended or repealed;

WHEREAS, Section 3(a) of 2005 No. 11 provides that "[t]he [Predecessor Act] exclusively governs all actions or proceedings that are pending on the effective date of [the Vermont Securities Act] or may be instituted on the basis of conduct occurring before the effective date of [the Vermont Securities Act], but a civil action may not be maintained to enforce any liability under the [Predecessor Act] unless instituted within any period of limitation that applied when the cause of action accrued or within five years after the effective date of [the Vermont Securities Act], whichever is earlier";

WHEREAS, Section 3(b) of 2005 No. 11 provides that "[a]ll effective registrations under the [Predecessor Act], all administrative orders relating to the registrations, rules, statements of policy, interpretive opinions, declaratory rulings, no

action determinations, and conditions imposed on the registrations under the [Predecessor Act] remain in effect as they would have remained in effect if [the Vermont Securities Act] had not been enacted. They are considered to have been filed, issued, or imposed under [the Vermont Securities Act], but are exclusively governed by the [Predecessor Act]";

WHEREAS, Section 3(c) of 2005 No. 11 provides that the Predecessor Act "exclusively applies to an offer or sale made within one year after the effective date of [the Vermont Securities Act] pursuant to an offering made in good faith before the effective date of [the Vermont Securities Act] on the basis of an exemption available under the [Predecessor Act]";

WHEREAS, the Securities Division of the Department of Banking, Insurance, Securities and Health Care Administration (the "Division") is engaged in the process of drafting new regulations to implement the Vermont Securities Act, and it is in the public interest for the Commissioner to issue an order to ensure that certain provisions contained in the Existing Administrative Rules are in effect to implement the Act until such regulations are promulgated; and

WHEREAS, the Commissioner finds that this Order is necessary and appropriate in the public interest and is consistent with the purposes intended by the Vermont Securities Act;

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

Section 1. Effectiveness of the Existing Administrative Rules; Interpretation of the Act

1.1 Except as provided in Section 3 of 2005 No. 11, as of July 1, 2006 the provisions of the Existing Administrative Rules shall be rescinded and shall have no further force or effect.

1.2 As provided in Section 4 of 2005 No. 11, the Official Comments of the 2002 Uniform Securities Act, promulgated by the National Conference of Commissioners on Uniform State Laws, shall guide administrative and judicial interpretations of the Vermont Securities Act.

1.3 Any no action determination or interpretive opinion issued under the Predecessor Act shall have no force or effect under the Act. An interpretive opinion or no action determination under the Act may be requested pursuant to Section 5605(d) of the Act. A fee will apply as provided in Exhibit 3.1 to this Order.

Section 2. Definitions

2.1 Any term used in this Order shall have the meaning provided in the Act, except as the specific context otherwise requires or as specifically provided in this Order.

2.2 The definition of "security" in Section 5102(28) of the Act shall include variable insurance products, consistent with the Division's interpretation of the definition of "security" under the Predecessor Act as including variable insurance products.

Section 3. Fees

3.1 The schedule of fees attached hereto as Exhibit 3.1, which is incorporated as if set forth fully herein, shall apply to registrations, notice filings and certain other amounts payable under the Act, but shall not be construed as an exclusive list of fees and other amounts payable under the Act. The schedule does not include fees payable to a third party designated for the filing and processing of registrations associated with broker-dealers, agents, investment advisers, federal covered investment advisers and investment adviser representatives (as of the date of this Order, the Central Registration Depository (CRD) and the Investment Adviser Registration Depository (IARD)). The Division reserves the right to adjust fees as provided in the Act, and to charge any fee or other amount specifically provided for in the Act that may not be included in Exhibit 3.1.

Section 4. Hearing Procedures

4.1 The provisions of Regulation 82-1 shall continue to apply other than as expressly provided in the Act.

Section 5. Privacy of Consumer Financial and Health Information

5.1 The provisions of Exhibit 5.1, attached hereto, regarding disclosure of consumer nonpublic personal information, are incorporated as if set forth fully herein. *Cf.* Regulation S-2001-1 (Privacy of Consumer Financial and Health Information).

Section 6. Regulation of Broker-Dealers, Agents, Investment Advisers, Federal Covered Investment Advisers and Investment Adviser Representatives

6.1 Unethical or Dishonest Practices - Broker-Dealers and Agents. The provisions of Exhibit 6.1, attached hereto, regarding unethical or dishonest practices of broker-dealers and agents, are incorporated as if set forth fully herein. *Cf.* Regulation S-91-1 (Unethical or Dishonest Practices of Broker-Dealers and Sales Representatives).

6.2 Registration of Broker-Dealers, Agents and Branch Offices. The provisions of Exhibit 6.2, attached hereto, regarding registration of broker-dealers, agents and branch offices, are incorporated as if set forth fully herein. *Cf.* Order 05-47-S.

6.3 Broker-Dealer Recordkeeping Requirements. The provisions of Exhibit 6.3, attached hereto, regarding recordkeeping requirements applicable to broker-dealers and agents, are incorporated as if set forth fully herein. *Cf.* Bulletin 05-1-S.

6.4 Registration of Investment Advisers and Investment Adviser Representatives. The provisions of Exhibit 6.4, attached hereto, regarding registration of investment advisers, federal covered investment advisers and investment adviser representatives, are incorporated as if set forth fully herein. Cf. Order 01-040-S; Order 02-051-S; Regulation S-95-1.

6.5 Other Requirements of Investment Advisers and Investment Adviser Representatives. The provisions of Exhibit 6.5, attached hereto, regarding the regulation of activities of investment advisers and investment adviser representatives, are incorporated as if set forth fully herein. Cf. Regulation S-95-1.

6.6 Broker-Dealers and Investment Advisers On Premises of Depository Institutions. The provisions of Exhibit 6.6, attached hereto, regarding conduct of business by broker-dealers and investment advisers on the premises of depository institutions, are incorporated as if set forth fully herein. Cf. Policy Statement 00-3-S (Guidelines for broker-dealer and investment adviser/depository institution brokerage service arrangements under the Vermont Securities Act).

Section 7. Securities Registration

7.1 Multijurisdictional Disclosure System. The provisions of Exhibit 7.1, attached hereto, regarding registration of certain Canadian securities through the Multijurisdictional Disclosure System, are incorporated as if set forth fully herein. Cf. Policy Statement S-91-3 (MJDS).

7.2 Notice Filing of Securities of Registered Investment Companies. The provisions of Exhibit 7.2, attached hereto, regarding notice filing with respect to certain securities issued by investment companies, are incorporated as if set forth fully herein. Cf. Policy Statement 98-1-SE (notice filing for investment companies); Policy Statement 92-2-S (open-end investment companies and unit trusts).

Section 8. Exemptions from Registration and Other Registration Provisions

8.1 Agent Registration in Connection with Offers and Sales of Securities Under SEC Rule 701. The provisions of Exhibit 8.1, attached hereto, regarding registration of agents in connection with offers and sales of securities pursuant to SEC Rule 701, are incorporated as if set forth fully herein. Cf. Order 00-22-S (Offers and Sales of Securities pursuant to SEC Rule 701).

8.2 Bank Employees Effecting Transactions in Bank Securities. The provisions of Exhibit 8.2, attached hereto, regarding agent registration of employees of banks and depository recordkeeping requirements applicable to broker-dealers and agents, are incorporated as if set forth fully herein. Cf. Order 02-001-S (Bank Employees Effecting Transactions in Bank Securities).

8.3 Federal Home Loan Bank Transactions - Agent Registration. The provisions of Exhibit 8.3, attached hereto, regarding registration of employees in connection with federal home loan bank transactions, are incorporated as if set forth fully herein. *Cf.* Order 02-062-S (Federal Home Loan Bank Transactions - Sales Representative Registration).

8.4 Housing Vermont Limited Partnership Interests - Agent Registration. The provisions of Exhibit 8.4, attached hereto, regarding exemption from registration for sales of limited partnership interests by Housing Vermont and agent registration of Housing Vermont employees and agents, are incorporated as if fully set forth herein. *Cf.* Order 03-072-S (Exemption Order - Employees, officers and general partner of a limited partnership created by a nonprofit corporation to provide affordable housing in Vermont are exempt from issuer sales representative registration).

8.5 Broker-Dealers as Institutional Investors. The provisions of Exhibit 8.5, attached hereto, regarding registration of the offer and sale of securities to broker-dealers as institutional investors, are incorporated as if fully set forth herein. *Cf.* Order 93-030-S (Exemption Order - Designation of Broker-Dealers as Institutional Buyers).

8.6 Agent Registration For Employee Benefit Plans. The provisions of Exhibit 8.6, attached hereto, regarding registration of persons involved in the distribution of securities from employee benefit plans, are incorporated as if fully set forth herein. *Cf.* Order 91-016-S (Exemption Order - Employee Benefit Plans).

8.7 Offers and Sales under SEC Rule 144A. The provisions of Exhibit 8.7, attached hereto, regarding registration of securities, broker-dealers and agents involved in the offer and sale of securities pursuant to SEC Rule 144A, are incorporated as if fully set forth herein. *Cf.* Order 91-022-S (Exemption Order - QIBs).

8.8 Multijurisdictional Disclosure System Exemption of Non-Issuer Transactions Filed with the SEC under Forms F-8, F-9 and F-10. The provisions of Exhibit 8.8, attached hereto, regarding registration of certain nonissuer transactions involving Canadian securities filed with the SEC pursuant to the Multijurisdictional Disclosure System, are incorporated as if fully set forth herein. *Cf.* Order 9-090-S (Exemption Order - Multijurisdictional Disclosure System).

8.9 Solicitation of Interest Prior to Filing Registration Statement. The provisions of Exhibit 8.9, attached hereto, regarding registration of securities that are the subject of a solicitation of interest, are incorporated as if fully set forth herein. *Cf.* Order 93-9-SE (Exemption Order - Solicitations of Interest).

8.10 Internet Offers. The provisions of Exhibit 8.10, attached hereto, regarding offers of securities over the Internet, are incorporated as if fully set forth herein. *Cf.* Order 97-1-SE (Exemption Order - Offers Made Over the Internet).

8.11 Vermont Small Business Offering Exemption. The provisions of Exhibit 8.11, attached hereto, regarding registration of certain small business offerings, are incorporated as if fully set forth herein. Cf. Order 96-4-SE (Exemption Order - VSBOE).

8.12 Federal Covered Securities--Notice Filing and Fees. The provisions of Exhibit 8.12, attached hereto, regarding notice filings and fees for certain federal covered securities, are incorporated as if fully set forth herein. Cf. Policy Statement 98-2-S.

8.13 Vermont Accredited Investor Exemption. The provisions of Exhibit 8.13, attached hereto, regarding registration of securities offered and sold to accredited investors, are incorporated as if fully set forth herein. Cf. Order 00-037-S (Vermont Accredited Investor Exemption).

8.14 Shares Issued by Commonwealth Cash Reserve Fund. The provisions of Exhibit 8.14, attached hereto, regarding registration with respect to the offer and sale of shares in the Commonwealth Cash Reserve Fund, are incorporated as if fully set forth herein. Cf. Order 03-065-S (Exemption Order - Shares of portfolios issued by a fund fall within the transactional exemption for sales to "other institutional investors").

8.15 Internet Communications. The provisions of Exhibit 8.15, attached hereto, regarding registration of broker-dealers, agents, investment advisers and investment adviser representatives involved in certain communications over the Internet, are incorporated as if fully set forth herein. Cf. Order 98-1-SE.

8.16 Uniform Limited Offering Registration. The provisions of Exhibit 8.16, attached hereto, regarding the Uniform Limited Offering Registration, are incorporated as if fully set forth herein. Cf. Regulation S-92-1 (Uniform Limited Offering Exemption).

8.17 Rule 505 Offerings. The provisions of Exhibit 8.17, attached hereto, regarding offers and sales of securities pursuant to Rule 505 of SEC Regulation D, are incorporated as if fully set forth herein. Cf. Order 94-2-SE (Offerings under Rules 505 and 506 of SEC Regulation D).

8.18 Transactions Involving Self-Directed Canadian Retirement Accounts. The provisions of Exhibit 8.18, attached hereto, regarding registration of securities, broker-dealers and agents in connection with certain transactions involving self-directed Canadian retirement accounts, are incorporated as if fully set forth herein. Cf. Order 00-042-S (Transactions Involving Self-Directed Canadian Retirement Accounts).

8.19 Transactions Involving Canadians Temporarily in Vermont. The provisions of Exhibit 8.19, attached hereto, regarding registration of securities, broker-dealers and agents in connection with certain transactions involving Canadian residents temporarily present in Vermont, are incorporated as if fully set forth herein. Cf. Order 01-015-S (Transactions Involving Canadians Temporarily in Vermont).

8.20 Charitable Organization Transactions. The provisions of Exhibit 8.20, attached hereto, regarding offers and sales of charitable gift annuities and related instruments issued by certain nonprofit organizations, are incorporated as if fully set forth herein. *Cf.* Order 01-43-S.

Section 9. General Provisions

9.1 NASAA Periodic Payment Guidelines. The provisions of Exhibit 9.1, attached hereto, regarding agreements for periodic payment plans with respect to a security, are incorporated as if fully set forth herein. *Cf.* Policy Statement 92-5-S (Adoption of NASAA periodic payment plan guidelines).

9.2 Filing of Advertising. The provisions of Exhibit 9.2, attached hereto, regarding filing and approval of advertising, are incorporated as if set forth fully herein.

9.3 Mutual Fund Prospectus Wrapper Brochures. The provisions of Exhibit 9.3, attached hereto, regarding the form and content of mutual fund prospectus wrapper brochures, are incorporated as if set forth fully herein. *Cf.* Policy Statement 94-1-S.

9.4 Electronic Records and Signatures. A record may be filed electronically to the extent permitted in the Act and as specifically provided in this Order, and an electronic signature may be used on any form or filing that may be filed electronically pursuant to the Act and any provision of this Order, provided the filing of such record or signature complies with the provisions of 15 U.S.C. § 7004(a), and such filing or signature complies with the requirements of any person authorized to accept them. Any filing requiring a signature shall be executed by the person making the filing or an authorized representative of such person.

9.5 Designation of Repository. Pursuant to Section 5608(c)(1) of the Act, the Central Registration Depository ("CRD") and the Investment Adviser Registration Depository ("IARD") are hereby designated as central depositories for registration and notice filings, as more specifically provided in this Order.

9.6 Civil Unions. The provisions of Exhibit 9.6, attached hereto, regarding the status of parties to a civil union in Vermont, are incorporated as if set forth fully herein.

Section 10. Applicability of Exemptions and Anti-Fraud Provisions

10.1 Other Exemptions. Except to the extent explicitly stated in this Order, the specific exemptions provided in this Order are not intended to limit the applicability of any other exemption available under the Act.

10.2 Anti-Fraud Provisions. Any exemption or waiver granted under this Order shall not be construed to limit the applicability of any provision of the Act not specifically covered by such exemption or waiver, including but not limited to the anti-fraud and enforcement provisions of the Act.

This Order shall be effective as of July 1, 2006 and shall remain in effect unless and until subsequently amended or rescinded by order or regulation adopted under the Vermont Securities Act

Effected at Montpelier, Vermont this 7th day of July, 2006

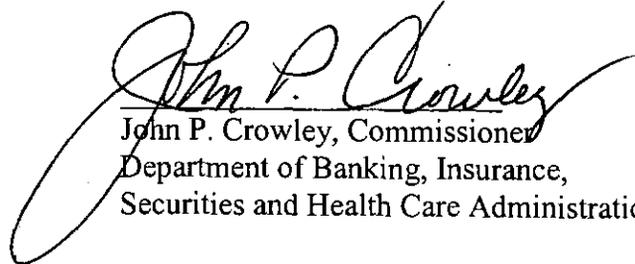

John P. Crowley, Commissioner
Department of Banking, Insurance,
Securities and Health Care Administration

Exhibit 3.1 Applicable Fees**Broker-Dealer Registration**

Action	Fee
Initial Registration	\$250.00
Registration Renewal	\$250.00
Initial Branch office Registration (per office, separate application)	\$100.00
Branch office Registration Renewal (per office, separate application)	\$100.00

Agent Registration

Action	Fee
Initial Registration	\$55.00
Registration Renewal	\$55.00
Agent Transfer or Change in Registration	\$55.00

Investment Adviser Registration

Action	Fee
Initial Registration	\$250.00
Registration Renewal	\$250.00
Initial Branch office Registration (per office, separate application)	\$100.00
Branch office Registration Renewal (per office, separate application)	\$100.00

Investment Adviser Representative Registration

Action	Fee
Initial Registration	\$55.00
Registration Renewal	\$55.00
Investment Adviser Representative Transfer or Change in Registration	\$55.00

Federal Covered Investment Adviser Notice Filing

Action	Fee
Initial Notice Filing	\$250.00
Notice Filing Renewal	\$250.00
Initial Branch Office Notice Filing (per office, separate filing)	\$100.00
Branch Office Notice Filing Renewal (per office, separate filing)	\$100.00

Securities Registration Filings

Action	Fee
Registration by Coordination or by Qualification – Initial Filing of Application for Registration and Annual Renewal	\$1.00 for each \$1,000.00 of the aggregate amount of the offering of the securities to be sold in the state for which the applicant is seeking registration. Minimum Fee is \$400.00; Maximum Fee is \$1,250.00.
Open-end Investment Companies – Initial Filing of Application for Registration and Annual Renewal	Fees above apply to each class of securities within a portfolio as long as the registration of such class of securities within a portfolio remains in effect
Registration Statement Amendments Increasing the Number/Amount of Securities to be Registered	Fees above apply to any additional securities per the above schedule

Federal Covered Securities Notice Filings

Action	Fee
Initial Notice Filings	\$1.00 for each \$1,000.00 of the aggregate amount of the offering of the securities to be sold in the state for which the issuer is seeking to perfect a notice filing under this section. Minimum Fee is \$400.00; Maximum Fee is \$1,250.00.
Open-end Investment Companies – Initial Notice Filing and Annual Renewal	Fees above apply to each class of securities within a portfolio as long as the registration of such class of securities within a portfolio remains in effect
Amendments Increasing the Number/Amount of Securities to be Notice Filed	Fees above apply to any additional securities per the above schedule

Interpretive Opinions and No Action Determinations

A fee of \$250 applies to each request for an interpretive opinion or no-action determination.

PRIVACY OF CONSUMER FINANCIAL AND HEALTH INFORMATION

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Section 1. [reserved]

Section 2. Purpose, scope and compliance

(a) *Purpose.* This Exhibit 5.1 to Order 06-43-S (the "Exhibit") governs the treatment of nonpublic personal information about individuals by the financial institutions listed in paragraph (b) of this section. This Exhibit:

- (1) Requires a financial institution to provide notice to individuals about its privacy policies and practices;
- (2) Describes the conditions under which a financial institution may disclose nonpublic personal information about individuals to nonaffiliated third parties; and
- (3) Provides a method for consumers to prevent a financial institution from disclosing that information, subject to the exceptions in sections 14, 15, 16 and 17 of this Exhibit and subject to the federal Fair Credit Reporting Act and Vermont Fair Credit Reporting Act.

(b) *Scope.* This Exhibit applies to nonpublic personal information about individuals who obtain financial products or services primarily for personal, family, or household purposes from the financial institutions listed below. This Exhibit does not apply to information about companies or about individuals who obtain financial products or services for business, commercial, or agricultural purposes. This Exhibit applies to broker-dealers and investment advisers that are registered or required to be registered with the Department. These entities are referred to in this Exhibit as "you."

(c) *Health Information.* This Exhibit applies to all nonpublic personal health information.

(d) *Compliance*

- (1) A financial institution subject to this Exhibit regardless of its jurisdiction of domicile shall comply with this Exhibit for all transactions with Vermont consumers.

Section 3. Rule of construction.

The examples in this Exhibit and the sample clauses in the Appendix of this Exhibit provide guidance concerning the Exhibit's application in ordinary circumstances. The facts and circumstances of each individual situation, however, will determine whether compliance with an example or use of a sample clause, to the extent applicable, constitutes compliance with this Exhibit.

Section 4. Definitions.

As used in this Exhibit, unless the context requires otherwise:

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with another financial institution or another company. In addition, a broker-dealer or investment adviser will be deemed an affiliate of a company for the purposes of this Exhibit if:

- (1) that company is regulated under Title V of the Gramm-Leach-Bliley Act (Pub. L. No. 106-102, 133 Stat. 1338(1999)) by the Federal Trade Commission or by a federal functional regulator; and

- (2) rules adopted by the Federal Trade Commission or another federal functional regulator under Title V of the Gramm-Leach-Bliley Act (Pub. L. No. 106-102, 133 Stat. 1338(1999)) treat the broker-dealer or investment adviser as an affiliate of that company.

(b) *Broker-dealer* has the same meaning as in Title 9 V.S.A. § 5102(3).

(c) (1) *Clear and conspicuous* means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

- (2) *Examples.*

- (i) *Reasonably understandable.* You make your notice reasonably understandable if you:

- (A) Present the information in the notice in clear, concise sentences, paragraphs, and sections;

- (B) Use short explanatory sentences or bullet lists whenever possible;

- (C) Use definite, concrete, everyday words and active voice whenever possible;

- (D) Avoid multiple negatives;
- (E) Avoid legal and highly technical business terminology whenever possible;
- (F) Avoid explanations that are imprecise and readily subject to different interpretations; and
- (G) Avoid contradictory, confusing or misleading language.

(ii) *Designed to call attention.* You design your notice to call attention to the nature and significance of the information in it if you:

- (A) Use a plain-language heading to call attention to the notice;
- (B) Use a typeface and type size that are easy to read;
- (C) Provide wide margins and ample line spacing;
- (D) Use boldface or italics for key words; and
- (E) Use distinctive type size, style, and graphic devices, such as shading or sidebars when you combine your notice with other information.

(iii) *Notices on web sites.* If you provide a notice on a web page, you design your notice to call attention to the nature and significance of the information in it if you use text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the web site (such as text, graphics, hyperlinks, or sound) do not distract attention from the notice, and you either:

- (A) Place the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or
- (B) Place a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature, and relevance of the notice.

(d) *Collect* means to obtain information that you organize or can retrieve by the name of an individual or by identifying number, symbol, or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(e) *Commissioner* means the commissioner of the Vermont Department of Banking, Insurance, Securities and Health Care Administration.

(f) *Company* means any corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship or similar organization.

(g) (1) *Consumer* means an individual who seeks to obtain, obtains or has obtained a financial product or service from you that is to be used primarily for personal, family, or household purposes, and about whom you have nonpublic personal information, or that individual's legal representative.

(2) *Examples.* (i) An individual is your consumer if he or she provides nonpublic personal information to you in connection with obtaining or seeking to obtain brokerage services or investment advisory services, whether or not you provide brokerage services to the individual or establish a continuing relationship with the individual.

(ii) An individual is not your consumer if he or she provides you only with his or her name, address, and general areas of investment interest in connection with a request for a prospectus, an investment adviser brochure, or other information about financial products or services.

(iii) An individual is not your consumer if he or she has an account with another broker-dealer (the introducing broker-dealer) that carries securities for the individual in a special omnibus account with you (the clearing broker-dealer) in the name of the introducing broker-dealer, and when you receive only the account numbers and transaction information of the introducing broker-dealer's consumers in order to clear transactions.

(iv) An individual who is a consumer of another financial institution is not your consumer solely because you act as agent for, or provide processing or other services to, that financial institution.

(v) An individual is not your consumer solely because he or she has designated you as trustee for a trust.

(vi) An individual is not your consumer solely because he or she is a beneficiary of a trust for which you are a trustee.

(vii) An individual is not your consumer solely because he or she is a participant or a beneficiary of an employee benefit plan that you sponsor or for which you act as a trustee or fiduciary.

(h) *Consumer reporting agency* has the same meaning as in section 603(f) of the federal Fair Credit Reporting Act (15 U.S.C. § 1681a(f)) and shall include any "credit reporting agency" within the meaning of 9 V.S.A. § 2480a(3).

(i) *Control* of a company means the power to exercise a controlling influence over the management or policies of a company whether through ownership of securities, by contract, or otherwise. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of any company is presumed to control the company. Any person who does not own more than 25 percent of the voting

securities of any company will be presumed not to control the company. Any presumption regarding control may be rebutted by evidence.

(j) *Customer* means a consumer who has a customer relationship with you.

(k) (1) *Customer relationship* means a continuing relationship between a consumer and you under which you provide one or more financial products or services to the consumer that are to be used primarily for personal, family, or household purposes.

(2) *Examples.* (i) *Continuing relationship.* A consumer has a continuing relationship with you if:

(A) The consumer has a brokerage account with you, or if a consumer's account is transferred to you from another broker-dealer;

(B) The consumer has an investment advisory contract with you (whether written or oral);

(C) The consumer holds an investment product through you, such as when you act as a custodian for securities or for assets in an Individual Retirement Arrangement;

(D) The consumer purchases a variable insurance product from you;

(E) The consumer has an account with an introducing broker-dealer that clears transactions with and for its customers through you on a fully disclosed basis;

(F) You hold securities or other assets as collateral for a loan made to the consumer, even if you did not make the loan or do not effect any transactions on behalf of the consumer; or

(G) You regularly effect or engage in securities transactions with or for a consumer even if you do not hold any assets of the consumer.

(ii) *No continuing relationship.* A consumer does not, however, have a continuing relationship with you if you open an account for the consumer solely for the purpose of liquidating or purchasing securities as an accommodation, *i.e.*, on a one-time basis, without the expectation of engaging in other transactions.

(l) *Department* means the Vermont Department of Banking, Insurance, Securities and Health Care Administration.

(m) (1) *Financial institution* means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. § 1843(k)).

(2) *Financial institution* does not include:

(i) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*);

(ii) The Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 (12 U.S.C. § 2001 *et seq.*); or

(iii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights), or similar transactions related to a transaction of a consumer, as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(n) (1) *Financial product or service* means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. § 1843(k)).

(2) *Financial service* includes your evaluation or brokerage of information that you collect in connection with a request or an application from a consumer for a financial product or service.

(o) *Health Care* means:

(1) Preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, services, procedures, tests or counseling that:

(i) Relates to the physical, mental or behavioral condition of an individual; or
(ii) Affects the structure or function of the human body or any part of the human body, including the banking of blood, sperm, organs or any other tissue; or

(2) Prescribing, dispensing or furnishing to an individual drugs or biologicals, or medical devices or health care equipment and supplies.

(p) *Health Care Provider* means a physician or other health care practitioner licensed, accredited or certified to perform specified health services consistent with state law, or a health care facility.

(q) *Health Information* means any information or data except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or the consumer that relates to:

(1) The past, present or future physical, mental or behavioral health or condition of an individual;

(2) The provision of health care to an individual; or

(3) Payment for the provision of health care to an individual.

(r) *Investment adviser* has the same meaning as in Title 9 V.S.A. § 5102(15); *federal covered investment adviser* has the same meaning as in 9 V.S.A. § 5102(6). For purposes of this Exhibit, the term *investment adviser* shall include a federal covered investment adviser.

(s) (1) *Nonaffiliated third party* means any person except:
(i) Your affiliate; or
(ii) A person employed jointly by you and any company that is not your affiliate (but *nonaffiliated third party* includes the other company that jointly employs the person).

(2) *Nonaffiliated third party* includes any company that is an affiliate solely by virtue of your or your affiliate's direct or indirect ownership or control of the company in conducting merchant banking or investment banking activities of the type described in section 4(k)(4)(H) or insurance company investment activities of the type described in section 4(k)(4)(I) of the Bank Holding Company Act (12 U.S.C. § 1843(k)(4)(H) and (I)) and also includes Vermont merchant banks as described in 8 V.S.A. § 12603.

(t) *Nonpublic personal information* means nonpublic personal financial information and nonpublic personal health information.

(u) (1) *Nonpublic personal financial information* means:
(i) Personally identifiable financial information; and
(ii) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available information.

(2) *Nonpublic personal financial information* does not include:
(i) Health information;
(ii) Publicly available information, except as included on a list described in subdivision (1)(ii) of this subsection (u); or
(iii) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information that is not publicly available information.

(3) *Examples of lists.* (i) Nonpublic personal financial information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available information, such as account numbers.

(ii) Nonpublic personal financial information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not

publicly available information, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

- (v) *Nonpublic personal health information* means health information:
- (1) That identifies an individual who is the subject of the information; or
 - (2) With respect to which there is a reasonable basis to believe that the information could be used to identify an individual.
- (w) (1) *Personally identifiable financial information* means any information:
- (i) A consumer provides to you to obtain a financial product or service from you;
 - (ii) About a consumer resulting from any transaction involving a financial product or service between you and a consumer; or
 - (iii) You otherwise obtain about a consumer in connection with providing a financial product or service to that consumer.
- (2) *Examples.*
- (i) *Information included.* Personally identifiable financial information includes:
- (A) Information a consumer provides to you on an application to obtain a loan, credit card, or other financial product or service;
 - (B) Account balance information, payment history, overdraft history, and credit or debit card purchase information;
 - (C) The fact that an individual is or has been one of your customers or has obtained a financial product or service from you;
 - (D) Any information about your consumer if it is disclosed in a manner that indicates that the individual is or has been your consumer;
 - (E) Any information that a consumer provides to you or that you or your agent otherwise obtain in connection with collecting on a loan or servicing a loan;
 - (F) Any information you collect through an Internet "cookie" (an information collecting device from a web server); and
 - (G) Information from a consumer report.
- (ii) *Information not included.* Personally identifiable financial information does not include:
- (A) Health information;
 - (B) A list of names and addresses of customers of an entity that is not a financial institution; and
 - (C) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.
- (x)(1) *Publicly available information* means any information that you reasonably believe is lawfully made available to the general public from:
- (i) Federal, State, or local government records;

(ii) Widely distributed media; or
(iii) Disclosures to the general public that are required to be made by federal, State, or local law.

(2) *Examples.* (i) *Reasonable belief.*

(A) You have a reasonable belief that information about your consumer is lawfully made available to the general public if you have confirmed, or your consumer has represented to you, that the information is publicly available from a source described in paragraphs (x)(1)(i) - (iii) of this section;

(B) You have a reasonable belief that information about your consumer is made available to the general public if you have taken steps to submit the information, in accordance with your internal procedures and policies and with applicable law, to a keeper of federal, State, or local government records that is required by law to make the information publicly available.

(C) You have a reasonable belief that an individual's telephone number is lawfully made available to the general public if you have located the telephone number in the telephone book or the consumer has informed you that the telephone number is not unlisted.

(D) You do not have a reasonable belief that information about a consumer is publicly available solely because that information would normally be recorded with a keeper of federal, State, or local government records that is required by law to make the information publicly available, if the consumer has the ability in accordance with applicable law to keep that information nonpublic, such as where a consumer may record a deed in the name of a blind trust.

(ii) *Government records.* Publicly available information in government records includes information in government real estate records and security interest filings.

(iii) *Widely distributed media.* Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper, or a web site that is available to the general public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

(y) *You* means:

(1) Any broker-dealer registered or required to be registered with the Department; and

(2) Any investment adviser registered or required to be registered with the Department including a federal covered investment advisor who makes the notice filing, or is required to make the notice filing, provided for in 9 V.S.A. § 5405.

Subpart A-Privacy and Opt-in Notices for Nonpublic Personal Information

Section 5. Initial privacy notice to consumers required.

(a) *Initial notice requirement.* You must provide a clear and conspicuous notice that accurately reflects your privacy policies and practices with respect to nonpublic personal information to:

(1) *Customer.* An individual who becomes your customer, not later than when you establish a customer relationship, except as provided in paragraph (e) of this section; and

(2) *Consumer.* A consumer, before you disclose any nonpublic personal information about the consumer to any nonaffiliated third party, if you make such a disclosure other than as authorized by Sections 15, 16 and 17 of this Exhibit.

(b) *When initial notice to a consumer is not required.* You are not required to provide an initial notice to a consumer under paragraph (a)(2) of this section if:

(1) You do not disclose any nonpublic personal information about the consumer to any nonaffiliated third party, other than as authorized by Sections 15, 16 and 17 and you do not have a customer relationship with the consumer; or

(2) A notice has been provided by an affiliate, as long as the notice clearly identifies all affiliates to whom the notice applies and is accurate with respect to you and your other affiliates.

(c) *When you establish a customer relationship.*

(1) *General rule.* You establish a customer relationship when you and the consumer enter into a continuing relationship.

(2) *Special Rule for Loans.* You do not have a customer relationship with a consumer if you buy a loan made to the consumer but do not have the servicing rights for that loan.

(3) *Examples of establishing customer relationship.* You establish a customer relationship when the consumer:

(i) Effects a securities transaction with you or opens a brokerage account with you under your procedures;

- (ii) Opens a brokerage account with an introducing broker-dealer that clears transactions with and for its customers through you on a fully disclosed basis; or
- (iii) Enters into an advisory contract with you (whether in writing or orally).

(d) *Existing customers.* When an existing customer obtains a new financial product or service from you that is to be used primarily for personal, family, or household purposes, you satisfy the initial notice requirements of paragraph (a) of this section as follows:

(1) You may provide a revised privacy notice, under Section 9, that covers the customer's new financial product or service; or

(2) If the initial, revised, or annual notice that you most recently provided to that customer was accurate with respect to the new financial product or service, you do not need to provide a new privacy notice under paragraph (a) of this section.

(e) *Exceptions to allow subsequent delivery of notice.*

(1) You may provide the initial notice required by paragraph (a)(1) of this section within a reasonable time after you establish a customer relationship if:

- (i) Establishing the customer relationship is not at the customer's election;
- (ii) Providing notice not later than when you establish a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time; or
- (iii) A nonaffiliated broker-dealer or investment adviser establishes a customer relationship between you and a consumer without your prior knowledge.

(2) *Examples of exceptions.*

(i) *Not at customer's election.* Establishing a customer relationship is not at the customer's election if the customer's account is transferred to you by a trustee selected by the Securities Investor Protection Corporation ("SIPC") and appointed by a United States Court.

(ii) *Substantial delay of customer's transaction.* Providing notice not later than when you establish a customer relationship would substantially delay the customer's transaction when you and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the financial product or service.

(iii) *No substantial delay of customer's transaction.* Providing notice not later than when you establish a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at your office or through other means by which the customer may view the notice, such as on a web site.

(f) *Delivery.* When you are required to deliver an initial privacy notice by this section, you must deliver it according to Section 10. If you use a short-form initial notice for

non-customers according to Section 7(d), you may deliver your privacy notice according to Section 7(d)(3).

Section 6. Annual privacy notice to customers required.

(a)(1) *General rule.* You must provide a clear and conspicuous notice to customers that accurately reflects your privacy policies and practices with respect to nonpublic personal information not less than annually during the continuation of the customer relationship. *Annually* means at least once in any period of 12 consecutive months during which that relationship exists. You may define the 12-consecutive-month period, but you must apply it to the customer on a consistent basis.

(2) *Example.* You provide a notice annually if you define the 12-consecutive-month period as a calendar year and provide the annual notice to the customer once in each calendar year following the calendar year in which you provided the initial notice. For example, if a customer opens an account on any day of year 1, you must provide an annual notice to that customer by December 31 of year 2.

(b)(1) *Termination of customer relationship.* You are not required to provide an annual notice to a former customer. A former customer is an individual with whom you no longer have a continuing relationship.

(2) *Examples.* You no longer have a continuing relationship with a customer if:

- (i) The individual's brokerage account is closed;
- (ii) The individual's investment advisory contract is terminated; or
- (iii) You no longer have a continuing relationship with an individual if the individual's last known address according to your records is deemed invalid. An address of record is deemed invalid if mail sent to that address by you has been returned by the postal authorities as undeliverable and if subsequent attempts by you to obtain a current valid address for the individual have been unsuccessful.

(c) *Special Rule for Loans.* If you do not have a customer relationship with a consumer under the special provision for loans in Section 5(c)(2), then you need not provide an annual notice to that consumer under this section.

(d) *Delivery.* When you are required to deliver an annual privacy notice by this section, you must deliver it according to Section 10.

Section 7. Information to be included in privacy notices.

(a) *General rule.* The initial, annual, and revised privacy notices that you provide under Sections 5, 6 and 9 must include each of the following items of information that applies to you or to the consumers to whom you send your privacy notice, in addition to any other information you wish to provide:

- (1) The categories of nonpublic personal information that you collect;
- (2) The categories of nonpublic personal information that you disclose;
- (3) The categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information, other than those parties to whom you disclose information under Sections 15, 16 and 17;
- (4) The categories of nonpublic personal information about your former customers that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information about your former customers, other than those parties to whom you disclose information under Sections 15, 16 and 17;
- (5) If you disclose nonpublic personal financial information to a third party under Section 14 (and no other exception in Sections 15 or 16 applies to that disclosure), a separate statement of the categories of information, as limited by Section 14, you disclose and the categories of nonaffiliated third parties with whom you have contracted;
- (6) An explanation of the consumer's right to opt in under Section 11(a) prior to the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right at any time;
- (7) Any disclosures that you make under Section 603(d)(2)(A)(iii) of the federal Fair Credit Reporting Act (15 U.S.C. § 1681a(d)(2)(A)(iii)) and the federal implementing regulations as modified by 15 U.S.C. § 1681t(b)(2) and the Vermont Fair Credit Reporting Act, 9 V.S.A. § 2480e;
- (8) Your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and
- (9) Any disclosure that you make under paragraph (b) of this section.

(b) *Description of parties subject to exceptions.* If you disclose nonpublic personal information to third parties as authorized under Sections 15, 16 and 17, you are not required to list those exceptions in the initial or annual privacy notices required by Sections 5 and 6. When describing the categories with respect to those parties, you are required to state only that you make disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.

(c) *Examples.* (1) *Categories of nonpublic personal financial information that you collect.* You satisfy the requirement to categorize the nonpublic personal financial information that you collect if you categorize the information according to the source of the information, as applicable:

- (i) Information from the consumer;

- (ii) Information about the consumer's transactions with you or your affiliates;
- (iii) Information about the consumer's transactions with nonaffiliated third parties; and
- (iv) Information from a consumer-reporting agency.

(2) *Categories of nonpublic personal financial information you disclose.*

(i) You satisfy the requirement to categorize the nonpublic personal financial information that you disclose if you list the categories described in paragraph (c)(1) of this section, as applicable, and a few examples to illustrate the types of information in each category. These might include:

(A) Information from the consumer, including application information, such as assets and income and identifying information, such as name, address and social security number;

(B) Transaction information, such as information about balances, payment history and parties to the transaction; and

(C) Information from consumer reports, such as a consumer's creditworthiness and credit history.

(ii) If you reserve the right to disclose all of the nonpublic personal financial information about consumers that you collect, you may simply state that fact without describing the categories or examples of the nonpublic personal financial information you disclose.

(iii) You do not adequately categorize the information you disclose if you use only general terms, such as transaction information about the consumer.

(3) *Categories of affiliates and nonaffiliated third parties to whom you disclose.*

(i) You satisfy the requirement to categorize the affiliates and nonaffiliated third parties to whom you disclose nonpublic personal financial information if you identify the types of businesses in which they engage.

(ii) Types of businesses may be described by general terms only if you use a few illustrative examples of significant lines of business. For example, you may use the term financial products or services if it includes appropriate examples of significant lines of businesses, such as life insurer, consumer banking or securities brokerage.

(iii) You may categorize the affiliates and nonaffiliated third parties to which you disclose nonpublic personal financial information about consumers using more detailed categories.

(4) *Disclosures under exception for service providers and joint marketers.* If you disclose nonpublic personal financial information under the exception in Section 14 to a nonaffiliated third party to market products or services that you offer alone or jointly with another financial institution, you satisfy the disclosure requirement of paragraph (a)(5) of this section if you:

- (i) Subject to the limitation in Section 14, list the categories of nonpublic personal financial information you disclose, using the same categories and examples you used to meet the requirements of paragraph (a)(2) of this section, as applicable; and
- (ii) State whether the third party is:
 - (A) A service provider that performs marketing services on your behalf or on behalf of you and another financial institution; or
 - (B) A financial institution with which you have a joint marketing agreement.

(5) *Simplified notices.* If you do not disclose, and do not wish to reserve the right to disclose, nonpublic personal information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under Sections 15, 16 and 17, you may simply state that fact, in addition to the information you must provide under paragraphs (a)(1), (a)(8), (a)(9), and (b) of this section.

(6) *Confidentiality and security.* You describe your policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information if you do both of the following:

- (i) Describe in general terms who is authorized to have access to the information; and
- (ii) State whether you have security practices and procedures in place to ensure the confidentiality of the information in accordance with your policy. You are not required to describe technical information about the safeguards you use.

(d) *Short-form initial notice with opt-in notice for non-customers.*

(1) You may satisfy the initial notice requirements in Section 5(a)(2) and Section 8(d) for a consumer who is not a customer by providing a short-form initial notice at the same time as you deliver an opt-in notice as required in Section 8.

- (2) A short-form initial notice must:
 - (i) Be clear and conspicuous;
 - (ii) State that your privacy notice is available upon request; and
 - (iii) Explain a reasonable means by which the consumer may obtain the privacy notice.

(3) You must deliver your short-form initial notice according to Section 10. You are not required to deliver your privacy notice with your short-form initial notice. You instead may simply provide the consumer a reasonable means to obtain your privacy notice. If a consumer who receives your short-form notice requests your privacy notice, you must deliver your privacy notice according to Section 10.

(4) *Examples of obtaining privacy notice.* You provide a reasonable means by which a consumer may obtain a copy of your privacy notice if you:

(i) Provide a toll-free telephone number that the consumer may call to request the notice; or

(ii) For a consumer who conducts business in person at your office, maintain copies of the notice on hand that you provide to the consumer immediately upon request.

(e) *Future disclosures.* Your notice may include:

(1) Categories of nonpublic personal financial information that you reserve the right to disclose in the future, but do not currently disclose; and

(2) Categories of affiliates or nonaffiliated third parties to whom you reserve the right in the future to disclose, but to whom you do not currently disclose, nonpublic personal financial information.

(f) *Sample clauses.* Sample clauses illustrating some of the notice content required by this section are included in the Appendix of this Exhibit.

Section 8. Form of opt-in notice to consumers; opt-in methods.

(a) (1) *Form of opt-in notice.* If you are required to provide an opt-in notice under Section 11(a) then you may not disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party unless you:

(i) Provide to the consumer a clear and conspicuous notice, in writing or electronic form, of the categories of nonpublic personal financial information that may be disclosed and the categories of nonaffiliated third parties to whom you disclose nonpublic personal financial information;

(ii) Identify the financial product or services that the consumer obtains from the financial institution, either singly or jointly, to which the opt-in direction would apply;

(iii) Identify the methods by which the consumer may subsequently revoke the opt-in direction;

(iv) Clearly and conspicuously request in writing or in electronic form that the consumer affirmatively authorize such disclosure; and

(v) Obtain from the consumer such affirmative consent and such consent has not been withdrawn.

(2) *Unreasonable revocation of opt-in direction means.* You do not provide a reasonable means of revoking an opt-in direction if:

(i) The only means of revoking an opt-in direction is for the consumer to write his or her own letter to effect a revocation; or

(ii) The only means revoking an opt-in direction as described in any notice subsequent to the initial notice is to use a check-off box that you provided with the initial notice but did not include with the subsequent notice.

(3) *Duration and withdrawal of consent.* A consumer's direction to opt in under this subsection is effective until the consumer revokes it in writing or, if the consumer agrees, electronically; further provided however, any withdrawal or revocation of consent is subject to your rights if you acted reasonably in reliance on the consent prior to knowledge of its withdrawal or revocation. When a customer relationship terminates, the customer's opt-in direction continues to apply to the nonpublic personal financial information collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with you, the opt-in direction that applied to the former relationship does not apply to the new relationship.

(4) *Joint relationships.* If two or more consumers jointly obtain a financial product or service from you, you may only disclose nonpublic personal financial information of a consumer to a nonaffiliated third party after obtaining an affirmative consent notice from that consumer. Joint information may only be disclosed after obtaining the affirmative consent notice from all joint consumers of the product or service.

(5) *Aggregate Lists.* You may not disclose any aggregate list of consumers containing or derived from nonpublic personal financial information to a nonaffiliated third party unless you have satisfied, for each consumer on the list, the requirements of subdivisions (i), (ii), (iii), (iv) and (v) of (a)(1) of this section.

(6) *Exceptions.* This section shall not restrict you from disclosing nonpublic personal financial information as authorized in Sections 14, 15, 16 and 17.

(7) *Record Retention.* You must retain the opt-in authorization or a copy thereof in the record of the consumer who is the subject of disclosure of nonpublic personal financial information.

(b) *Delivery.* When you are required to deliver an opt-in notice by this section, you must deliver it according to Section 10.

(c) *Same form as initial notice permitted.* You may provide the opt-in notice together with or on the same written or electronic form as the initial notice you provide in accordance with Section 5.

(d) *Initial notice required when opt-in notice delivered subsequent to initial notice.* If you provide the opt-in notice after the initial notice in accordance with Section 5, you must also include a copy of the initial notice with the opt-in notice in writing or, if the consumer agrees, electronically.

Section 9. Revised privacy notices.

(a) *General rule.* Except as otherwise authorized in this Exhibit, you must not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party other than as described in the initial notice that you provided to that consumer under Section 5, unless:

- (1) You have provided to the consumer a clear and conspicuous revised notice that accurately describes your policies and practices;
- (2) You have provided to the consumer a new opt-in notice; and
- (3) The consumer provides an affirmative consent to the disclosures described in the notice.

(b) *Examples.*

(1) Except as otherwise permitted by Sections 14, 15 and 16, you must provide a revised notice before you:

- (i) Disclose a new category of nonpublic personal financial information to any nonaffiliated third party;
- (ii) Disclose nonpublic personal financial information to a new category of nonaffiliated third party; or
- (iii) Disclose nonpublic personal financial information about a former customer to a nonaffiliated third party, if that former customer has not given affirmative consent regarding that disclosure.

(2) A revised notice is not required if you disclose nonpublic personal financial information to a new nonaffiliated third party that you adequately described in your prior notice.

(c) *Delivery.* When you are required to deliver a revised privacy notice by this section, you must deliver it according to Section 10.

(d) *Fair Credit Reporting Acts.* Nothing in this Exhibit shall relieve you of any requirement under the federal or Vermont Fair Credit Reporting Acts or regulations promulgated thereunder with respect to notice and consumer consent for disclosures to affiliates.

Section 10. Delivering privacy and opt-in notices.

(a) *How to provide notices.* You must provide any notice that this Exhibit requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(b) (1) *Examples of reasonable expectation of actual notice.* You may reasonably expect that a consumer will receive actual notice if you:

- (i) Hand-deliver a printed copy of the notice to the consumer;
- (ii) Mail a printed copy of the notice to the last known address of the consumer;
- (iii) For the consumer who conducts transactions electronically, post the notice on the electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial product or service; or
- (iv) For an isolated transaction with the consumer, such as an ATM transaction, post the notice on the ATM screen and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular financial product or service.

(2) *Examples of unreasonable expectation of actual notice.* You may not, however, reasonably expect that a consumer will receive actual notice of your privacy policies and practices if you:

- (i) Only post a sign in your branch or office or generally publish advertisements of your privacy policies and practices; or
- (ii) Send the notice via electronic mail to a consumer who does not obtain a financial product or service from you electronically.

(c) *Annual notices only.* You may reasonably expect that a customer will receive actual notice of your annual privacy notice if:

- (1) The customer uses your web site to access financial products and services electronically and agrees to receive notices at the web site and you post your current privacy notice continuously in a clear and conspicuous manner on the web site; or
- (2) The customer has requested that you refrain from sending any information regarding the customer relationship, and your current privacy notice remains available to the customer upon request.

(d) *Oral description of notice insufficient.* You may not provide any notice required by this Exhibit solely by orally explaining the notice, either in person or over the telephone.

(e) *Retention or accessibility of notices for customers.*

(1) For customers only, you must provide the initial notice required by Section 5(a)(1), the annual notice required by Section 6(a), and the revised notice required by Section 9, so that the customer can retain them or obtain them later in writing or, if the customer agrees to electronic receipt, transmit them in a form that the customer can download and print.

(2) *Examples of retention or accessibility.* You provide a privacy notice to the customer so that the customer can retain it or obtain it later if you:

- (i) Hand-deliver a printed copy of the notice to the customer;
- (ii) Mail a printed copy of the notice to the last known address of the customer; or
- (iii) Make your current privacy notice available on a web site (or a link to another web site) for the customer who obtains a financial product or service electronically and agrees to receive the notice at the web site. Electronic receipt must include the ability to download and print the notice.

(f) *Joint notice with other financial institutions.* You may provide a joint notice from you and one or more of your affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to you and the other institutions. You may also provide a notice on behalf of another financial institution.

(g) *Joint relationships.* If two (2) or more consumers jointly obtain a financial product or service from you, you may satisfy the initial, annual, and revised notice requirements of Sections 5(a), 6(a) and (9)(a) respectively by providing one notice to those consumers jointly.

Subpart B-Limits on Disclosures of Financial Information

Section 11. Limits on disclosure of nonpublic personal financial information to nonaffiliated third parties.

(a) *Conditions for disclosure.* Except as otherwise authorized in this Exhibit, you may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party unless:

- (1) You have provided to the consumer an initial notice as required under Section 5;
- (2) You have provided to the consumer an opt-in notice under Section 8 of this Exhibit; and
- (3) The consumer has authorized the disclosure in writing or, if the consumer agrees, electronically.

(b) *Opt in definition.* "Opt in" means the written, or if the consumer agrees, electronic authorization by the consumer allowing you to disclose nonpublic personal financial information about that consumer to a nonaffiliated third party, other than as permitted by Sections 14, 15, and 16.

(c) *Application of Opt in to all consumers and all nonpublic personal financial information.*

(1) You must comply with this section, regardless of whether you and the consumer have established a customer relationship.

(2) Unless you comply with this section, you may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer that you have collected, regardless of whether you collected it before or after providing the opt-in notice.

(d) *Partial Opt in.* You may allow a consumer to select certain nonpublic personal financial information or certain nonaffiliated third parties with respect to which the consumer wishes to opt in.

Section 12. Limits on redisclosure and reuse of nonpublic personal financial information.

(a) (1) *Information you receive under an exception.* If you receive nonpublic personal financial information from a nonaffiliated financial institution under an exception in Sections 15 or 16, your disclosure and use of that information is limited as follows:

(i) You may disclose the information to the affiliates of the financial institution from which you received the information;

(ii) You may disclose the information to your affiliates, but your affiliates may, in turn, disclose and use the information only to the extent that you may disclose and use the information; and

(iii) You may disclose and use the information pursuant to an exception in Sections 15 or 16 in the ordinary course of business to carry out the activity covered by the exception under which you received the information.

(2) *Example.* If you receive a customer list from a nonaffiliated financial institution in order to provide account-processing services under the exception in Section 15(a), you may disclose that information under any exception in Sections 15 or 16 in the ordinary course of business in order to provide those services. You could also disclose that information in response to a properly authorized subpoena or in the ordinary course of business to your attorneys, accountants, and auditors. You could not disclose that

information to a third party for marketing purposes or use that information for your own marketing purposes.

(b) (1) *Information you receive outside of an exception.* If you receive nonpublic personal financial information from a nonaffiliated financial institution other than under an exception in Sections 15 or 16, you may disclose the information only:

- (i) To the affiliates of the financial institution from which you received the information;
- (ii) To your affiliates, but your affiliates may, in turn, disclose the information only to the extent that you can disclose the information; and
- (iii) To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which you received the information.

(2) *Example.* If you obtain a customer list from a nonaffiliated financial institution outside of the exceptions in Sections 15 and 16:

- (i) You may use that list for your own purposes; and
- (ii) You may disclose that list to another nonaffiliated third party only if the financial institution from which you purchased the list could have lawfully disclosed the list to that third party. That is, you may disclose the list in accordance with the privacy policy of the financial institution from which you received the list, as limited by the absence or limitation of the opt-in direction of each consumer whose nonpublic personal financial information you intend to disclose, and you may disclose the list in accordance with an exception in Sections 15 or 16, such as in the ordinary course of business to your attorneys, accountants, or auditors.

(c) *Information you disclose under an exception.* If you disclose nonpublic personal financial information to a nonaffiliated third party under an exception in Sections 15 or 16, the third party may disclose and use that information only as follows:

- (1) The third party may disclose the information to your affiliates;
- (2) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and
- (3) The third party may disclose and use the information pursuant to an exception in Sections 15 or 16 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(d) *Information you disclose outside of an exception.* If you disclose nonpublic personal financial information to a nonaffiliated third party other than under an exception in Sections 15 or 16, the third party may disclose the information only:

- (1) To your affiliates;
- (2) To its affiliates, but its affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

(3) To any other person, if the disclosure would be lawful if you made it directly to that person.

(e) *Fair Credit Reporting Acts.* Nothing in this Exhibit shall authorize you to make any disclosures to an affiliate not otherwise in compliance with the requirement of the federal Fair Credit Reporting Act or regulations promulgated thereunder or the Vermont Fair Credit Reporting Act or regulations promulgated thereunder, including, but not limited to, notice and consumer consent.

Section 13. Limits on sharing account number information for marketing purposes.

(a) *General prohibition on disclosure of account numbers.* You must not, directly or through an affiliate, disclose, other than to a consumer reporting agency, an account number or similar form of access number or access code for a consumer's credit card account, deposit account, or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer. You shall not provide an account number or similar form of access number or access code, in an encrypted form.

(b) *Exceptions.* Paragraph (a) of this section does not apply if you disclose an account number or similar form of access number or access code:

(1) To your agent or service provider solely in order to perform marketing for your own products or services, as long as the agent or service provider is not authorized to directly initiate charges to the account; or

(2) To a participant in an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

(c) *Example-Account number.*

(1) An account number, or similar form of access number or access code, includes a number or code in an encrypted form.

Subpart C-Exceptions

Section 14. Exception to Opt-in Requirements for disclosure of nonpublic personal information for service providers and joint marketing.

(a) *General rule.*

(1) The opt-in requirements in Sections 8 and 11 do not apply when you provide nonpublic personal information to a nonaffiliated third party to perform services for you or functions on your behalf, if you:

(i) Provide the initial notice in accordance with Section 5;

(ii) Enter into a contractual agreement with the third party that prohibits the nonaffiliated third party from disclosing or using the information other than to carry out the purposes for which you disclosed the information, including use under an exception in Sections 15 or 16 in the ordinary course of business to carry out those purposes; and

(iii) For joint marketing agreements,

(A) you provide only the consumer's name, contact information and own transaction and experience information within the meaning of the federal Fair Credit Reporting Act, 15 U.S.C. § 1681a(d)(2)(A)(i) and the Vermont Fair Credit Reporting Act, 9 V.S.A. § 2480a(2)(A); and,

(B) in the event health information is provided as own transaction or experience information as defined in (A) of this subdivision (iii), complies with section 20 of this rule.

(2) *Examples.*

(i) If you disclose nonpublic personal information under this section to a financial institution with which you perform joint marketing, your contractual agreement with that institution meets the requirements of paragraph (a)(1)(ii) of this section if it prohibits the institution from disclosing or using the nonpublic personal information except as necessary to carry out the joint marketing or under an exception in Sections 15 or 16 in the ordinary course of business to carry out that joint marketing.

(ii) If you comply with the provisions of Section 14(a)(1)(i), (ii) of this Exhibit, you may provide nonpublic personal information to a service provider that is a nonaffiliated third party agent of yours to enable the agent to offer, renew or service products on your behalf. Such disclosure shall not be subject to the limitations of paragraph (a)(1)(iii) of this section.

(b) *Service may include joint marketing.* The services a nonaffiliated third party performs for you under paragraph (a) of this section may include marketing of your own products or services or marketing of financial products or services offered pursuant to joint agreements between you and one or more financial institutions.

(c) *Joint agreement. Definition.* For purposes of this section, *joint agreement* means a written contract pursuant to which you and one or more financial institutions jointly offer, endorse, or sponsor a financial product or service.

Section 15. Exceptions to notice and opt-in requirements for disclosure of nonpublic personal financial information for processing and servicing transactions.

(a) *Exceptions for processing and servicing transactions at consumer's request.* The requirements for initial notice in Section 5(a)(2), for the opt-in requirements in Sections 8 and

11, and for service providers and joint marketing in Section 14, do not apply if you disclose nonpublic personal financial information as necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes, or in connection with:

- (1) Processing or servicing a financial product or service that a consumer requests or authorizes;
- (2) Maintaining or servicing the consumer's account with you, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or
- (3) A proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer.

(b) *Necessary to effect, administer, or enforce a transaction* means that the disclosure is:

- (1) Required, or is one of the lawful or appropriate methods, to enforce your rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or
- (2) Required, or is a usual, appropriate, or acceptable method:
 - (i) To carry out the transaction or the product or service business of which the transaction is a part, and record, service, or maintain the consumer's account in the ordinary course of providing the financial service or financial product;
 - (ii) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;
 - (iii) To provide a confirmation, statement, or other record of the transaction, or information on the status or value of the financial service or financial product to the consumer or the consumer's agent or broker;
 - (iv) To accrue or recognize incentives or bonuses associated with the transaction that are provided by you or any other party;
 - (v) To underwrite insurance at the consumer's request or for reinsurance purposes, or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating, or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects, or as otherwise required or specifically permitted by federal or State law; or
 - (vi) In connection with:
 - (A) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited, or otherwise paid using a debit, credit, or other payment card, check, or account number, or by other payment means;
 - (B) The transfer of receivables, accounts, or interests therein; or
 - (C) The audit of debit, credit, or other payment information.

Section 16. Other exceptions to notice and opt-in requirements for disclosure of nonpublic personal financial information.

(a) *Exceptions to opt-in requirements.* The requirements for initial notice in Section 5(a)(2) and for the opt-in requirements in Sections 8, 11 and service providers and joint marketing under Section 14 do not apply when you disclose nonpublic personal financial information:

- (1) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;
- (2)
 - (i) To protect the confidentiality or security of your records pertaining to the consumer, service, product, or transaction;
 - (ii) To protect against or prevent actual or potential fraud or unauthorized transactions;
 - (iii) For required institutional risk control or for resolving consumer disputes or inquiries;
 - (iv) To persons holding a legal or beneficial interest relating to the consumer; or
 - (v) To persons acting in a fiduciary or representative capacity on behalf of the consumer.
- (3) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating you, persons that are assessing your compliance with industry standards, and your attorneys, accountants, and auditors;
- (4) To the extent specifically permitted or required under other provisions of law and in accordance with the federal Right to Financial Privacy Act of 1978 (12 U.S.C. § 3401 *et seq.*), to law enforcement agencies (including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, the Securities and Exchange Commission, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping and the Federal Trade Commission) to state and federal civil and administrative authorities (including, but not limited to, a state insurance authority, a state banking authority and a state securities authority), self-regulatory organizations or for an investigation on a matter related to public safety;
- (5)
 - (i) To a consumer reporting agency in accordance with the federal Fair Credit Reporting Act (15 U.S.C. § 1681 *et seq.*), or
 - (ii) From a consumer report reported by a consumer reporting agency;
- (6) In connection with a proposed or actual affiliation, reorganization, sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the

disclosure of nonpublic personal financial information concerns solely consumers of such business or unit;

- (7) (i) To comply with federal, state, or local laws, rules and other applicable legal requirements;
 - (ii) To comply with a properly authorized civil, criminal, or regulatory investigation, or subpoena or summons by federal, state, or local authorities;
 - (iii) To respond to judicial process or government regulatory authorities having jurisdiction over you for examination, compliance, or other purposes as authorized by law; or
- (8) In the administration of an order or proceeding under Chapter 150 of Title 9.

(b) *Examples of revocation of consent.* A consumer may revoke consent by subsequently exercising the right to prevent future disclosures of nonpublic personal financial information as permitted under Section 8(a).

Subpart D-Rules for Health Information

Section 17. When Authorization Required for Disclosure of Nonpublic Personal Health Information.

(a) *General rule.* You shall not disclose nonpublic personal health information about a consumer or customer unless an authorization is obtained from the consumer or customer whose nonpublic personal health information is the subject of a requested disclosure.

(b) *Exceptions.* Nothing in this section shall prohibit, restrict or require an authorization for the disclosure of nonpublic personal health information by a financial institution for the following:

(1) Any activity that would permit disclosure without opt in by the consumer or customer pursuant to Section 15 or 16 of this rule if the information were nonpublic personal financial information;

(2) In connection with the conduct by the financial institution directly of the business of insurance, any activity that would permit disclosure without authorization pursuant to section 17.B or 17.C of Insurance Regulation IH-2001-01 (Privacy of Consumer Financial and Health Information Regulation);

(3) Any activity that permits disclosure without authorization pursuant to the federal Health Insurance Portability and Accountability Act privacy rules promulgated by

the U.S. Department of Health and Human Services, *except* as provided in section 20 of this Exhibit; and

(4) Any activity required pursuant to governmental reporting authority or to comply with legal process.

(c) *Additional Functions.* Additional categories of disclosures may be added with the approval of the commissioner to the extent they are necessary for appropriate performance of activities that are financial in nature or incidental to such financial activities as described in the section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. § 1843(k)) and are fair and reasonable to the interest of consumers.

Section 18. Authorizations.

(a) *Authorization requirement.* A valid authorization to disclose nonpublic personal health information pursuant to this Subpart D shall be in written or electronic form and shall contain all of the following:

(1) The identity of the consumer or customer who is the subject of the nonpublic personal health information;

(2) A general description of the types of nonpublic personal health information to be disclosed;

(3) General descriptions of the parties to whom you disclose nonpublic personal health information, the purpose of the disclosure and how the information will be used;

(4) The signature of the consumer or customer who is the subject of the nonpublic personal health information or the individual who is legally empowered to grant authority and the date signed; and

(5) Notice of the length of time for which the authorization is valid and that the consumer or customer may revoke the authorization at any time and the procedure for making a revocation.

(b) *Time Limits.* An authorization for the purposes of this Subpart D shall specify a length of time for which the authorization shall remain valid, which in no event shall be for more than twenty-four (24) months.

(c) *Revocation of authorization.* A consumer or customer who is the subject of nonpublic personal health information may revoke an authorization provided pursuant to this

Subpart D at any time, subject to your rights if you acted in reliance on the authorization prior to notice of the revocation.

(d) *Record retention.* You shall retain the authorization or a copy thereof in the record of the individual who is the subject of nonpublic personal health information.

Section 19. Authorization Request Delivery.

A request for authorization and an authorization form may be delivered to a consumer or a customer as part of an opt-in notice pursuant to Section 10, provided that the request and the authorization form are clear and conspicuous. An authorization form is not required to be delivered to the consumer or customer unless you intend to disclose protected health information pursuant to Section 17(a).

Section 20. Relationship to Federal Rules.

Irrespective of whether you are subject to the federal Health Insurance Portability and Accountability Act privacy rule as promulgated by the U.S. Department of Health and Human Services, 45 C.F.R. Parts 160 and 164, (the "federal rule"), if you comply with all requirements of the federal rule and its effective date provision, you shall be deemed to be in compliance with the provisions of this Subpart D; provided, however, you shall be prohibited from making disclosures under the provisions of 45 C.F.R. § 164.514(e)(2) without the consumer's prior written consent. Nothing in this Exhibit shall be deemed to make applicable any provision of the federal Health Insurance Portability and Accountability Act of 1996 or the regulations promulgated thereunder to any financial institution not otherwise subject thereto.

Section 21. Relationship to State Laws.

Nothing in this article shall preempt or supersede existing state law related to medical records, health or insurance information privacy.

Subpart E- Additional Provisions

Section 22. Protection of Fair Credit Reporting Acts.

(a) *Transaction and experience information.* No inference shall be drawn on the basis of the provisions of this Exhibit regarding whether information is transaction or experience information under Section 603 of federal Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.).

(b) *Vermont Fair Credit Reporting Act.* Nothing in this Exhibit shall be construed to modify, limit or supersede the operation of the Vermont Fair Credit Reporting Act (9 V.S.A. §§ 2480a-2480g). No inference shall be drawn on the basis of the provisions of this Exhibit

regarding whether information is transaction or experience information under section 2480a(2) of the Vermont Fair Credit Reporting Act. This Exhibit shall not be construed to extend the application of the Vermont Fair Credit Reporting Act to persons who are not residents of Vermont.

Section 23. Nondiscrimination.

(a) *No opt-in discrimination.* You shall not unfairly discriminate against a consumer or customer because that consumer or customer has not granted authorization for the disclosure of his or her nonpublic personal financial information pursuant to the provisions of this Exhibit.

(b) *No health opt-in discrimination.* You shall not unfairly discriminate against a consumer or customer because that consumer or customer has not granted authorization for the disclosure of his or her nonpublic personal health information pursuant to the provisions of this Exhibit.

Section 24. Violations.

In addition to any other sanctions available to the commissioner under Vermont law for violations of this Exhibit, any violation of this Exhibit shall be deemed an unfair method of competition or an unfair or deceptive act or practice in the conduct of a broker-dealer or investment adviser for the purposes of Chapter 150 of Title 9 V.S.A.

Section 25. Severability.

If any section or portion of a section of this Exhibit or its applicability to any person or circumstance is held invalid by a court, the remainder of the Exhibit or the applicability of the provision to other persons or circumstances shall not be affected.

Section 26. [reserved]

Section 27. Procedures to safeguard customer records and information.

Every broker-dealer and every investment adviser registered with the Department must adopt policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information. These policies and procedures must be reasonably designed to:

- (a) Insure the security and confidentiality of customer records and information;
- (b) Protect against any anticipated threats or hazards to the security or integrity of customer records and information; and
- (c) Protect against unauthorized access to or use of customer records or information that could result in substantial harm or inconvenience to any customer.

Appendix - Sample Clauses

Financial institutions, including a group of financial holding company affiliates that use a common privacy notice, may use the following sample clauses, if the clause is accurate for each institution that uses the notice. (Note that disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act, such as a requirement to permit a consumer to opt-in to disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.)

A-1. Categories of information you collect (all institutions)

You may use this clause, as applicable, to meet the requirement of Section 7(a)(1) to describe the categories of nonpublic personal financial information you collect.

Sample Clause A-1:

We collect nonpublic personal financial information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information about your transactions with us, our affiliates, or others; and
- Information we receive from a consumer reporting agency.

A-2. Categories of information you disclose (institutions that disclose outside of the exceptions)

You may use one of these clauses, as applicable, to meet the requirement of Section 7(a)(2) to describe the categories of nonpublic personal financial information you disclose. You may use these clauses if you disclose nonpublic personal financial information other than as permitted by the exceptions in Sections 14, 15 and 16.

Sample Clause A-2, Alternative 1:

We may disclose the following kinds of nonpublic personal financial information about you:

- Information we receive from you on applications or other forms, such as [*provide illustrative examples, such as "your name, address, social security number, assets, and income"*];
- Information about your transactions with us, our affiliates, or others, such as [*provide illustrative examples, such as "your account balance, payment history, parties to transactions, and credit card usage"*]; and

- Information we receive from a consumer reporting agency, such as [*provide illustrative examples, such as "your creditworthiness and credit history"*].

Sample Clause A-2, Alternative 2:

We may disclose all of the information that we collect, as described [*describe location in the notice, such as "above" or "below"*].

A-3. Categories of information you disclose and parties to whom you disclose (institutions that do not disclose outside of the exceptions)

You may use this clause, as applicable, to meet the requirements of Section 7(a)(2), (3), and (4) to describe the categories of nonpublic personal financial information about customers and former customers that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose. You may use this clause if you do not disclose nonpublic personal financial information to any party, other than as permitted by the exceptions in Sections 15 and 16.

Sample Clause A-3:

We do not disclose any nonpublic personal financial information about our customers or former customers to anyone, except as permitted by law.

A-4. Categories of parties to whom you disclose (institutions that disclose outside of the exceptions)

You may use this clause, as applicable, to meet the requirement of Section 7(a)(3) to describe the categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal financial information. You may use this clause if you disclose nonpublic personal financial information other than as permitted by the exceptions in Sections 14, 15 and 16, as well as when permitted by the exceptions in Sections 15 and 16.

Sample Clause A-4:

We may disclose nonpublic personal financial information about you to the following types of third parties:

- Financial service providers, such as [*provide illustrative examples, such as "mortgage bankers, securities broker-dealers, and insurance agents"*];
- Non-financial companies, such as [*provide illustrative examples, such as "retailers, direct marketers, airlines, and publishers"*]; and

- Others, such as [*provide illustrative examples, such as "non-profit organizations"*].

We may also disclose nonpublic personal financial information about you to nonaffiliated third parties as permitted by law.

A-5. Service provider/joint marketing exception

You may use one of these clauses, as applicable, to meet the requirements of Section 7(a)(5) related to the exception for service providers and joint marketers in Section 14. If you disclose nonpublic personal information under this exception, you must describe the categories of nonpublic personal financial information you disclose and the categories of third parties with whom you have contracted.

Sample Clause A-5, Alternative 1:

We may disclose the following information to companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements.

Information we receive from you on applications or other forms, such as [*provide illustrative examples, such as "your name, address, social security number, assets, and income"*];

- Information about your transactions with us, our affiliates, or others, such as [*provide illustrative examples, such as "your account balance, payment history, parties to transactions, and credit card usage"*]; and
- Information we receive from a consumer reporting agency, such as [*provide illustrative examples, such as "your creditworthiness and credit history"*].

Sample Clause A-5, Alternative 2:

We may disclose all of the information we collect, as described [*describe location in the notice, such as "above" or "below"*] to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements.

Sample Clause A-5, Alternative 3:

We may disclose the following information to other financial institutions with which we have joint marketing agreements:

- The following information we receive from you: “your name and contact information”;
- Information about your transactions with us or our affiliates, such as [*provide illustrative examples of own transaction and experience information, such as “your account balance, payment history, parties to transactions, and credit card usage”*].

A-6. Explanation of opt-in right (institutions that disclose to non affiliates outside of the exceptions)

You may use this clause, as applicable, to meet the requirement of Section 7(a)(6) to provide an explanation of the consumer's right to opt in to the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right. You may use this clause if you disclose nonpublic personal financial information to nonaffiliated third parties other than as permitted by the exceptions in Sections 14, 15, and 16.

Sample Clause A-6-b:

We will not disclose nonpublic personal financial information about you to nonaffiliated third parties (other than disclosures permitted by law), unless you authorize us to make those disclosures. Your authorization must be in writing or, if you agree, in electronic form. If you wish to authorize us to disclose your nonpublic personal financial information to nonaffiliated third parties, you may [*describe a reasonable means of opting in, such as "sign the attached, postage prepaid card and mail it to us"*].

A-7. Confidentiality and security (all institutions)

You may use this clause, as applicable, to meet the requirement of Section 7(a)(8) to describe your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

Sample Clause A-7:

We restrict access to nonpublic personal information about you to [*provide an appropriate description, such as "those employees who need to know that information to provide products or services to you"*]. We maintain physical, electronic, and procedural safeguards that comply with federal standards to guard your nonpublic personal information.

**UNETHICAL OR DISHONEST PRACTICES OF
BROKER-DEALERS AND AGENTS.**

Table of Contents

Section 1.	Authority, Scope and Purpose
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Section 1. Authority, Scope and Purpose

1.01 The provisions of this Exhibit 6.1 to Order 06-43-S (the "Exhibit") are issued by the Department of Banking, Insurance and Securities pursuant to the authority granted by Sections 5412(d)(13) and 5605 of the Act.

1.02 The provisions of this Exhibit apply to all persons who are registered or required to be registered under the Act to transact business in Vermont as a broker-dealer or agent. Section 5412 of the Act empowers the Commissioner to impose civil penalties on, and to deny, revoke, limit or condition the registration of, broker-dealers and agents who engage in certain prohibited conduct described in Section 5412(d). Under Section 5412(d)(13), such prohibited conduct includes engaging in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous 10 years.

1.03 The provisions of this Exhibit provide a non-exclusive definition of "dishonest or unethical practices" for purposes of Section 5412(d)(13) of the Act.

All broker-dealers and agents shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business and shall give particular attention to any conflicts of interest that may arise or exist. The acts and practices set forth in Section 3 of this Exhibit are considered contrary to such standards. This Exhibit is not intended to be all inclusive, and thus acts or practices not enumerated herein may also be deemed unethical or dishonest.

This Exhibit is also not intended to limit or define fraudulent and other prohibited practices under Section 5501 of the Act or to preclude the application of the general anti-fraud provisions contained therein against any person for acts or practices similar in kind to the acts or practices set forth in Section 3 of this Exhibit.

Section 2. Definitions

The definitions set forth in Section 5102 of the Act apply to this Exhibit.

Section 3. General Rules

The term "unethical or dishonest practices" as used in Section 5412(d)(13) of the Act includes, but is not limited to, the following:

3.01 Unreasonable or unjustifiable delay or failure in executing orders, liquidating customers' accounts, making delivery of securities purchased or in paying upon request free credit balances reflecting completed transactions of any customers;

3.02 Entering into a transaction with a customer in any security at an unreasonable price or at a price not reasonably related to the current market price of the security or receiving an unreasonable commission, markup or profit;

3.03 Effecting a transaction in the account of a customer without authority to do so; or 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 or price for the execution of orders or both;

3.04 Switching or churning of securities in a customer's account or inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

3.05 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 other securities holdings, investment objectives, financial situation and needs and any other relevant information known by the broker-dealer or agent;

3.06 Engaging or aiding in boiler room operations or high pressure tactics in connection with the solicitation of a sale or purchase of a security by means of an intensive telephone campaign or unsolicited calls to persons not known by, nor having an account with, the agent or broker-dealer represented by the agent, whereby the prospective purchaser is encouraged to make a hasty decision to buy, irrespective of his or her investment needs and objectives;

3.07 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 include all information set forth in the final prospectus, or making oral or written statements contrary to or inconsistent with the disclosures contained in the prospectus or additional documents furnished;

3.08 Making a false, misleading, deceptive or exaggerated representation or prediction in connection with solicitation of a sale or sale of a security about an issuer's financial condition, anticipated earnings, dividends, distributions, potential growth, future success or the ability or competency of management, or a statement that:

(a) The security will be resold or repurchased, except for a security issued by an investment company registered under the Investment Company Act of 1940;

(b) A market will be established in the security in which the security will be regularly bought and sold in the absence of a reasonable basis for such statement;

(c) There is an unqualified or absolute guarantee against risk or loss in the absence of a reasonable basis for such statement;

(d) Purchasing the security will result in an assured, immediate, or extensive increase in value, future market price, or return on investment;

(e) There will be, or the issuer contemplates, a stock split, merger or consolidation, unless such action has been announced or declared by the issuer; or

(f) The next or succeeding issue of securities of the same issuer will sell for a higher price than the present issue of securities;

3.09 Failing to disclose a dual-agency capacity or effecting a transaction upon terms and conditions other than those stated by the confirmation; or failing to disclose that the broker-dealer or agent 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, or if such disclosure is not made in writing, failing to give or send a written disclosure at or before the completion of the transaction;

3.10 Failing to segregate customers' free securities or securities held in safekeeping;

3.11 Establishing or maintaining fictitious or nominee accounts in order to execute transactions which would otherwise be prohibited;

3.12 Entering into agreements with any unregistered broker-dealer or sales representative for selling concessions, discounts, commissions or allowances as consideration for services in connection with the distribution or sale of a security in this state, or dividing or otherwise splitting agents' commissions, profits or other compensation from the purchase or sale of securities in this state with any person not also registered as a agent associated with the same broker-dealer or with a broker-dealer under direct or indirect common control, unless such person is not required to be registered in order to engage in the securities business in this state;

3.13 Operating a securities business while unable to meet current liabilities, or violating any statutory provision, rule or order relating to minimum capital, surety bond, record-keeping and reporting requirements, or the use, commingling or hypothecation of customers' money or securities;

3.14 Failure or refusal to furnish a customer, upon reasonable request, information

to which he or she is entitled, or to respond to a formal written demand or complaint;

3.15 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;

3.16 Executing any transaction in a margin account without obtaining from a customer a properly executed written margin agreement, including, but not limited to, written authorization for the existence of such account prior to the settlement date for the initial transaction in the account;

3.17 Hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent except as permitted by rules of the Securities and Exchange Commission;

3.18 Publishing or 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 the broker-dealer or agent believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid or asked price for any security, unless the broker-dealer or agent believes that such quotation represents a bona fide bid for, or offer of, such security; or using any advertising or sales material in such a fashion as to be deceptive or misleading, such as the distribution of any non-factual 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;

3.19 Borrowing money or securities from, or lending money or securities to a customer by an agent, or for an agent to act as a custodian for money, securities or an executed stock power of a customer, unless the customer is a parent, grandparent, spouse, brother or sister, or child of the agent, or any relative to whose support the agent contributes directly or indirectly, and written authorization is first obtained from the broker-dealer which the agent represents;

3.20 Sharing, by an agent, directly or indirectly, in profits or losses in the account of any customer without first obtaining written authorization of the customer and the broker-dealer which the agent represents;

3.21 Effecting securities transactions not recorded on the regular books and records of the broker-dealer which the agent represents, unless the transactions are disclosed to, and authorized in writing by, the broker-dealer prior to the execution of the transactions;

3.22 Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution by, among other things, transferring securities to a customer, another broker-dealer or a fictitious account with the understanding that those

securities will be returned to the broker-dealer or its nominees, or parking or withholding securities;

3.23 Violating any provision of the Rules of Fair Practice of the National Association of Securities Dealers or any applicable fair practice or ethical standard promulgated by the Securities and Exchange Commission, the Commodity Futures Trading Commission or a self-regulatory organization approved by either the Securities and Exchange Commission or the Commodity Futures Trading Commission with respect to any customer, transaction or business in this state;

3.24 Marking any order tickets or confirmations as unsolicited when in fact the transaction was solicited;

3.25 After soliciting a purchase by a customer, failing or refusing, in connection with a principal transaction, to promptly execute sell orders on behalf of the customer;

3.26 In connection with the offer, purchase or sale of a security, leading a customer to believe that the broker-dealer or agent is in possession of material, nonpublic information that would affect the value of the security;

3.27 In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors of similar investment objective for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstances of each investor;

3.28 Guaranteeing a customer against loss in any securities account of such customer carried by the broker-dealer or agent or in any securities transaction effected by the broker-dealer or agent with or for such customer;

3.29 Using advertising describing or relating to the agent's business unless the advertising clearly identifies the name of the broker-dealer with whom the agent is associated;

3.30 Holding oneself out as representing any person other than the broker-dealer with whom the agent is associated and, in the case of an agent whose normal place of business is not on the premises of the broker-dealer, failing to conspicuously disclose the name of the broker-dealer with whom the agent is associated when representing the broker-dealer in effecting or attempting to effect purchases or sales of securities; or

3.31 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 the securities business.

Registration Requirements for Broker-Dealers and Agents

This Exhibit 6.2 to Order 06-43-S ("Exhibit") sets forth the requirements for registration of broker-dealers and agents. Any broker-dealer or agent registered or required to be registered under the Act shall comply with these requirements and any other applicable provisions of the Act.

1. Initial and Renewal Registration by NASD-member Firms

Applications for initial registration or renewal registration by a broker-dealer that is an NASD member, and for any agent associated with or employed by such broker-dealer, will not be deemed complete until the required fee and all required submissions have been filed with the Vermont Securities Division (the "Division") and the Central Registration Depository (the "CRD"), including any information or documentation requested by the Division after an initial submission. Failure to complete the application or renewal procedures as set forth below may result in termination of an application or registration. Fees will not be refunded or credited and new fees will be required upon re-filing.

A. Initial Broker-dealer Application - NASD Firms

An application for an initial broker-dealer registration must include:

- 1) A non-refundable application fee of \$250.00 submitted through the CRD.
- 2) A Form BD filed via the CRD. A copy of the firm's Form BD must also be submitted to the Division. The copy must include all corresponding schedules and related documents.
- 3) If question 12S on Form BD is checked (indicating that the firm plans to offer investment advisory services), the firm must indicate, in writing, whether these services are solely incidental to the firm's broker-dealer business and whether the firm receives a fee or special compensation for investment advisory services.
- 4) The Division's Consent to Service of Process appointing the Commissioner of Banking, Insurance, Securities and Health Care Administration as the applicant's attorney for service of process.
- 5) A completed Affidavit of Broker-Dealer Dealer Activity Form.
- 6) A completed Vermont Broker-Dealer Tax Certification Form.
- 7) For applicants that have been in business for longer than six (6) months, a copy of the firm's most recent FOCUS report (Parts I and II or IIA) is

required. For applicants that are in the process of seeking NASD membership but have not yet been approved, the firm's most recent trial balance, balance sheet, supporting schedules and computation of capital, as filed with the NASD.

8) Any other financial or other information or record that the Division may determine is appropriate and that the Division requests in writing.

B. Initial Agent Application - NASD Firms

An application must be submitted for each agent to be registered. An initial agent application must include:

- 1) A non-refundable application fee of \$55.00, submitted through the CRD.
- 2) A Form U-4, filed through the CRD.
- 3) A completed Child Support and Tax Certification Form, for any agent who is a Vermont resident or who transacts business from a place of business located in Vermont, which is filed directly with the Division.
- 4) Any other financial or other information or record that the Division may determine is appropriate and that the Division requests in writing.

All broker-dealers must have at least one (1) agent registered in Vermont.

Vermont does not presently impose a state examination requirement on agents as a prerequisite to registration.

If an agent is associated with or employed by more than one broker-dealer, each such broker-dealer must be duly registered or exempt from registration, and the agent must be registered separately for each such broker-dealer. Dual or multiple registrations are permitted only upon demonstration of appropriate affiliation of the broker-dealers; registrations on any other basis must be approved in advance by order of the Commissioner.

If the agent operates from a place of business in Vermont, the agent will not be registered until the branch office is registered.

C. Financial Statements - NASD Firms

A broker-dealer that is an NASD-member firm is not required to file financial statements with the Division, unless requested by the Division.

D. Branch offices - NASD Firms

A broker-dealer must register each branch office that the broker-dealer maintains in Vermont.

A "branch office" is any office of a broker-dealer that qualifies as a "place of business" as defined in Section 5102(21) of the Act, specifically: (A) an office at which the broker-dealer regularly provides brokerage advice or solicits, meets with, or otherwise communicates with customers or clients; or (B) any other location that is held out to the general public as a location at which the broker-dealer provides brokerage advice or solicits, meets with, or otherwise communicates with customers or clients.

If an agent is registered as associated with or employed by more than one broker-dealer, and the agent operates from a place of business in Vermont on behalf of such broker-dealers, such place of business shall be deemed a branch office of each such broker-dealer.

Until December 31, 2006, all Vermont branch office registrations, renewals, withdrawals, amendments and fees may be filed either in writing or electronically through the CRD. Effective January 1, 2007, all broker-dealer branch office registrations, renewals, amendments and withdrawals shall be filed electronically through the CRD. A fee of \$100.00 is required for each initial and renewal registration of a broker-dealer branch office.

All branch office registrations shall expire on December 31 of each year. Applications for branch office registration filed with the CRD must be filed on such forms and at such time as required by CRD to allow timely renewal as of January 1.

If the information contained in any application for branch office registration becomes inaccurate or incomplete for any reason before or after the branch office becomes registered, including changing the location of the branch office or its supervisory personnel, the broker-dealer shall file an amendment to the application within thirty (30) days of the change.

If any branch office terminates its operations the broker-dealer must withdraw the registration of the branch office by timely making all filings required by CRD. This filing shall effectively terminate the branch office registration. The acquisition of a registered branch office by a broker-dealer shall require a filing terminating the existing branch office registration and the filing of a new branch office application by the acquiring broker-dealer, with CRD.

E. Renewals - NASD Firms

All broker-dealer and agent registrations expire on December 31 of each year.

Registration renewals for broker-dealers and agents must be filed annually through the CRD, along with payment of the renewal fee of \$250.00 for each broker-dealer and \$55.00 for each agent associated with or employed by a broker-dealer, and any other information or documentation required by the Division.

Agents who are Vermont residents or who transact business from any office located in Vermont must file a Child Support and Tax Certification Form prior to December 31 of each year. This form must be filed directly with the Division even though the agent's renewal is processed through the CRD.

F. Amendments; Terminations and Withdrawals - NASD Firms

An amendment to Form BD, Form U-4 or a branch office registration must be filed through the CRD. All other amendments must be filed directly with the Division. An amendment shall be filed within thirty (30) days of the event that requires the amendment.

If an agent registered as employed by or associated with a broker-dealer terminates such employment or association, or if the agent ceases activities that require registration as an agent with respect to such broker-dealer, the broker-dealer shall promptly file a notice of termination through the CRD.

An application for withdrawal of registration by a broker-dealer or agent shall be filed through the CRD. Except as provided in Section 5409 of the Act, a withdrawal shall be effective sixty (60) days after the filing of the application for withdrawal.

G. Other Changes - NASD Firms

1) A broker-dealer may succeed to the current registration of another broker-dealer or investment adviser, or to a notice filing of a federal covered investment adviser, by filing as a successor an application for registration (for broker-dealers and investment advisers) or filing a notice of succession (for a federal covered investment adviser).

An application for succession to the registration of a broker-dealer shall be done in compliance with the provisions of this Exhibit. An application for succession to the registration of an investment adviser, and a filing for notice of succession to a federal covered investment adviser, shall be done through the procedures described in Section 6.4 of this Order. The registration or notice filing shall be effective for the unexpired portion of the current registration or notice filing. No fee is required for such registration or notice filing.

2) A broker-dealer that changes its form of organization or state of incorporation or organization may continue its registration by filing an amendment to its registration if the change does not involve a material change in its financial condition or management. No fee is required for filing such amendment. The amendment becomes effective when filed or on a date designated by the registrant in its filing. The new

organization is a successor to the original registrant for the purposes of the Act. If there is a material change in financial condition or management, the broker-dealer shall file a new application for registration, including payment of the registration fee. A predecessor registered under the Act shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser registration within 45 days after filing its amendment to effect succession.

3) A broker-dealer that changes its name may continue its registration by filing an amendment to its registration. The amendment becomes effective when filed or on a date designated by the registrant. No fee is required for such amendment.

4) The existing registration of an agent may be transferred to another registered broker-dealer by notification to the CRD, completion of any form required by CRD, and payment of a transfer fee of \$55.00.

H. Filing - NASD Firms

All non-CRD filings must be mailed or delivered to:

Vermont Department of Banking, Insurance,
Securities and Health Care Administration
Securities Division
89 Main Street, Drawer 20
Montpelier, VT 05620-3101

2. Initial and Renewal Registration by Firms that are not NASD Members

Applications for initial registration or renewal registration of a broker-dealer that is not a member of NASD, and any agent associated with or employed by such broker-dealer, will not be deemed complete until the required fee and all required submissions have been filed with the Division, including any information or documentation requested by the Division after the initial submission. Failure to complete the application or renewal procedures as set forth below may result in termination of an application or registration without prejudice. Fees will not be refunded or credited and new fees will be required upon re-filing.

A. Initial non-NASD broker-dealer applications

An application for an initial broker-dealer registration for a non-NASD member firm must include all of the following, which shall be submitted to the Division:

1) A non-refundable application fee of \$250.00 by check payable to the Vermont Department of Banking, Insurance, Securities and Health Care Administration.

2) A complete Form BD including all corresponding schedules and related documents.

3) If question 12S on Form BD is checked (indicating that the firm plans to offer investment advisory services), the firm must indicate, in writing, whether these services are solely incidental to the firm's broker-dealer business and whether the firm receives a fee or special compensation for investment advisory services.

4) The Division's Consent to Service of Process appointing the Commissioner of Banking, Insurance, Securities and Health Care Administration as the applicant's attorney for service of process.

5) A completed Affidavit of Broker-Dealer Dealer Activity Form.

6) A completed Vermont Broker-Dealer Tax Certification Form.

7) The firm's most recent trial balance, balance sheet, supporting schedules and computation of net capital, and the firm's most recent audited financial statements, if any.

8) Copies of all complaints naming the broker-dealer or any of its partners, officers, directors or agents as defendants in any civil or criminal proceeding, or in an administrative or disciplinary proceeding by any public or private regulatory agency.

9) Any other financial or other information or record that the Division may determine is appropriate and that the Division requests in writing.

B. Initial Agent Application - Non-NASD Firms.

An application must be submitted for each agent to be registered. An initial agent application must include all of the following, submitted to the Division:

1) A non-refundable application fee of \$55.00 by check payable to the Vermont Department of Banking, Insurance, Securities and Health Care Administration.

2) A completed Form U-4.

3) A completed Child Support and Tax Certification Form for an agent who is a Vermont resident or who transacts business from any place of business located in Vermont.

- 4) Any other financial or other information or record that the Division may determine is appropriate and that the Division requests in writing.

All broker-dealers must have at least one (1) agent registered in Vermont.

Vermont does not presently impose a state examination requirement on agents as a prerequisite to registration.

If an agent is associated with or employed by more than one broker-dealer, each such broker-dealer must be duly registered or exempt from registration, and the agent must be registered separately for each such broker-dealer. Dual or multiple registrations are permitted only upon demonstration of appropriate affiliation of the broker-dealers; registrations on any other basis must be approved in advance by order of the Commissioner.

If the agent operates from a place of business in Vermont, the agent will not be registered until the branch office is registered.

C. Branch offices - Initial and Renewal Registration - Non-NASD Firms.

A broker-dealer must register each branch office that the broker-dealer maintains in Vermont.

All non-NASD broker-dealer branch office registrations, renewals, amendments and withdrawals shall be filed directly with the Division. A fee of \$100.00 is required for each initial and renewal registration of a broker-dealer branch office registration, which must be paid by check payable to the Vermont Department of Banking, Insurance, Securities and Health Care Administration.

A "branch office" is any office of a broker-dealer that qualifies as a "place of business" as defined in Section 5102(21) of the Act, specifically: (A) an office at which the broker-dealer regularly provides brokerage advice or solicits, meets with, or otherwise communicates with customers or clients; or (B) any other location that is held out to the general public as a location at which the broker-dealer provides brokerage advice or solicits, meets with, or otherwise communicates with customers or clients.

If an agent is registered as associated with or employed by more than one broker-dealer, and the agent operates from a place of business in Vermont on behalf of such broker-dealers, such place of business shall be deemed a branch office of each such broker-dealer.

All branch office registrations shall expire on December 31 of each year. Applications for branch office registration must be filed with the Division on or before December 1 of each year in order to achieve timely renewal of the branch office for the succeeding year.

If the information contained in any application for branch office registration becomes inaccurate or incomplete for any reason before or after the branch office becomes registered, including changing the location of the branch office or its supervisory personnel, the broker-dealer shall file an amendment to the application within thirty (30) days of the change.

If any branch office terminates its operations the broker-dealer must withdraw the registration of the branch office within thirty (30) days of the termination of operations. This filing shall effectively terminate the branch office registration. The acquisition of a registered branch office by a broker-dealer shall require a filing terminating the existing branch office registration and the filing of a new branch office application by the acquiring broker-dealer.

D. Ongoing Compliance

As a condition of continued registration, all non-NASD broker-dealers must provide the Division with the following:

- 1) Copies of all complaints naming the broker-dealer or any of its partners, officers, directors or agents as defendants in any civil or criminal proceeding, or in an administrative or disciplinary proceeding by any public or private regulatory agency within twenty (20) days of the date of service or notice of the action, and a copy of any decision, order or sanction with respect to any such proceedings within twenty (20) days of the date of the decision, order or sanction is rendered.
- 2) Written notice to the Division whenever the net capital of the non-NASD broker-dealer falls below \$25,000.00, by the close of business on any day that this occurs.
- 3) A written notice of transfer of control or change of name at least thirty (30) days prior to the transfer or change.
- 4) A written explanation of any material change in the information included in the most recent application for registration within thirty (30) days of such changes. This information includes, but is not limited to, a change of officers, address, or the type of securities sold by the firm.
- 5) Upon request by the Division, the broker-dealer's recent financial statements for the non-NASD broker-dealer only, not any parent company, even if the broker-dealer is a wholly-owned subsidiary, and must include the firm's most recent trial balance, balance sheet, supporting schedules and computation of net capital.
- 6) Any other information or documentation requested by the Department.

E. Registration Renewals - Non-NASD Firms

All broker-dealer and agent registrations expire on December 31 of each year.

Registration renewals for non-NASD broker-dealers and agents must be filed directly with the Division.

Renewal applications for non-NASD broker-dealers must include:

- 1) A non-refundable renewal fee of \$250.00 by check payable to the Vermont Department of Banking, Insurance, Securities and Health Care Administration.
- 2) The firm's most recent trial balance, balance sheet, supporting schedules and computation of net capital.
- 3) Any other financial or other information or record that the Division may determine is appropriate and requests in writing.

A renewal application for an agent must include:

- 1) A non-refundable application fee of \$55.00 by check payable to the Vermont Department of Banking, Insurance, Securities and Health Care Administration.
- 2) A Form U-4, indicating only any changes in the information provided in the Form U-4 (including any amendments thereto) previously filed with the Division.
- 3) A completed Child Support and Tax Certification Form for an agent who is a Vermont resident or who transacts business from any place of business located in Vermont.
- 4) Any other financial or other information or record that the Division may determine is appropriate and requests in writing.

F. Amendments; Terminations and Withdrawals - Non-NASD Firms

An amendment to Form BD, Form U-4 or a branch office registration must be filed directly with the Division. An amendment must be filed within thirty (30) days of the event that requires the amendment.

If an agent registered as employed by or associated with a broker-dealer terminates such employment or association, or if the agent ceases activities that require registration as an

agent with respect to such broker-dealer, the broker-dealer shall promptly file a Form U-5 notice of termination with the Division.

A Form BD-W application for withdrawal of registration by a broker-dealer or agent shall be filed with the Division. Except as provided in Section 5409 of the Act, a withdrawal shall be effective sixty (60) days after the filing of the application for withdrawal.

G. Other Changes - Non-NASD Firms

1) A broker-dealer may succeed to the current registration of another broker-dealer or investment adviser, or to a notice filing of a federal covered investment adviser, by filing as a successor an application for registration (for broker-dealers and investment advisers) or filing a notice of succession (for a federal covered investment adviser).

An application for succession to the registration of a broker-dealer shall be done in compliance with the provisions of this Exhibit. An application for succession to the registration of an investment adviser, and a filing for notice of succession to a federal covered investment adviser, shall be done through the procedures described in Section 6.4 of this Order. The registration or notice filing shall be effective for the unexpired portion of the current registration or notice filing. No fee is required for such registration or notice filing.

2) A broker-dealer that changes its form of organization or state of incorporation or organization may continue its registration by filing an amendment to its registration if the change does not involve a material change in its financial condition or management. No fee is required for filing such amendment. The amendment becomes effective when filed or on a date designated by the registrant in its filing. The new organization is a successor to the original registrant for the purposes of the Act. If there is a material change in financial condition or management, the broker-dealer shall file a new application for registration, including payment of the registration fee. A predecessor registered under the Act shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser registration within 45 days after filing its amendment to effect succession.

3) A broker-dealer that changes its name may continue its registration by filing an amendment to its registration. The amendment becomes effective when filed or on a date designated by the registrant. No fee is required for such amendment.

4) The existing registration of an agent may be transferred to another registered broker-dealer by notification to the Division, which shall include a Form U-4, indicating only any changes in the information provided in the Form U-4 (including any amendments thereto) previously filed with the Division, and payment of a transfer fee of \$55.00.

All filings provided in this subsection G shall be made with the Division.

H. Filing - Non-NASD Firms

All filings by non-NASD broker-dealers and their agents must be mailed or delivered to:

Vermont Department of Banking, Insurance,
Securities and Health Care Administration
Securities Division
89 Main Street, Drawer 20
Montpelier, VT 05620-3101

1. Purpose

Section 5411(c)(1) of the Act provides that every broker-dealer and investment adviser registered or required to be registered under the Act shall make and keep such accounts, correspondence, memoranda, papers, books and other records as the Commissioner prescribes, for the period required by the Commissioner. Section 5411(c)(2) requires the maintenance of such records in any form of data storage acceptable under 15 U.S.C. § 78q(a) if they are readily accessible to the Commissioner.

2. Policy

For the purposes of complying with Section 5411(c) of the Act, every registered broker-dealer shall keep and maintain, open to inspection by the Commissioner, the books and records required to be kept by the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder. Such books and records shall be kept true, accurate and current and shall be preserved for such periods of time and in such places as specified by the Securities and Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder. Compliance with the requirements of the United States Securities and Exchange Commission concerning preservation of records in an electronic medium is deemed compliance with this Section 5411(c).

Registration requirements for investment advisers, federal covered investment advisers and investment adviser representatives

This Exhibit 6.4 to Order 06-43-S ("Exhibit") sets forth the requirements for registration of investment advisers and investment adviser representatives, and for notice filing by federal covered investment advisers. Any investment adviser or investment adviser representative registered or required to be registered under the Act, and any federal covered investment adviser that makes or is required to make a notice filing under the Act, shall comply with these requirements and any other applicable provisions of the Act.

1. Registration of Investment Advisers and Investment Adviser Representatives

An investment adviser that is registered or required to be registered under the Act must register through the Investment Adviser Registration Depository (the "IARD").

An investment adviser representative who is registered or required to be registered under the Act must register through the Central Registration Depository (the "CRD").

Applications for initial registration as an investment adviser or investment adviser representative will not be deemed "filed" until the required fee and all required submissions have been filed with the Vermont Securities Division (the "Division"), IARD and CRD, as applicable. Failure to complete the application or renewal procedures as set forth below may result in termination of an application or registration without prejudice. Fees will not be refunded or credited and new fees will be required upon re-filing.

A Initial Investment Adviser Registration

An application for initial registration as an investment adviser must include:

- 1) A non-refundable application fee of \$250.00 submitted through the IARD.
- 2) Part I of Form ADV filed through the IARD. A copy of the firm's Part I of Form ADV must also be submitted to the Division. The copy must include all corresponding schedules.
- 3) A completed Part II of Form ADV and any document that the applicant may use in lieu of Part II of Form ADV (the "brochure" described in Section 3.12 of Exhibit 6.5 of this Order).
- 4) A copy of each form of client contract in use or to be used during the period for which registration will be effective.
- 5) A copy of the investment adviser's privacy policy.

- 6) A completed Affidavit of Investment Advisory Activity Form.
- 7) A completed Vermont Investment Adviser Tax Certification Form.
- 8) Subject to (10), below, a current balance sheet:
 - a) An investment adviser having custody of client funds, assets or securities must file a current audited balance sheet.
 - b) An investment adviser having discretion over, but not custody of, client funds or securities, or requiring payment of fees six or more months in advance and in excess of \$500.00, must file a current certified balance sheet.
 - c) An investment adviser having neither custody nor discretion is not required to file a balance sheet.
- 9) Subject to (10), below, the Vermont Surety Bond Form is required as follows:
 - a) An investment adviser having custody of client funds or securities as must either meet a \$35,000.00 minimum net worth requirement or post a bond in the amount of the net worth deficiency, rounded up to the nearest \$5,000.00.
 - b) An investment adviser having discretionary authority over client assets must meet a \$10,000.00 minimum net worth requirement or post a bond in the amount of the net worth deficiency, rounded up to the nearest \$5,000.00.
- 10) Demonstration of compliance with the net worth and bonding requirements applicable in the investment adviser's state of domicile. An investment adviser shall not be subject to the requirements of (8) and (9), above, during any period that the investment adviser is in compliance with such requirements.
- 11) A certification that includes the names of the designated supervisor and certifies that the applicant has established and shall maintain and enforce written supervisory policies and procedures pursuant to Section 3.10 of Exhibit 6.5 to this Order.
- 12) A consent to service of process in the form required by the Commissioner.
- 13) Any other financial or other information or record that the Division may determine is appropriate and requests from the investment adviser in writing.

B. Initial Investment Adviser Representative Registration

The Act requires registration of certain individuals employed by or associated with an investment adviser or federal covered investment adviser.

An individual who is employed by or associated with a federal covered investment adviser is not an "investment adviser representative" subject to registration unless the individual has a "place of business" in Vermont and either: (i) the individual is an "investment adviser representative"; or (ii) the individual is not a "supervised person." For purposes of this definition:

- a "place of business" is defined under Rule 203A-3 promulgated under the federal Investment Advisers Act of 1940 as:
 - (1) an office at which the investment adviser representative regularly provides investment advisory services, solicits, meets with, or otherwise communicates with clients; and
 - (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.
- an "investment adviser representative" is defined under Rule 203A-3, generally as a supervised person of an investment adviser who has at least 6 clients who are natural persons, and more than 10% of total clients are natural persons. Rule 203A-3 includes exceptions to this definition, which should be carefully reviewed.
- a "supervised person" is defined under Section 202(a)(25) of the Investment Adviser Act of 1940 (codified at 15 U.S.C. § 80b-2(a)(25)) as 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.

If an individual employed by or associated with a federal covered investment adviser qualifies as an "investment adviser representative" under the Act, the individual should review Section 5404 of the Act and the provisions above carefully to determine if registration is required.

An application for initial registration as an investment adviser representative shall include:

- 1) A non-refundable application fee of \$55.00 submitted through the CRD.
- 2) A Form U-4, filed through the CRD.

- 3) A completed Vermont Child Support and Tax Certification Form, filed with the Division.
- 4) Evidence filed with the Division that the applicant has obtained a passing score on:
 - a) The Revised Uniform Investment Adviser Law Examination (Series 65 examination); or
 - b) The General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination).

These scores must be valid for an initial or renewal application for registration to be complete.

- 5) Any other information or documentation requested by the Division.

Any individual that has not been registered in at least one (1) jurisdiction in the United States during any period of two (2) consecutive years shall be required to retake the necessary examinations in order to satisfy the above examination requirements.

Any individual who was registered as an investment adviser representative in any jurisdiction in the United States on January 1, 2000 shall not be required to satisfy the examination requirements for continued registration, except that the Commissioner may require additional examinations for any individual found to have violated any state or federal securities law.

The above examination requirements shall not apply to an applicant who currently holds and maintains, in good standing, one of the following professional designations:

- 1) Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.;
- 2) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;
- 3) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;
- 4) Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts; or
- 5) Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.

If an investment adviser representative is associated with or employed by more than one investment adviser or federal covered investment adviser, the investment adviser representative must be registered separately for each such investment adviser or federal covered investment adviser.

Each investment adviser must have at least one (1) investment adviser representative registered in Vermont.

C. Branch offices

An investment adviser must register each branch office maintained in Vermont. A federal covered investment adviser subject to notice filing must include information in its notice filing regarding each branch office maintained in Vermont, but only to the extent the federal covered investment adviser is required to file information regarding a branch office with the Securities and Exchange Commission.

A "branch office" is any office of an investment adviser or federal covered investment adviser that qualifies as a "place of business" as defined in Section 5102(21) of the Act, specifically: (A) an office at which the investment adviser or federal covered investment adviser regularly provides investment advice or solicits, meets with, or otherwise communicates with customers or clients; or (B) any other location that is held out to the general public as a location at which the investment adviser or federal covered investment adviser provides investment advice or solicits, meets with, or otherwise communicates with customers or clients.

If an investment adviser representative is registered, as associated with or employed by more than one investment adviser or federal covered investment adviser, and the investment adviser representative operates from a place of business in Vermont on behalf of such investment advisers or federal covered investment advisers, such place of business shall be deemed a branch of each such investment adviser or federal covered investment adviser.

Each application for branch office registration of an investment adviser shall be filed with the Division with a \$100.00 registration fee. A federal covered investment adviser shall include a notice filing fee of \$100.00 for each branch office included in its notice filing.

All branch office registrations and notice filings shall expire on December 31 of each year. Applications for branch office registration and renewal notice filings must be filed on or before December 1 of each year to be timely filed for renewal as of the following January 1. Each renewal registration shall be filed with a renewal fee of \$100.00. A federal covered investment adviser shall pay an annual notice filing fee of \$100.00 for each branch office included in its notice filing.

If the information contained in any application for branch office registration, or in a notice filing, becomes inaccurate or incomplete for any reason before or after the branch office becomes registered or the notice filing is made, including changing the location of

the branch office or its supervisory personnel, the investment adviser or federal covered investment adviser shall file an amendment within thirty (30) days of the change.

If any branch office terminates its operations, the investment adviser or federal covered investment adviser must withdraw the registration or notice filing of the branch office within thirty (30) days of the termination of operations. This filing shall effectively terminate the branch office registration or notice filing. The acquisition of a registered branch office by an investment adviser or federal covered investment adviser shall require a filing terminating the existing branch office registration and the filing of a new branch office registration application or notice filing by the acquiring investment adviser or federal covered investment adviser.

D. Renewals

All investment adviser and investment adviser representative registrations expire on December 31 of each year.

Registration renewals for investment advisers must be filed annually through the IARD, with a \$250.00 renewal fee.

Each investment adviser must provide the Division with a written certification that the current Part II of Form ADV is accurate and does not require an amendment or, alternatively, file an amended Part II of Form ADV.

Investment advisers must also submit all applicable financial information as required by Exhibit 6.5 of this Order.

Registration renewals for investment adviser representatives must be filed annually through the CRD, with a renewal fee of \$55.00. Each investment adviser representative must also provide the Division with a new Vermont Investment Adviser Representative Child Support and Tax Certification Form.

E. Amendments

Any amendment to Part I of Form ADV must be filed through the IARD. Any amendment to Form U-4 must be filed through the CRD. All other amendments must be filed with the Division. An amendment shall be filed at within thirty (30) days of the event that requires the amendment.

F. Other Changes

1) An investment adviser may succeed to the current registration of another broker-dealer or investment adviser, or to a notice filing of a federal covered investment adviser, by filing as a successor an application for registration (for broker-dealers and investment advisers) or filing a notice of succession (for a federal covered investment adviser).

An application for succession to the registration of a broker-dealer shall be done in compliance with the provisions of Exhibit 6.2 to this Order. An application for succession to the registration of an investment adviser, and a filing for notice of succession to a federal covered investment adviser, shall be done through the procedures described in this Exhibit. The registration or notice filing shall be effective for the unexpired portion of the current registration or notice filing. No fee is required for such registration or notice filing.

2) An investment adviser that changes its form of organization or state of incorporation or organization may continue its registration by filing an amendment to its registration if the change does not involve a material change in its financial condition or management. No fee is required for filing such amendment. The amendment becomes effective when filed or on a date designated by the registrant in its filing. The new organization is a successor to the original registrant for the purposes of the Act. If there is a material change in financial condition or management, the investment adviser shall file a new application for registration, including payment of the registration fee. A predecessor registered under the Act shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser registration within 45 days after filing its amendment to effect succession.

3) An investment adviser that changes its name may continue its registration by filing an amendment to its registration. The amendment becomes effective when filed or on a date designated by the registrant. No fee is required for such amendment.

4) The existing registration of an investment adviser representative may be transferred to another registered investment adviser or to another federal covered investment adviser by notification to the CRD, completion of any form required by CRD, and payment of a transfer fee of \$55.00.

G. Filing

All non-IARD and non-CRD filings must be mailed or delivered to:

Vermont Department of Banking, Insurance,
Securities and Health Care Administration
Securities Division
89 Main Street, Drawer 20
Montpelier, VT 05620-3101

2. **Notice Filing and Branch Office Registration by Federal Covered Investment Advisers.**

A. **Notice Filing**

A federal covered investment adviser subject to the provisions of Section 5405(c) of the Act shall be in compliance upon completion of all of the following:

- 1) notification by of the federal covered investment adviser through its registration with the IARD that the firm plans to transact business in Vermont; and
- 2) payment of a \$250.00 notice filing fee, submitted through IARD.

B. **Branch Office Registration**

The provisions of Section 1.C, above, regarding registration and notice filings with respect to branch offices, shall apply to a federal covered investment adviser.

C. **Renewal**

A federal covered investment adviser shall pay an annual notice filing fee of \$250.00, and an annual notice filing fee of \$100.00 for each branch office included in its notice filing.

D. **Other Changes**

- 1) A federal covered investment adviser may succeed to the current registration of another broker-dealer or investment adviser, or to a notice filing of a federal covered investment adviser.

An application for succession to the registration of a broker-dealer shall be done in compliance with the provisions of Exhibit 6.2 to this Order. An application for succession to the registration of an investment adviser, and a filing for notice of succession to a federal covered investment adviser, shall be done through the procedures described in this Exhibit. The registration or notice filing shall be effective for the unexpired portion of the current registration or notice filing. No fee is required for such registration or notice filing.

- 2) The existing registration of an investment adviser representative may be transferred to another registered investment adviser or to another federal covered investment adviser by notification to the CRD, completion of any form required by CRD, and payment of a transfer fee of \$55.00.

Section 1. Scope and Purpose

1.01 This Exhibit 6.5 to Order 06-43-S (the "Exhibit") applies to any person that transacts business in the state of Vermont as an investment adviser, federal covered investment adviser, or investment adviser representative.

1.02 The purpose of this Exhibit is to establish rules governing the registration and the regulated activities of investment advisers, federal covered investment advisers and investment adviser representatives in the State of Vermont.

1.03 The provisions of this Exhibit shall be subject to 15 U.S.C. § 80b-22.

Section 2. [Reserved]

2.01 [Reserved.]

2.02 [Reserved.]

Section 3. General Rules

3.01 [reserved]

3.02 [reserved]

3.03 Examination Requirements for Investment Adviser Representatives

Based on demonstration by an individual of relevant factors including, but not limited to, education and experience, the Commissioner shall consider an individual's request for a waiver of the examination requirements in accordance with Section 5412(e) of the Act.

3.04. Investment Adviser Supervision

a. An investment adviser registered or required to be registered in the state of Vermont shall establish, maintain and enforce written supervisory policies and procedures that are reasonably designed to achieve compliance with the Act, these rules, and applicable federal securities laws and regulations. Final responsibility for proper supervision shall rest with the investment adviser. This supervisory system shall, at minimum, provide:

(1) The designation of an appropriately registered investment adviser representative with the authority to oversee the supervisory responsibilities of the investment adviser.

(2) The assignment of each registered investment adviser representative to an appropriately registered investment adviser representative who shall be responsible for supervising that person's activities.

(3) Reasonable efforts to determine that all supervisory personnel are qualified by virtue of experience or training to carry out their assigned responsibilities.

(4) The establishment and maintenance of written supervisory policies and procedures required below.

(A) Each investment adviser shall establish, maintain and enforce written policies and procedures to supervise the types of business in which it engages and to supervise the activities of its investment adviser representatives and other employees that are reasonably designed to achieve compliance with applicable state or federal securities laws and regulations.

(B) A copy of the investment adviser's written supervisory policies and procedures, or the relevant portions thereof, shall be kept at each location where activities are conducted on behalf of the investment adviser in the State of Vermont. The written supervisory policies and procedures shall be amended as necessary to reflect any change in state or federal securities laws and regulations.

(5) Each investment adviser shall conduct a review, at least annually or more often if circumstances warrant, to ensure compliance with the written supervisory policies and procedures.

(6) Each investment adviser shall establish procedures for internal review and endorsement by supervisory personnel in writing of all transactions and all correspondence of its investment adviser representatives pertaining to the rendering of investment advice to individual clients.

(7) Each investment adviser shall have the responsibility and duty to reasonably ascertain by investigation the good character, business repute, qualifications, and experience of any person prior to making a certification in the application of such person for registration.

3.05 Financial Requirements for Certain Investment Advisers

a. An investment adviser registered or required to be registered in the State of Vermont who has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000, and every investment adviser registered or required to be registered under the Act who has discretionary authority over but not custody of client funds or securities shall maintain at all times a minimum net worth of \$10,000.

b. An investment adviser registered or required to be registered under the Act who accepts prepayment of more than \$500 per client and six or more months in advance shall maintain at all times a positive net worth.

c. Unless otherwise exempted, as a condition of the right to continue to transact business in this state, every investment adviser registered or required to be registered in the State of Vermont shall by the close of business on the next business day notify the Commissioner 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 Commissioner 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.

d. For purposes of this Section 3.05, the term "net worth" shall mean an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets: prepaid expenses (except as to items properly classified as current assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature; home, home furnishings, automobile(s), or 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.

e. For purposes of this Section 3.05, a person will be deemed to have custody if said person directly or indirectly holds client funds or securities, has any authority to obtain possession of them or has the ability to appropriate them.

f. The Commissioner may require that a current appraisal be submitted in order to establish the worth of any asset.

g. Every investment adviser that has its principal place of business in a state other than this state shall maintain only such minimum capital as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is licensed in such state and is in compliance with such state's minimum capital requirements.

h. Every investment adviser registered or required to be registered under the Act who has custody or discretion of client funds or securities who does not meet the minimum net worth standards in subsection (a) shall be bonded, or provide other security satisfactory to the Commissioner, in the amount of the net worth deficiency rounded up to the nearest \$5,000. Any bond required by this Section 3.05 shall be issued by a company qualified to do business in this state in the form determined by the Commissioner and shall be subject to the claims of all clients of such investment adviser regardless of the client's state of residence.

i. 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 (h), provided that the investment adviser is registered as an investment adviser in the state where it has its principal place of business and is in compliance with such state's requirements relating to bonding or other required security.

3.06 Custody of Client Funds or Securities by Investment Advisers

a. It shall be unlawful for any investment adviser to take or have custody of any securities or funds of any client unless:

(1) The investment adviser notifies the Commissioner in writing that the investment adviser has or may have custody;

(2) The securities of each client are segregated, marked to identify the particular client having the beneficial interest therein and held in safekeeping in some place reasonably free from risk of destruction or other loss;

(3) (A) All client funds are deposited in one or more bank accounts containing only clients' funds,

(B) such account or accounts are maintained in the name of the investment adviser as agent, or trustee for such clients, and

(C) the investment adviser maintains a separate record for each such account showing the name and address of the bank where the account is maintained, the dates and amounts of deposits in and withdrawals from the account, and the exact amount of each client's beneficial interest in the account;

(4) Immediately after accepting custody or possession of funds or securities from any client, the investment adviser notifies the client in writing of the place where and the manner in which the funds and securities will be maintained and subsequently, if and when there is a change in the place where or the manner in which the funds or securities are maintained, the investment adviser gives written notice thereof to the client;

(5) At least once every three months, the investment adviser sends each client an itemized statement showing the funds and securities in the investment adviser's custody at the end of such period and all debits, credits and transactions in the client's account during such period; and

(6) At least once every calendar year, an independent certified public accountant or independent public accountant verifies all client funds and securities by actual examination at a time chosen by the accountant without prior notice to the investment adviser. A report stating that such accountant has made an examination of such funds and securities, and describing the nature and extent of the examination, shall be filed with the Commissioner promptly after each such examination.

(7) For the purposes of this Section 3.06, a person will be deemed to have custody if said person directly or indirectly holds client funds or securities, has any authority to obtain possession of them or has the ability to appropriate them.

b. This Section 3.06 shall not apply to an investment adviser also registered as a broker-dealer under Section 15 of the Securities Exchange Act of 1934 if the broker-dealer is: (i) subject to and in compliance with SEC Rule 15c3-1 (Net Capital Requirements for Brokers or Dealers), 17 C.F.R. § 240.15c3-1 under the Securities Exchange Act of 1934, or (ii) a member of an exchange whose members are exempt from SEC Rule 15c3-1, 17 C.F.R. § 240.15c3-1 under the provisions of paragraph (b)(2) thereof, and the broker-dealer is in compliance with all rules and settled practices of the exchange imposing requirements with respect to financial responsibility and the segregation of funds or securities carried for the account of customers.

3.07 Dishonest or Unethical Practices

To the extent any provision of this Section 3.07 is subject to the requirements of Section 5502(b) or 5502(c) of the Act, requiring the promulgation of a rule, such provision shall be construed as outside of this Order and as the Department's policy position with respect to the subject of such provision.

As used in Section 5412(d)(13) of the Act with respect to investment advisers, federal covered investment advisers, and investment adviser representatives, dishonest or unethical practices shall include, but not be limited to the following:

a. Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the investment adviser after reasonable examination of the client's records as may be provided to the investment adviser.

b. Placing an order to purchase or sell a security for the account of a client without written authority to do so.

c. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.

d. Exercising any discretionary power in placing an order for the purchase or sale of securities without first obtaining written discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of specified securities shall be executed, or both.

e. 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.

f. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate, of the investment adviser, or a member of the immediate family of the investment adviser or investment adviser representative, or a financial institution engaged in the business of loaning funds or securities.

g. Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser or a member of the immediate family of the investment adviser or investment adviser representative.

h. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the adviser, its representatives or any employees or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

i. Providing a report or recommendation to any advisory client prepared by someone other than the investment adviser without disclosing that fact. (This prohibition does not apply to a situation where the investment adviser uses published research reports or statistical analyses to render advice or where an investment adviser orders such a report in the normal course of providing service.)

j. Charging a client an advisory fee that is unreasonable.

k. Failing to disclose to a client in writing before entering into or renewing an advisory agreement with that client any material conflict of interest relating to the investment adviser, its representatives or any of its employees, which could reasonably be expected to impair the rendering of unbiased and objective advice including:

(1) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

(2) Charging a client an advisory fee for rendering advice without disclosing that a commission for executing securities transactions pursuant to such advice will be received by the investment adviser, its representatives or its employees or that such advisory fee is being reduced by the amount of the commission earned by the investment adviser, its representatives or employees for the sale of securities to the client.

l. Guaranteeing a client that a specific result will be achieved (gain or loss) as a result of the advice which will be rendered.

m. Publishing, circulating or distributing any advertisement which does not comply with Section 3.18 of this Exhibit.

n. Disclosing the identity, affairs, or investments of any client to any third party unless required by law to do so, or unless consented to by the client.

o. 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 investment adviser's action is subject to and does not comply with the safekeeping requirements of Rule 206(4)-2 under the Investment Advisers Act of 1940 or the adviser is exempt from these requirements by virtue of Section 3.06(b) of this Exhibit.

p. Entering into, extending or renewing any investment advisory contract, other than a contract for impersonal advisory services, unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee or the formula for computing the fee, the amount or the manner of calculation of the amount of the prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the investment adviser or its representatives and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract.

q. Employing any device, scheme, or artifice to defraud or engaging in any act, practice or course of business which operates or would operate as a fraud or deceit.

r. Failing to disclose to any client or prospective client all material facts with respect to:

(1) A financial condition of the adviser that is reasonably likely to impair the ability of the investment adviser to meet contractual commitments to clients, if the investment adviser has discretionary authority (express or implied) or custody over such client's funds, assets or securities, or requires payment of advisory fees 6 or more months in advance and in excess of \$500 per client; or

(2) A legal or disciplinary event that is material to an evaluation of the investment adviser's integrity or ability to meet contractual commitments to clients.

s. There shall be a rebuttable presumption that the following legal or disciplinary events involving an investment adviser or a management person of the adviser (any of the foregoing being referred to hereafter as "person") that were not resolved in the person's favor or subsequently reversed, suspended, or vacated are

material within the meaning of paragraph (r)(2) of this Section 3.07 for a period of 10 years from the time of the event:

(1) A criminal or civil action in a court of competent jurisdiction in which the person:

(A) Was convicted, pleaded guilty or nolo contendere ("no contest") to a felony or misdemeanor, or is the named subject of a pending criminal proceeding (any of the foregoing referred to hereafter as "action"), and such action involved: an investment-related business, fraud, false statements, or omissions; wrongful taking of property; or bribery, forgery, counterfeiting, or extortion;

(B) Was found to have been involved in a violation of an investment-related statute or regulation; or

(C) Was the subject of any order, judgment, or decree permanently or temporarily enjoining the person from, or otherwise limiting the person from, engaging in any investment-related activity.

(2) Administrative proceedings before the Commissioner, Securities and Exchange Commission, any other federal regulatory agency or any other state agency (any of the foregoing being referred to hereafter as "agency") in which the person:

(A) Was found to have caused an investment-related business to lose its authorization to do business; or

(B) Was found to have been involved in a violation of an investment-related statute or regulation and was the subject of an order by the agency denying, suspending, or revoking the authorization of the person to act in, or barring or suspending the person's association with, an investment-related business; or otherwise significantly limiting the person's investment-related activities.

(3) Self-Regulatory Organization (SRO) proceedings in which the person:

(A) Was found to have caused an investment-related business to lose its authorization to do business; or

(B) Was found to have been involved in a violation of the SRO's rules and was the subject of an order by the SRO barring or suspending the person from membership or from association with other members, or expelling the person from membership; fining the person

more than \$2,500; or otherwise significantly limiting the person's investment-related activities.

t. The information required to be disclosed by subsection (r) shall be disclosed to clients promptly, and to prospective clients not less than 48 hours prior to entering into any written or oral investment advisory contract, or no later than the time of entering into such contract if the client has the right to terminate the contract without penalty within five business days after entering into the contract.

u. For purposes of this Section 3.07:

(1) "Management person" means a person with power to exercise, directly or indirectly, a controlling influence over the management or policies of an adviser which is a company or to determine the general investment advice given to clients.

(2) "Found" means determined or ascertained by adjudication or consent in a final SRO proceeding, administrative proceeding, or court action.

(3) "Investment-related" means pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, investment company, investment adviser, government securities broker or dealer, municipal securities dealer, bank, savings and loan association, entity or person required to be registered under the Commodity Exchange Act [7 U.S.C. 1 et seq.] or fiduciary).

(4) "Involved" means acting or aiding, abetting, causing, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.

(5) "Self-Regulatory Organization" or "SRO" means any national securities or commodities exchange, registered association, or registered clearing agency.

v. For purposes of calculating the 10-year period during which events are presumed to be material under subsection (s), the date of a reportable event shall be the date on which the final order, judgment, or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees lapsed.

w. Compliance with this Section 3.07 shall not relieve any investment adviser from the obligations of any other disclosure requirement under the Act, the rules and regulations thereunder, or under any other federal or state law.

3.08 Agency Cross Transactions

a. For purposes of this Section 3.08, "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.

b. An investment adviser effecting an agency cross transaction for an advisory client shall be in compliance with section 5412(d)(13) of the Act if the following conditions are met:

(1) The advisory client executes a written consent prospectively authorizing the investment adviser to effect agency cross transactions for such client;

(2) 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;

(3) At or before the completion of each agency cross transaction, the investment adviser or any other person relying on this Section 3.08 sends the client a written confirmation. The written confirmation shall include

- (A) a statement of the nature of the transaction,
- (B) the date the transaction took place,
- (C) an offer to furnish, upon request, the time when the transaction took place, and
- (D) 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;

(4) 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 Section 3.08 sends each client a written disclosure statement identifying:

(A) the total number of agency cross transactions during the period for the client since the date of the last such statement or summary, and

(B) 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.

(5) Each written disclosure and confirmation required by this Section 3.08 must include a conspicuous statement that the client may revoke the written consent required under Section 3.08(b)(1) at any time by providing written notice to the investment adviser.

(6) No agency cross transaction may be effected in which the same investment adviser recommended the transaction to both any seller and any purchaser.

c. Nothing in this Section 3.08 shall be construed to relieve an investment adviser or investment adviser representative from acting in the best interests of the client, including fulfilling their 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.

3.09 Exemption from Section 5502(a) for Certain Broker-Dealers

a. For purposes of this Section 3.09,

(1) "Publicly distributed written materials" means written materials which are distributed to 35 or more persons who pay for those materials.

(2) "Publicly made oral statements" means oral statements made simultaneously to 35 or more persons who pay for access to those statements.

b. An investment adviser registered as a broker-dealer pursuant to Section 15 of the Securities Exchange Act of 1934 shall be exempt from section 5502(a) of the Act in connection with any transaction in relation to which that broker-dealer acts as an investment adviser:

(1) solely by means of publicly distributed written materials or publicly made oral statements;

(2) solely by means of written materials or oral statements not purporting to meet the objectives or needs of specific individuals or accounts;

(3) solely through the issuance of statistical information containing no expressions of opinion as to the investment merits of a particular security; or

- (4) any combination of the foregoing services.

This exemption shall apply only if the materials and oral statements 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.

3.10 Performance-Based Compensation Exemption

To the extent any provision of this Section 3.10 is subject to the requirements of Section 5502(b) or 5502(c) of the Act, requiring the promulgation of a rule, such provision shall be construed as outside of this Order and as the Department's policy position with respect to the subject of such provision.

- a. For purposes of this Section 3.10,

(1) "Affiliate" shall have the same definition as in Section 2(a)(3) of the federal Investment Company Act of 1940.

(2) "Client's independent agent" means any person who agrees to act as an investment advisory client's agent in connection with the contract, but does not include

(A) the investment adviser relying on this Section 3.10;

(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 that person (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 years.

(3) "Company" means a corporation, partnership, association, joint stock company, trust, or 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 their capacity as such. "Company" shall not include

(A) a company required to be registered under the federal Investment Company Act of 1940 but which is not so registered,

(B) a private investment company (for purposes of this subparagraph (B), a private investment company is a company which would be defined as an investment company under Section 3(a) of the federal 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 federal Investment Company Act of 1940, or

(D) a business development company as defined in Section 202(a)(22) of the federal 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 company within the meaning of paragraph a(3) of this Section 3.10.

(4) "Interested person" means

(A) any member of the immediate family of any natural person who is an affiliated person of the investment adviser;

(B) any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued by the investment adviser or by a controlling person of the investment adviser if that beneficial or legal interest exceeds

(i) one tenth of one percent of any class of outstanding securities of the investment adviser or a controlling person of the investment adviser or

(ii) five percent 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 years, has acted as legal counsel for the investment adviser.

b. An investment adviser may 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 if the conditions in Subsections (c) through (h) of this Section 3.10 are met.

c. The client entering into the contract must be (1) a natural person or a company who, immediately after entering into the contract, has at least \$500,000 under the management of the investment adviser or (2) 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 \$1,000,000. The net worth of a natural person may include assets held jointly with that person's spouse.

d. 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:

(1) 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), 17 C.F.R. § 270.2a-4(a)(1), the formula must include the realized capital losses and unrealized capital depreciation of the securities over the period;

(2) 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, 17 C.F.R. § 270.2a-4(a)(1), the formula must include

(A) the realized capital losses of securities over the period and

(B) if the unrealized capital appreciation of the securities over the period is included, the unrealized capital depreciation of the securities over the period; and

(3) 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 subdivisions (1) and (2) of this paragraph) in the client's account for a period of not less than one year.

e. 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:

(1) 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;

(2) 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;

(3) The periods which will be used to measure investment performance throughout the contract and their significance in the computation of the fee;

(4) The nature of any index which 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

(5) 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, 17 C.F.R. § 270.2a-4(a)(1), how the securities will be valued and the extent to which the valuation will be independently determined.

f. 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 Section 3.10(a)(3), 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 or an 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 subsection (a)(2) of this Section 3.10.

g. Any person entering into or performing an investment advisory contract under this Section 3.10 is not relieved of any obligations under any applicable provision of the Act or any rule or order thereunder.

h. Nothing in this Section 3.10 shall relieve a client's independent agent from any obligation to the client under applicable law.

3.11 [Reserved]

3.12 Investment Adviser Brochure Rule

a. **General Requirements.** Unless otherwise provided in this Section 3.12, an investment adviser, registered or required to be registered pursuant to sections 5402

and 5403 of the Act shall, in accordance with the provisions of this section, furnish each advisory client and prospective advisory client with a written disclosure statement which may be a copy of Part II of its Form ADV or written documents containing at least the information then so required by Part II of Form ADV, or such other information as the Commissioner may require.

b. Delivery.

(1) An investment adviser, except as provided in paragraph (2), shall deliver the statement required by this section to an advisory client or prospective advisory client

(A) not less than 48 hours prior to entering into any investment 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) Delivery of the statement required by paragraph (1) need not be made in connection with entering into (A) an investment company contract or (B) a contract for impersonal advisory services.

c. Offer to Deliver.

(1) An investment adviser, except as provided in subdivision (2), annually shall, without charge, deliver or offer in writing to deliver upon written request to each of its advisory clients the statement required by this paragraph.

(2) The delivery or offer required by subdivision (1) need not be made to advisory clients receiving advisory services solely pursuant to (A) an investment company contract or (B) a contract for impersonal advisory services requiring a payment of less than \$200.00.

(3) With respect to an advisory client entering into a contract or receiving advisory services pursuant to a contract for impersonal advisory services which requires a payment of \$200.00 or more, an offer of the type specified in subdivision (1) shall also be made at the time of entering into an advisory contract.

(4) Any statement requested in writing by an advisory client pursuant to an offer required by this subsection must be mailed or delivered within seven days of the receipt of the request.

d. Omission of Inapplicable Information. If an investment adviser renders substantially different types of investment advisory services to different advisory clients,

any information required by Part II of Form ADV may be omitted from the statement furnished to an advisory client or prospective advisory client if such information is applicable only to a type of investment advisory service or fee which is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

e. Other Disclosures. Nothing in this Section 3.12 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 Section 3.12.

f. Definitions. For the purpose of this Section 3.12:

(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 which 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 investment advisory contract, does not include an extension or renewal without material change of any such contract which is in effect immediately prior to such extension or renewal.

(3) "Investment company contract" means a contract with an investment company registered under the Investment Company Act of 1940 which meets the requirements of Section 15(c) of that Act.

3.13 Wrap Fee Brochure

a. For purposes of this Section 3.13:

(1) "Wrap Fee Program" means any program under which any client is charged a specified fee or fees not based directly upon transactions in a client's account for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and execution of client transactions.

(2) "Portfolio manager" means an investment adviser who determines or recommends securities transactions for any portion of a client's portfolio.

(3) "Sponsor" means any investment adviser that is compensated under a wrap fee program for administering, organizing or sponsoring the program, or for selecting or providing advice to clients regarding the selection of other investment advisers in the program.

b. Applicability of Disclosure Requirements.

(1) An investment adviser that sponsors a wrap fee program shall, in lieu of the written disclosure statement required by Section 3.12 of this Exhibit, furnish each client or prospective client of a wrap fee program, a separate written disclosure statement containing at least the information required by Part II of form ADV. Any information included in such disclosure statement that is not specifically required by Form ADV, Part II, should be limited to information concerning wrap fee programs for which the investment adviser is required to furnish disclosure statements under this paragraph.

(2) If an investment adviser sponsors or organizes more than one wrap fee program, the investment adviser may omit from the disclosure statement furnished to clients and prospective clients of a particular wrap fee program or programs any information required by Form ADV, Part II, that is not applicable to clients or prospective clients of that wrap fee program or programs.

(3) An investment adviser need not furnish the written disclosure statement required by subsection (b)(1) to clients and prospective clients of a wrap fee program if another investment adviser is required to furnish and does furnish the written disclosure statement to all clients and prospective clients of the wrap fee program.

c. Filing and Delivery. The wrap fee disclosure statement shall be attached to Form ADV, Part II and filed with the Commissioner. If the investment adviser prepared separate wrap fee brochures for clients of different programs, each brochure shall be filed with the Commissioner. An investment adviser shall deliver the statement required by this section to a client or prospective client of a wrap fee program

(1) not less than 48 hours prior to entering into a wrap fee program contract with a client or prospective client, or

(2) at the time of entering into any wrap fee program contract, if the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract.

d. Amendments. If information contained in the wrap fee disclosure statement becomes inaccurate in a material manner, the investment adviser shall promptly file an amendment to Form ADV correcting the information. An investment adviser may update the wrap fee disclosure statement by using a supplement or "sticker" that indicates

what information is being added or updated and states the new or revised information, as long as the resulting brochure is readable. Nonmaterial changes shall be filed within 90 days after the investment adviser's fiscal year end.

3.14 Withdrawal of Investment Adviser and Investment Adviser Representative Registrations

a. The application for withdrawal of registration as an investment adviser shall be filed upon Form ADV-W (Notice of Withdrawal from Registration as Investment Adviser) (17 C.F.R. § 279.2) with the IARD.

b. The application for withdrawal of registration as an investment adviser representative pursuant to section 5409 of the Act shall be filed upon Form U-5 (Uniform Notice of Withdrawal of Securities Industry Registration) with CRD.

3.15 Record-Keeping Requirements for Investment Advisers

a. Every investment adviser registered or required to be registered under the Act shall make and keep true, accurate and current the following books, ledgers and records:

(1) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

(2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

(3) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. Such 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 such 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 books, bank statements, canceled checks and cash reconciliations of the investment adviser.

(5) All bills or statements (or copies thereof), paid or unpaid, relating to the business of the investment adviser as such.

(6) All trial balances, financial statements, and internal audit working papers relating to the business of such investment adviser.

(7) Originals of all written communications received and copies of all written communications sent by such investment adviser relating to

(A) any recommendation made or proposed to be made and any advice given or proposed to be given,

(B) any receipt, disbursement or delivery of funds or securities,
or

(C) the placing or execution of any order to purchase or sell any security; provided, however,

(i) that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, and

(ii) that if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 10 persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if such notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of such notice, circular or advertisement a memorandum describing the list and the source thereof.

(8) A list or other record of all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.

(9) All powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser, or copies thereof.

(10) All written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser as such.

(11) A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication, including by electronic media, recommending the purchase or sale of a specific security that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with such investment adviser), and if such notice circular, advertisement, newspaper article, investment letter, bulletin or other communication recommends the purchase or sale of a specific security and does

not state the reasons for such recommendation, a memorandum of the investment adviser indicating the reasons therefor.

(12) (A) A record of every transaction in a security in which the investment adviser or any advisory representative of such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except

(i) transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and

(ii) transactions in securities which are direct obligations of the United States. Such 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. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(B) For purposes of this subdivision (12) the term "Advisory representative" shall mean any partner, officer or director of the investment adviser; any employee who makes any recommendation, who participates in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which recommendation shall be made; any employee who, in connection with such person's duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of such recommendations or of the information concerning such recommendations; and any of the following persons who obtain information concerning securities recommendations being made by such investment adviser prior to the effective dissemination of such recommendations or of the information concerning such recommendations:

(i) any person in a control relationship to the investment adviser,

(ii) any affiliated person of such controlling person and

(iii) any affiliated person of such affiliated person.

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

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

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

(i) transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and

(ii) transactions in securities which are direct obligations of the United States. Such 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. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(B) An investment adviser is "primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients" when, for each of its most recent three fiscal years or for

the period of time since organization, whichever is lesser, the investment adviser derived, on an unconsolidated basis, more than 50% of

- (i) its total sales and revenues, and
- (ii) its income (or loss) before income taxes and extraordinary items, from such other business or businesses.

(C) For purposes of this subdivision (13) the term "advisory representative," when used in connection with a company primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients, shall mean any partner, officer, director or employee of the investment adviser who makes any recommendation, who participates in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which recommendation shall be made, or who, in connection with such person's duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of such recommendations or of the information concerning such recommendations; and any of the following persons who obtain information concerning securities recommendations being made by such investment adviser prior to the effective dissemination of such recommendations or of the information concerning such recommendations:

- (i) any person in a control relationship to the investment adviser,
- (ii) any affiliated person of such controlling person and
- (iii) any affiliated person of such affiliated person.

"Control" shall have the same meaning as that set forth in Section 2(a)(9) of the Investment Company Act of 1940, as amended.

(D) An investment adviser shall not be deemed to have violated the provisions of this subdivision (13) because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(14) A copy of each written statement and each amendment or revision thereof, given or sent to any client or prospective client of such investment adviser in accordance with the provisions of Section 3.12, and a record of the dates that each written statement, and each amendment or revision thereof 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 to be in compliance if such documents are in compliance with Rule 275.206(4)-3 of the Investment Advisers Act of 1940. For purposes of this Section 3.15, the term "solicitor" shall mean any person or entity who, for compensation, acts as an agent of an investment adviser in referring potential clients.

(16) All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of any or all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication, including but not limited to electronic media, that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with such investment adviser); provided, however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this paragraph.

(17) A file containing a copy of all written communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee, and regarding any written customer or client complaint.

(18) Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.

(19) Written procedures to supervise the activities of employees and investment adviser representatives that are reasonable designed to achieve compliance with applicable securities laws and regulations.

(20) A file containing a copy of each document (other than 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 representative as that term is defined in subdivision (a)(12)(A) of this Section 3.15, which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

b. If an investment adviser subject to paragraph (a) of this Section 3.15 has custody or possession of securities or funds of any client, the records required to be made and kept under paragraph (a) above shall also include:

(1) A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for such accounts and all other debits and credits to such accounts.

(2) A separate ledger account for each such client showing all purchases, sales, receipts and deliveries of securities, the date and price of each such purchase and sale, and all debits and credits.

(3) Copies of confirmations of all transactions effected by or for the account of any such client.

(4) A record for each security in which any such client has a position, which record shall show the name of each such client having any interest in each security, the amount or interest of each such client, and the location of each such security.

c. Every investment adviser subject to Section 3.15(a) who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:

(1) Records showing separately for each such client the securities purchased and sold, and the date, amount and price of each such purchase and sale.

(2) For each security in which any such client has a current position, information from which the investment adviser can promptly furnish the name of each such client, and the current amount or interest of such client.

d. Any books or records required by this Section 3.15 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 3.15(a) shall preserve the following records in the manner prescribed:

(1) All books and records required to be made under the provisions of Sections 3.15(a) through 3.15(c)(1) (except for books and records required to be made under the provisions of Sections 3.15(a)(11), (15)), shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser.

(2) Partnership articles and any amendments thereto, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.

(3) Books and records required to be made under the provisions of Section 3.15(a)(11), (15) shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in 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) Notwithstanding other record preservation requirements of this Section 3.15, 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 Sections 3.15(a)(3), (7)-(10), (14), (15), (17)-(19), (b) and (c), and (B) the records or copies require under the provision of Section 3.15(a)(11), (16) which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the period described in Section 3.15(e).

f. An investment adviser subject to Section 3.15(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 Section 3.15 for the remainder of the period specified in this Section 3.15, and shall notify the Commissioner in writing of the exact address where such books and records will be maintained during such period.

g. (1) The records required to be maintained and preserved pursuant to this Section 3.15 may be immediately produced or reproduced by photograph on film or, as provided in paragraph (g)(2) below, on magnetic disk, tape or other computer storage medium, and be maintained and preserved for the required time in that form. If records are produced or reproduced by photographic film or computer storage medium, the investment adviser shall:

(A) Arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record,

(B) Be ready at all times to provide, and promptly provide, any facsimile enlargement of film or computer printout or copy of the computer storage medium which the Commissioner by his or her examiners or other representatives may request,

(C) Store separately from the original one other copy of the film or computer storage medium for the time required,

(D) With respect to records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction, and

(E) With respect to records stored on photographic film, at all times have available for the Commissioner's examination of its records pursuant to section 5411(d) of the Act, facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

(2) Pursuant to Section 3.15(g)(1), an investment adviser may maintain and preserve on computer tape or disk or other computer storage medium records which, in the ordinary course of the investment adviser's business, are created by the investment adviser on electronic media or are received by the adviser solely on electronic media or by electronic data transmission.

h. For purposes of this Section 3.15, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client; and "discretionary power" shall not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

i. Any book or other record made, kept, maintained and preserved in compliance with Rules 17a-3 [17 C.F.R. § 240.17a-3] and 17a-4 [17 C.F.R. § 240.17a-4]

under the Securities Exchange Act of 1934, which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this Section 3.15 shall be deemed to be made, kept, maintained and preserved in compliance with this Section 3.15.

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 section, provided the investment adviser is licensed in such state and is in compliance with such state's recordkeeping requirements.

3.16 Financial Reporting Requirements for Investment Advisers

a. Every registered investment adviser who has custody of client funds, assets or securities or requires payment of advisory fees 6 or more months in advance and in excess of \$500 per client shall file with the Commissioner an audited balance sheet as of the end of the investment adviser's fiscal year.

(1) Each balance sheet filed pursuant to this Section 3.16 must be:

(A) Examined in accordance with generally accepted auditing standards and prepared in conformity with generally accepted accounting principles;

(B) Audited by an independent public accountant or an independent certified public accountant; and

(C) 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.

b. Every registered investment adviser who has discretionary authority over client funds or securities, but not custody, shall file with the Commissioner a balance sheet, which need not be audited, but which must be prepared in accordance with generally accepted accounting principles and represented by the investment adviser or the person who prepared the statement as true and accurate, as of the end of the investment adviser's fiscal year.

c. The financial statements required by this Section 3.16 shall be filed with the Commissioner within 90 days following the end of the investment adviser's fiscal year.

3.17 Filing of Amendments

a. An amendment required by section 5406(b) of the Act for an investment adviser shall be made on Form ADV in the manner prescribed by that form. Any amendment to Form ADV shall be filed within the period of time specified in the

instructions to that form relating to filings made with the Securities and Exchange Commission.

b. Any amendment required to be filed under Section 3.17(a) shall include only a notarized execution page (Form ADV, part I, page 1) and the pages to be amended. The investment adviser shall circle only the amended questions. The investment adviser shall not file Form ADV in its entirety in lieu of an amendment which complies with this Section 3.17.

c. Any amendment required by section 5406(b) of the Act for an investment adviser representative shall be made on Form U-4 in the manner prescribed by that form.

3.18 Advertisements by Investment Advisers or Investment Adviser Representatives

a. It shall constitute a fraudulent practice within the meaning of section 5501 of the Act, for any investment adviser or investment adviser representative, directly or indirectly, to publish, circulate or distribute any advertisement:

(1) Which refers, directly or indirectly, to any testimonial of any kind concerning the investment adviser or investment adviser representative or concerning any advice, analysis, report or other service rendered by such investment adviser or investment adviser representative; or

(2) Which refers, directly or indirectly, to past specific recommendations of such investment adviser or investment adviser representative which were or would have been profitable to any person; provided, however, that this shall not prohibit an advertisement which sets out or offers to furnish a list of all recommendations made by such investment adviser or investment adviser representative within the immediately preceding period of not less than one year if such advertisement, and such list if it is furnished separately:

(A) States the name of each such security recommended, the date and nature of each such recommendation (e.g., whether to buy, sell or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each such security as of the most recent practicable date; and

(B) Contains the following cautionary legend on the first page thereof in print or type as large as the largest print or type used in the body or text thereof: "It should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list"; or

(3) Which represents, directly or indirectly, that any graph, chart, formula or other device being offered can in and of itself be used to determine

which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula or other device being offered will assist any person in making their 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; or

(4) Which contains any statement to the effect that any report, analysis, or other service will be furnished free or without charge, unless such report, analysis or other service actually is or will be furnished entirely free and without any condition or obligation, directly or indirectly; or

(5) Which contains any untrue statement of a material fact, or which is otherwise false or misleading; or

(6) Which states that the Commissioner or the Department of Banking, Insurance, Securities and Health Care Administration has approved any advertisement.

b. For the purposes of this Section 3.18 the term "advertisement" shall include any notice, circular, letter or other written or electronic communication addressed to more than one person, or any notice or other announcement in any publication or by radio, television, electronic network or other public media which offers:

(1) Any analysis, report, or publication concerning securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or

(2) Any graph, chart, formula or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or

(3) any other investment advisory service with regard to securities.

This Exhibit 6.6 to Order 06-43-S ("Exhibit") includes provisions regarding broker-dealers and investment advisers located on depository institution premises.

Broker-dealers and investment advisers may NOT access a customer's depository institution records unless the customer has given prior written permission.

Throughout this Exhibit the terms "securities firm", "securities customer" and "securities service" are intended to include both broker-dealer and investment adviser firms, customers and services.

I. Advertising.

1. Advertising material and other promotional literature, which may be disseminated jointly, must prominently and clearly disclose that the depository institution is not a registered broker-dealer/investment adviser and that securities customers will be dealing exclusively with the registered broker-dealer/investment adviser with respect to securities services. Advertising must make it clear that the broker-dealer/investment adviser and the bank are separate, distinct and unaffiliated entities and that investment products sold through the securities firm are not deposits insured by any government agency.

2. The broker-dealer/investment adviser must assume responsibility for reviewing and either approving or disapproving any advertising matter used or intended for use by the depository institution with respect to securities services and must maintain evidence demonstrating that it has done so.

II. Customer Disclosure.

1. Securities customers must sign a written disclosure that states:

a. The securities services are not being provided by the depository institution;

b. The broker-dealer/investment adviser is not a division of the depository institution but is a separate company;

c. Any insurance coverage which applies to accounts maintained by the depository institution, such as FDIC or NCUSIF, will not extend to dealings with the broker-dealer/investment adviser.

2. Signage, directories or other labeling displayed on depository institution premises must not in any way imply or lead customers or the public to conclude that the broker-dealer/investment adviser operation constitutes a division of the depository institution.

3. Employees who are jointly employed by the depository institution and the broker-dealer/investment adviser and who are registered agents/investment adviser representatives of the broker-dealer/investment adviser must disclose this dual relationship to securities customers.

4. The broker-dealer/investment adviser's telephone number must be listed and answered in a fashion as to be unambiguously identified as that of the broker-dealer/investment adviser, not the depository institution. For example, "XYZ Securities at ABC Bank" would be inappropriate while "XYZ Securities" would not. There must be separate letterhead and business cards for the broker-dealer/investment adviser and the depository institution, although the depository institution address may be shown on both. All securities confirmations and account statements must unambiguously identify the broker-dealer/investment adviser only.

III. Separation of Functions.

1. The broker-dealer/investment adviser must require that all orders be placed by customers directly with the broker-dealer/investment adviser and not [be] accepted through the depository institution.

2. The broker-dealer/investment adviser must not permit the depository institution and its employees to participate or aid in any way the offer, sale, or purchase of securities through the facilities of the broker-dealer/investment adviser, except as provided in these guidelines. Any questions concerning such transactions must be directed to and handled by the broker-dealer/investment adviser through persons who are registered as agents in Vermont. In addition, all accounts of Vermont residents must be opened and supervised by persons who are registered as agents/investment adviser representatives.

3. The broker-dealer/investment adviser must not permit the depository institution and its employees to advise securities customers as to the advisability of investing in, purchasing, or selling securities through the facilities of the broker-dealer/investment adviser. This does not preclude the depository institution from informing customers of the availability of the securities services or from distributing securities service advertising and informational material. Nor is this guideline intended to prohibit depository institutions with trust departments from engaging in normal trust functions.

4. All securities certificates and transactional correspondence (including, without limitation, confirmations, monthly statements, etc.) must be issued directly by the broker-dealer/investment adviser and not by or through the depository institution.

5. The broker-dealer/investment adviser must not permit the depository institution to accept securities customers' checks or securities certificates in settlement of securities transaction orders placed directly with the broker-dealer/investment adviser.

6. If a broker-dealer/investment adviser occupies physical space in an area on the premises of the depository institution, this area must be sufficiently separated from the

retail area of the depository institution. The area must be conspicuously identified as the place of business of the broker-dealer/investment adviser; readily distinguishable from the operations of the depository institution and staffed only by those persons whose affiliation with the broker-dealer/investment adviser is conspicuously identified.

7. The broker-dealer/investment adviser must not permit depository institution employees to receive compensation for securities services, either directly or indirectly, unless these employees are registered as agents/investment adviser representatives of the broker-dealer/investment adviser. However, the depository institution itself may receive commission related compensation for its participation in the networking arrangement based upon a percentage of the revenues generated by the arrangement. Depository institution employees may receive one-time, nominal fees of a fixed amount for referring depository institution customers to a securities firm if such fees do not depend on whether the referral results in a securities transaction.

8. The broker-dealer/investment adviser may permit depository institution employees to perform only clerical and ministerial functions in dealing with securities customers and in connection with securities transactions unless they are qualified as agents/investment adviser representatives of the broker-dealer/investment adviser and are registered as such in Vermont. The referral of questions or complaints and the mere transmittal of order forms or like information to another person registered as an agent/investment adviser representative of a broker-dealer/investment adviser for action by that person will be deemed a clerical or ministerial function. Other clerical or ministerial functions that would not appear to trigger the Act's securities representative registration requirements include informing potential securities customers that the securities firm provides securities services, delivering blank new account forms and written instructions on their preparation to customers, distributing promotional materials, and directing persons to registered agents of the broker-dealer/investment adviser or a toll-free telephone number.

9. Precautions should be exercised by the broker-dealer/investment adviser to ensure that unregistered depository institution employees do not engage in any solicitation activity. In addition, the broker-dealer/investment adviser must not permit unregistered depository institution employees to engage in the following activities:

- a. Open customer accounts or assist in the preparation of new account forms by customers;
- b. Make suitability determinations, render investment advice, or make investment recommendations in connection with the purchase or sale of securities;
- c. Process orders to purchase or sell securities;
- d. Engage in the resolution of complaints regarding the purchase or sale of securities;

e. Supervise broker-dealer/investment adviser personnel either directly or indirectly;

f. Assume responsibility for the day-to-day operation and supervision of any place of business of the broker-dealer/investment adviser.

10. Brokerage/adviser employees and registered agents/investment adviser representatives, even if jointly employed by the depository institution, may not have access to depository institution records of securities customers unless the customer grants prior written permission.

11. The broker-dealer/investment adviser may not deal in any securities of the depository institution or any affiliate thereof on the premises of the depository institution except in unsolicited transactions.

12. The broker-dealer/investment adviser is responsible for supervising joint employees of the depository institution and the securities firm who are registered agents/investment adviser representatives and for ensuring compliance with all applicable federal and state securities laws and NASD regulatory requirements including branch office registration under the Act, customer suitability and protection, financial responsibility, training and compliance responsibilities, and recordkeeping and reporting requirements.

The books and records of the broker-dealer/investment adviser must be kept separate from those of the depository institution. The Division shall have unimpeded access during the depository institution's business hours to all broker-dealer/investment adviser books and records maintained on the depository institution's premises and to joint employees of the depository institution and the securities firm who are registered as agents/investment adviser representatives and their personnel records.

The securities firm must have a written agreement with the depository institution that is approved by the securities firm's board of directors.

Multijurisdictional disclosure system (MJDS).

The Securities and Exchange Commission ("SEC") in Release No. 33-6902 has adopted a system referred to as the Multijurisdictional Disclosure System ("MJDS") to facilitate the multinational registration and sale of securities for substantial United States and Canadian issuers in each other's jurisdiction. Offerings of investment grade securities and equity securities by certain large Canadian issuers, rights offerings, exchange offers and business combinations may be registered with the SEC under the MJDS. Canadian issuers that meet specified eligibility tests may register securities with the SEC through disclosure documents they have prepared for Canadian regulatory authorities.

Filing Requirements: The Vermont Securities Division ("the Division") will require Canadian issuers to file forms U1, U2, and U2a as required of U.S. issuers. The Division will accept SEC forms F-7, F-8, F-9, and F-10 as fulfilling the filing requirements of Sections 5303 and 5304 of the Act. The Division will also accept financial statements and financial information which have been prepared in accordance with Canadian generally accepted accounting principles provided that the registration statement has been designated as form F-7, F-8, F-9, F-10 by the SEC and provided the following requirements are met:

(1) The securities which are the subject of a registration statement designated as Form F-7 by the SEC are offered for cash upon the exercise of rights granted to existing security holders;

(2) The securities which are the subject of a registration statement designated as Form F-8 by the SEC are securities to be issued in an exchange offer, merger or other business combination;

(3) The securities which are the subject of the registration statement designated as Form F-9 by the SEC are either non-convertible preferred stock or non-convertible debt which are to be rated in one of the four highest rating categories by one or more nationally recognized statistical rating organizations;

For purposes of this subsection, preferred stock and debt securities which are not convertible for at least one year from the date of effectiveness of the registration statement will be deemed to meet this requirement;

(4) The securities which are the subject of a registration statement designated as Form F-10 by the SEC are offered and sold pursuant to a prospectus in which the SEC has not required a reconciliation to United States generally accepted accounting principles with respect to the financial information presented therein.

(5) The applicable registration fees are paid.

Vermont Statutory Exemptions: Canadian issuers filing under MJDS and Canadian broker-dealers and sales persons handling MJDS issues will be entitled to the same exemptions as U.S. issuers and broker-dealers, as provided under the Act.

Provisions Regarding Registered Investment Companies

This Exhibit 7.2 to Order 06-43-S (the "Exhibit"), sets forth the requirements for registration and notice filings by registered investment companies, including unit trusts and open-end investment companies.

1. General Provisions Regarding Initial and Renewal Notice Filing

Each issuer of a federal covered security as defined in Section 18(b)(2) of the Securities Act of 1933, which is not exempt under Sections 5201 through 5203 of the Act, shall comply with the following requirements with respect to such security:

- (1) before the initial offer of such security, the issuer shall: (i) complete and submit a form NF and the applicable fee as set forth in Exhibit 3.1 to this Order to the Division; (ii) complete the filing of a federal registration statement with the Securities and Exchange Commission under 15 U.S.C. § 77a et seq., which is accessible on the Electronic Data Gathering, Analysis and Retrieval System ("EDGAR") maintained by the Securities and Exchange Commission, and (iii) file a completed form U-2 consent to service of process with the Division;
- (2) after the initial offer of the federal covered security in this state, file a form NF to report any amendment to the form NF originally filed, as subsequently amendment, and all records that are part of an amendment to a federal registration statement filed with the Securities and Exchange Commission under 15 U.S.C. § 77a et seq. shall be accessible through EDGAR;
- (3) if the issuer pays less than the maximum fee with respect to the notice filing of a security, the issuer shall file with the Commissioner a sales report on Form NF of actual sales of such security during the immediately preceding notice filing period, within sixty (60) days of the end of such notice filing period.

An initial notice filing will be effective upon completion of the requirements of clause (1), and will remain effective for one year from such effective date.

The notice filing with respect to a security will be renewed effective upon the expiration of the filing being renewed, provided all of the following are completed prior to such expiration date: (i) completion of the requirements of clauses (2) and (3), above, as applicable; (ii) the filing of a new consent to service of process to the extent any previously filed consent to service of process is no longer valid; and (iii) the payment of the renewal fee as set forth in Exhibit 3.1 of this Order.

2. Open-end Investment Companies and Unit Trusts

An open-end investment company or unit trust that intends to offer or sell securities from more than one portfolio or class of shares shall comply with the initial and renewal notice

requirements separately for each class of shares. The initial notice filing and renewal fees set forth in Exhibit 3.1 to this Order shall apply separately to each class of shares.

3. Oversales

In the event the amount of securities to be sold or actually sold during a registration period exceeds the amount reported in a notice filing, including any previous amendments thereto, and the issuer has not paid the maximum fee set forth in Exhibit 3.1 to this Order for the period with respect to such security, the issuer shall file an amended notice filing with a sales report indicating the amount in excess of the amount previously reported. Such report must be filed no later than sixty (60) days after the end of the registration period that is the subject of the report. The issuer shall pay the applicable filing fee as set forth in Exhibit 3.1 to this Order.

Offers and sales of securities made pursuant to SEC Rule 701.

WHEREAS, the Securities and Exchange Commission ("SEC") has adopted Rule 701 under the Securities Act of 1933;

WHEREAS, Rule 701 provides an exemption from the registration requirements of the Securities Act of 1933 for offers and sales of securities by non-reporting companies under certain compensatory benefit plans or written agreements relating to compensation;

WHEREAS, securities issued in connection with an employee's stock purchase, savings option, profit sharing, pension or similar employees' benefit plan are exempt from registration under Section 5202(22) of the Act;

WHEREAS, securities offered and sold in compliance with SEC Rule 701 come within the intent of a "similar employees' benefit plan" under Section 5202(22) of the Act;

NOW, THEREFORE IT IS HEREBY ORDERED THAT agents effecting offers and sales of securities in compliance with SEC Rule 701 are exempt from registration pursuant to 9 V.S.A. §5402(b)(9) provided that no compensation or other remuneration is paid or given for soliciting any prospective buyer.

Bank employees effecting transactions in bank securities.

WHEREAS securities issued by and representing an interest in or a direct obligation of, or guaranteed by a depository institution are generally exempt from registration under Section 5201(3) of the Act; and

WHEREAS depository institutions may be deemed to be "issuers" of securities as defined under Section 5201(17) of the Act and persons effecting transactions in an issuer's securities may be required to register as "agents" under Section 5402 of the Act; and

WHEREAS Section 5402(b)(9) of the Act provides that the Commissioner may, by rule or order, exempt any agent from the registration requirements of the Act by rule or order; and

WHEREAS the Commissioner has determined that the Act's registration provisions are not necessary in transactions involving the offer or sale of certain exempt securities issued by depository institutions that are effected by employees of such institutions.

THEREFORE IT IS HEREBY ORDERED that employees of depository institutions who effect transactions in securities issued by the employing depository institution, which are exempt pursuant to Section 5201(3) of the Act, are exempt from agent registration under Section 5402 of the Act. Such exemption shall not apply to transactions involving securities of an employing depository institution that are equity interests in that institution.

Exemption --Bank employees exempt from sales representative registration.

WHEREAS, the Federal Home Loan Bank of Boston ("Bank") has, by letter dated September 13, 2002, which is incorporated herein by reference, requested an order from the Commissioner exempting employees of the Bank who sell, purchase and/or transfer stock issued by the Bank among members and prospective members of the Bank from registrations as agents pursuant to Vermont's securities laws; and

WHEREAS, the Bank provides low-cost funding to its member financial institutions to support the origination of residential mortgage loans and other community development needs; and

WHEREAS, the Bank is a cooperative, requiring its members to own capital stock as a condition to obtaining funding and other services from the Bank; and

WHEREAS, pursuant to the Gramm-Leach-Bliley Act and the Bank's capital plan, the Bank must issue Class B stock to its members in exchange for their existing stock in the Bank ("Bank stock"); and

WHEREAS, Bank stock must be sold to members and prospective members at par value and may only be redeemed or repurchased by the Bank from members or transferred to another member and all such transactions may only occur at par value; and

WHEREAS, there is no potential for appreciation in the Bank stock nor is there any public trading market for the stock; and

WHEREAS, bank employees who effect the purchases, sales and transfer of Bank stock earn no commissions with respect to such transactions; and

WHEREAS, the Bank is regulated by the Federal Housing Finance Board ("Finance Board"), an independent agency of the federal government, which conducts annual on-site examinations of the Bank and has issued regulations governing the activities, operations, capital structure and management of the Bank; and

WHEREAS, only financial institutions are and/or may become members of the Bank and no other entities or individuals are and/or may become members of the Bank; and

WHEREAS, the Commissioner finds that it is not necessary or appropriate to require the Bank's employees engaged in such transactions involving the purchase, sale or transfer of Bank stock to members or prospective members to be registered as agents under the Act.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to Section 5402(b)(9) of the Act, employees of the Bank engaged in effectuating the purchase, sale and/or transfer of Bank stock to members and prospective members of the Bank at par value and without commissions are exempt from the registration requirements of Section 5402 of the Act

applicable to agents, but such exemption shall apply only to the extent the activities of the employees are limited to the circumstances described in this Exhibit 8.3 to this Order..

IT IS FURTHER ORDERED THAT nothing in this order shall relieve the Bank or any of its employees from the other provisions of the Act, including but not limited to the anti-fraud provisions and any rule or order promulgated thereunder regarding dishonest and unethical practices.

Exemption --Employees, officers and general partner of a limited partnership created by a nonprofit corporation to provide affordable housing in Vermont are exempt from issuer agent registration.

WHEREAS Housing Vermont, Inc. ("Housing Vermont") is a Vermont non-profit corporation created by the Vermont Housing Finance Agency for the purpose of developing affordable housing in Vermont; and

WHEREAS Housing Vermont has in the past created limited partnerships to raise sufficient capital to develop affordable housing on a project-by-project basis; and

WHEREAS Housing Vermont's affordable housing projects have generally been financed by regulated financial institutions and their institutional affiliates through the purchase of units in the limited partnerships; and

WHEREAS units in the limited partnerships have been offered and sold directly by employees and/or officers of Housing Vermont or the limited partnership's general partner; and

WHEREAS such employees and officers received no commissions or remuneration, either directly or indirectly, for soliciting prospective purchasers; and

WHEREAS Section 5202(13)(A) of the Act exempts the registration of securities when a transaction involves an offer or sale to an institutional investor as defined therein; and

WHEREAS, representatives of the issuers of such securities are subject to registration as agents under Section 5402 of the Act, unless exempted from registration; and

WHEREAS Section 5402(b)(9) of the Act exempts an individual from the agent registration requirements if provided by rule or order; and

WHEREAS the Commissioner has determined that the registration of agents is not necessary or appropriate for the protection of investors where the employees and officers described above sell Housing Vermont limited partnerships to financial or institutional investors;

THEREFORE IT IS HEREBY ORDERED that employees and/or officers of Housing Vermont and the general partner of any limited partnership created by Housing Vermont to finance affordable housing projects in Vermont are exempt from the issuer agent registration requirements under the Act, if the following conditions are met:

1. Sale of units and/or interests in any limited partnership created by Housing Vermont, for the purpose of developing affordable housing in Vermont, shall be made only to institutional investors as defined under Section 5102(11)(A)-(O) of the Act;

2. Such units and/or interests in the limited partnerships shall not be resalable except to such institutional investors; and

3. The employees and/or officers of Housing Vermont or the general partner of a limited partnership created by Housing Vermont for the purpose of developing affordable housing in Vermont, shall be exempt from the agent registration requirements of Section 5402(a) of the Act, provided that such person does not receive, directly or indirectly, any commissions and/or remuneration in connection with the offer or sale of any units and/or interests in any such limited partnership.

Sales to Broker-Dealers

WHEREAS, Section 5202(13)(A) provides an exemption from the requirements of Sections 5301 to 5306 and 5504 of the Act for a sale or offer to sell a security to an institutional investor, which includes any broker-dealer registered under the Securities and Exchange Act of 1934;

WHEREAS, Section 5201(11)(P) authorizes the Commissioner to designate a person as an institutional investor; and

WHEREAS, broker-dealers are presumed to be highly sophisticated institutional investors and therefore it is not in the public interest or necessary for the protection of Vermont investors to require the registration of any security sold in a transaction involving an offer or sale to a broker-dealer, notwithstanding that the broker-dealer is not registered under the Securities and Exchange Act of 1934;

NOW, THEREFORE, IT IS HEREBY ORDERED THAT for purposes of the exemption under Section 5202(13)(A) of the Act, an "institutional investor" shall include any broker-dealer not registered under the Securities Exchange Act of 1934, provided such broker-dealer is registered or exempt from registration under Section 5401 of the Act.

Agent Registration Exemption - Employee Benefit Plans

WHEREAS, securities issued in connection with an employee's stock purchase, savings option, profit-sharing, pension or similar employees' benefit plan are exempt from registration under Section 5202(21) of the Act;

WHEREAS, because of such exemption the Commissioner has determined that it is not necessary or appropriate for the protection of Vermont investors to require issuers distributing securities in connection with an employee benefit plan to register their officers, agents or employees distributing these securities as agents;

THEREFORE, IT IS HEREBY ORDERED that an individual distributing securities in connection with an employee benefit plan exempt from registration under Section 5202(21) of the Act is exempt from registration as an agent pursuant to Section 5402(b)(9) of the Act, provided that no commission or other remuneration is paid or given for soliciting any prospective purchaser.

Sales to Qualified Institutional Buyers

WHEREAS, Rule 144A of the U.S. Securities and Exchange Commission ("SEC"), entitled "Private Resales of Securities to Institutions," allows resale of private placement securities to Qualified Institutional Buyers ("QIB's"), thereby increasing the liquidity of these securities and lowering the cost of capital to issuers, and is designed to make the U.S. private placement market more attractive for both the domestic and foreign issuers;

WHEREAS, Qualified Institutional Buyers as defined under SEC Rule 144A are highly sophisticated investors and therefore it is not necessary or appropriate for the protection of Vermont investors to require such securities or the broker-dealers effecting such transactions be registered;

THEREFORE, it is hereby ordered that:

(i) pursuant to Sections 5102(11)(M), 5102(11)(P) and 5202(13)(A) of the Act, the offer and sale of a security to a person designated in SEC Rule 144A as a QIB is exempt from the requirements of Sections 5301 through 5306 and Section 5504 of the Act;

(ii) pursuant to Section 5401(b)(1)(H) of the Act, any broker-dealer that effects transactions limited to and described in clause (i) and that does not have a place of business in Vermont is exempt from the registration requirement of Section 5401(a) of the Act; and

(iii) pursuant to Section 5402(b)(9) of the Act, any other person acting as an agent solely in transactions described in clause (i) is exempt from the registration requirement of Section 5402(a) of the Act.

Exemption - MJDS

WHEREAS, the Multijurisdictional Disclosure System created by the U.S. Securities and Exchange Commission is intended to facilitate cross-border offerings of Canadian securities and continuous reporting by large Canadian companies; and

WHEREAS, it is desirable to remove impediments to cross-border capital formation involving the offer and sale of securities by Canadian companies that meet certain eligibility criteria;

THEREFORE, IT IS HEREBY ORDERED that any non-issuer transaction, whether or not effected through a broker-dealer, involving any class of an issuer's security where the issuer has filed a registration statement with the SEC on Form F-8, F-9, F-10 which has been declared effective with the SEC, is exempt from registration.

Exemption -- Solicitation of interest prior to filing registration statement.

WHEREAS, it is not presently deemed necessary or appropriate for the protection of Vermont investors to prohibit a prospective issuer from conducting public solicitations of investor interest in a contemplated offering prior to the filing of a registration statement under Section 5303 or 5304 of the Act if such activities are conducted in conformance with the requirements of this Exhibit 8.9 to Order 06-43-S ("Exhibit");

WHEREAS, it is desirable to further the objectives of compatibility with Regulation A, Rule 230.254 as promulgated by the Securities and Exchange Commission under the Securities Act of 1933 and to foster legitimate small business capital formation.

THEREFORE, IT IS HEREBY ORDERED that the following transaction is determined to be exempt from the securities registration provisions of the Act in accordance with the following conditions and limitations:

(1) An offer, but not a sale, of a security made by or on behalf of a prospective issuer ("issuer") for the sole purpose of soliciting an indication of interest in receiving a prospectus (or its equivalent) for such security is exempt from the registration provisions of Sections 5303 and 5304 of the Act if all of the following conditions are satisfied:

(a) The issuer may not engage in, or propose to engage in, a "blind pool" or "blank check" offering or other offering for which the specific business to be engaged in or property to be acquired cannot be described.

(b) The issuer has a bona fide intent prior to soliciting indications of interest to register the security in this state pursuant to Section 5303 or 5304 of the Act (or such security will be exempt from registration under the Act), and the actual aggregate offering price of the security so registered (within or outside of this state) shall not exceed five million dollars.

(c) Fifteen (15) business days prior to the initial solicitation of interest under this Exhibit the issuer files with the Commissioner a copy of any written document to be published or distributed, the script of any radio or television broadcast to be made, and the name, address, telephone number, and social security number for any of the issuer's directors, officers, general partners, ten percent beneficial owners of any class of its equity securities, promoters presently connected with the issuer in any capacity, and persons paid or given, directly or indirectly, a commission, fee or other remuneration for soliciting any indication of interest under this Exhibit. The filing includes a non-refundable filing fee provided in Exhibit 3.1 to this Order.

(d) Amendments to the foregoing materials or additional materials to be used to conduct solicitations of interest, except for materials provided to a particular investor pursuant to a request by that investor, are filed with the Commissioner five (5) days prior to usage. There are no fees for amendments, other than those seeking to increase the number or amount of securities to be registered.

(e) Any written document or script for broadcast to be used to conduct solicitations of interest contains at least the identity of the chief executive officer or general partner of the issuer, the address of the issuer, a brief and general description of its business and products, its intended use of proceeds of the proposed offering, and the following legends:

1. NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED;

2. NO SALES OF THE SECURITIES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED UNTIL DELIVERY OF A PROSPECTUS OR ITS EQUIVALENT THAT INCLUDES COMPLETE INFORMATION ABOUT THE ISSUER AND THE OFFERING;

3. AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND; AND

4. THIS OFFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE VERMONT SECURITIES ACT. NO SALE MAY BE MADE UNTIL THE OFFERING IS REGISTERED IN VERMONT AND, IF REQUIRED, QUALIFIED BY THE SEC.

(f) All oral or written communications with prospective investors made in reliance on this Exhibit cease after a registration statement is filed in this state, and no sale may be made until at least twenty (20) calendar days after the last communication made in reliance on this Exhibit.

(g) All oral or written communications with prospective investors which include a discussion of the potential rewards of the contemplated offering are balanced by a discussion of possible risks.

(h) No script, advertisement or other material which the issuer has been notified by the Commissioner not to distribute is used to solicit indications of interest.

(i) Except for scripted broadcasts, the issuer does not orally communicate with any prospective investor about the contemplated offering unless a written document which has been filed pursuant to subsection c. or d. above is provided to the investor at or before the time of the communication or within five (5) calendar days from the communication.

(j) The issuer does not, directly or indirectly, make any oral statement to any prospective investor about the contemplated offering which is contrary to or inconsistent with the disclosures contained in any materials to be used to conduct solicitations of interest.

(k) During the solicitation of interest period, the issuer does not solicit or accept money or a commitment to purchase securities.

(l) No director, officer or general partner of the issuer, beneficial owner of ten percent or more of any class of its equity securities, promoter presently connected with the issuer in any capacity, or person paid or given, directly or indirectly, a commission, fee or other remuneration for soliciting any indication of interest under this Exhibit:

1. Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any federal or state securities law within five years prior to the initial filing required under this exemption.

2. Has been convicted within five years prior to the initial filing required under this exemption of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.

3. Is currently subject to any administrative enforcement order or judgment entered by any state securities administrator or the Securities and Exchange Commission within five years prior to the initial filing required under this exemption, or is subject to any federal or state administrative enforcement order or judgment entered within five years prior to the initial filing required under this exemption in which fraud or deceit, including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found.

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

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

Any disqualification pursuant to this subsection is automatically waived if the agency that created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that this exemption be denied. It is a defense to a violation of this subsection if the issuer sustains the burden of proof to establish that the issuer did not know and in the exercise of reasonable care could not have known that a disqualification under this subsection existed.

(2) A failure to comply with a term, condition or requirement of section (1) of this Exhibit will result in the loss of the exemption from the securities registration requirements of Sections 5303 and 5304 of the Act for any offer to a particular individual or entity unless the person relying on the exemption shows:

(a) The failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity; and

(b) The failure to comply was insignificant with respect to the offering as a whole; and

(c) A good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of section (1).

Where an exemption is established only through reliance upon this section (2), the failure to comply shall nonetheless be actionable as a violation of the Act by the Commissioner.

(3) The Commissioner may at any time by order suspend or revoke the availability of this exemption if there is reason to believe that the issuer has solicited indications of interest in violation of Section 5501 of the Act.

(4) The Commissioner may waive any condition of this exemption in writing, upon application by the issuer and cause having been shown. Neither compliance nor attempted compliance with this Exhibit, nor the absence of any objection or order by the Commissioner with respect to any offer of securities undertaken pursuant to this Exhibit, shall be deemed to be a waiver of any condition of the Exhibit or deemed to be a confirmation by the Commissioner of the availability of this exemption.

(5) Offers made in reliance on this Exhibit will not be integrated with subsequent offers or sales of securities that are registered in this state. Issuers on whose behalf indications of interest are solicited under this Exhibit may not make offers or sales in reliance on Section 5202(14) of the Act or Exhibit 8.16 to this Order until six months after the last communication with a prospective investor is made pursuant to this Exhibit 8.16 to this Order.

(6) In view of the object of this Exhibit and the purposes and policies underlying the Act, this exemption is not available to any person with respect to any solicitation of interest which, although in technical compliance with this Exhibit, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this Exhibit.

(7) Nothing in this Exhibit is intended to relieve registered broker-dealers or sales representatives from the due diligence, suitability, or know-your-customer standards or any other requirements of law otherwise applicable to such registered persons.

(8) No commission, fee or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in this state unless such person is appropriately registered in this state. It is a defense to a violation of this section if the issuer sustains the burden of proof to establish that he or she did not know and in the exercise of reasonable care could not have known that the person who received a commission, fee or other remuneration was not appropriately registered in this state.

(9) The Commissioner may require the issuer to file such reports as deemed appropriate or necessary in such manner and form as may be required by the Commissioner.

Internet Offers

WHEREAS, a communication on the Internet is directed generally to anyone who is able to access the Internet, including persons in Vermont; and

WHEREAS, communications placed on the Internet by, or on behalf of, issuers, as that term is defined in Section 5102(17) of the Act that are designed to raise capital are offers within the meaning of the Act ("Internet Offer") and advertisements within the meaning of Section 5504 of the Act and constitute, for the purposes of the Act, general advertising; and

WHEREAS, Internet Offers come within the scope of Section 5301 of the Act; and

WHEREAS, notwithstanding the application of Section 5301 of the Act to Internet Offers, certain issuers do not intend to offer and sell securities in Vermont; and

WHEREAS, Section 5202(20) of the Act provides a transaction exemption from the registration provisions of Sections 5301 to 5306 and the advertising filing provisions of Section 5504 of the Act, for "an offer or sale of a security to a person not a resident of this state and not present in this state if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade [the Act]"; and

WHEREAS, Section 5203 of the Act provides, in relevant part, that "an order under this chapter may waive, in whole or in part, any or all of the conditions for an exemption or offer under sections 5201 and 5202 of [the Act]"; and

WHEREAS, the Commissioner finds that it is not necessary or appropriate for the protection of investors to require registration of certain offers of securities communicated by means of Internet and that exemption of such offers from the registration provisions of the Act would not pose any increased potential for harm to Vermont investors.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT Internet Offers are exempt from the requirements of Sections 5301 through 5306 and 5504 of the Act, where all of the conditions set forth below are met:

Conditions of Exemption:

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

Reliance on the exemption provided by this Exhibit 8.10 to Order 06-43-S does not preclude an issuer from relying on other available exemptions for offers provided under the Act. Securities that were the subject of an Internet Offer and that are subject to registration or notice filing under the Act must comply with all requirements of the Act.

Exemption --Vermont small business offering exemption

WHEREAS, Section 5202(13)(C) of the Act provides for a transaction exemption from the registration and advertising filing requirements of Sections 5301 to 5306 and Section 5504 of the Act, for the "sale or offer to sell to . . . any . . . person exempted by rule or order issued" under the Act; and

WHEREAS, the Commissioner finds that it is not necessary or appropriate for the protection of investors to require registration of limited offerings of securities which are conducted by small businesses where such offerings satisfy the terms and conditions of this Order as set forth below and foster legitimate small business capital formation.

THEREFORE, IT IS HEREBY ORDERED that a transactional exemption, which shall be known and may be cited as the "Vermont Small Business Offering Exemption" or "VSBOE", is available under Section 5202(13)(C) of the Act for any offer or sale of securities of an issuer having, both before and upon completion of the offering, its principal place of business and a majority of its full-time employees located in Vermont in the case of a corporation or its principal place of business and eighty percent of its assets located in Vermont in the case of a partnership or limited liability company; provided, however, that at least eighty percent of the proceeds from the offering shall be used by the issuer in operations of the issuer in Vermont and all of the following conditions are satisfied other than any condition or conditions waived by the Commissioner upon a showing of good cause.

(1) VSBOE is unavailable for the following types of offerings:

(a) "Blind pools," "blank check companies" or other offerings for which the specific business to be engaged in or property to be acquired cannot be specified or described;

(b) Offerings involving petroleum exploration or production, mining, or other extractive industries; and

(c) Offerings involving an investment company as defined and classified under Section 4 of the Investment Company Act of 1940.

(2) There are no more than, or the issuer reasonably believes that there are no more than, fifty purchasers of securities in Vermont from the issuer in any offering in reliance upon VSBOE in any consecutive twelve-month period. A husband and wife shall be counted as one purchaser, as shall an estate. Each shareholder of a corporation and each beneficiary of a trust shall be counted separately as a purchaser in addition to the corporation or trust unless the shareholder or beneficiary has been such for at least six months prior to the purchase. Members of the immediate family of an executive officer or director of the issuer who have the same permanent residence as the officer or director, and institutional investors described in Section 5102(11) of the Act shall be excluded from the total number of purchasers permitted in reliance upon VSBOE.

(3) No commission, fee or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in this state in reliance upon VSBE.

(4) The aggregate offering amount for an offering of securities sold to persons in Vermont pursuant to VSBE shall not exceed \$500,000 provided that the issuer has not made other offerings in Vermont pursuant to VSBE that would meet the criteria for being integrated with the offering under Rule 502(a) of Regulation D under the Securities Act of 1933.

(5) VSBE is not available if the issuer or its affiliates have previously sold securities of such issuer or affiliate under the provisions of Sections 5303 or 5304 of the Act (registration by coordination or qualification) or under the provisions of the securities laws of any other state which pertain to registration by qualification or coordination.

(6) The total amount of funds raised in Vermont by the issuer or its affiliates under all available transactional exemptions, including VSBE, may not exceed \$500,000 in any twelve-month period during which an offering is made in reliance upon VSBE.

(7) The duration of the offering period shall not exceed twelve months, although the issuer may extend the offering for up to an additional one year by amending its initial filing in conformance with requirements prescribed by the Securities Division.

(8) Neither the issuer, its officers, directors, partners, members, ten percent shareholders, nor any promoter or selling agent of the securities to be offered is or would be disqualified, unless the Commissioner for good cause shown has waived such disqualification, for any of the reasons described in Regulation 262(a), (b) or (c) of Regulation A under the Securities Act of 1933, or because any such person:

(i) is the subject of an adjudication or determination within the last ten years by a securities or commodities agency or administrator of another state or a court of competent jurisdiction that the person has violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or the securities or commodities law of any other state;

(ii) within the last ten years, has pled guilty or nolo contendere to, or been convicted in a domestic or foreign court of an offense that the commissioner finds:

(A) involves the purchase or sale of a security, taking a false oath, making a false report, bribery, perjury, burglary, robbery, or attempt or conspiracy to commit any of those offenses;

(B) arises out of the conduct of business as a broker-dealer, investment adviser, federal covered investment adviser, depository institution, insurance company, or fiduciary; or

(C) involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities or an attempt or conspiracy to commit any of those offenses;

(iii) is permanently or temporarily enjoined by a court of competent jurisdiction from acting as an investment adviser, federal covered investment adviser, investment adviser representative, underwriter, broker-dealer, agent, or as an affiliated person or employee of an investment adviser, federal covered investment adviser, broker-dealer, investment company, depository institution, or insurance company, or from engaging in or continuing conduct or practice in connection with any of the foregoing activities or any aspect of the securities business, or in connection with the purchase or sale of a security;

(iv) is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, agent, investment adviser, or investment adviser representative;

(v) is the subject of any of the following orders that are currently effective and were issued within the last five years:

(A) an order by the securities agency or administrator of another state or Canadian province or territory, or by the Securities and Exchange Commission, denying, suspending, or revoking the person's license as a broker-dealer, agent, investment adviser, investment adviser representative, or the substantial equivalent of those terms;

(B) a suspension or expulsion from membership in or association with a member of a self-regulatory organization;

(C) a United States Postal Service fraud order;

(D) a cease and desist order by the commissioner, the securities agency or administrator of another state or a Canadian province or territory, the Securities and Exchange Commission, or the Commodity Futures Trading Commission; or

(E) an order by the Commodity Futures Trading Commission denying, suspending, or revoking registration under the Commodity Exchange Act.

(9) The issuer shall reasonably believe that the purchaser either alone or by or through a representative has such knowledge as to be capable of evaluating the merits and the risks of the investment.

(10) An offering document shall be delivered to each offeree twenty-four hours prior to any sale of securities in reliance upon VSBOE which meets the following requirements:

(a) The offering document must contain a legend which substantially conforms to the following:

(i) INVESTMENT IN THESE SECURITIES INVOLVES SIGNIFICANT RISKS AND IS SUITABLE ONLY FOR PERSONS WHO HAVE NO NEED FOR IMMEDIATE LIQUIDITY IN THEIR INVESTMENT AND WHO CAN BEAR THE ECONOMIC RISK OF A LOSS OF THEIR ENTIRE INVESTMENT. INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME,

(ii) IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER 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,

(iii) THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933 AND THE VERMONT SECURITIES ACT PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM, and

(b) The offering document must be signed by a duly authorized representative of the issuer who by such action shall certify that the issuer has made reasonable efforts to verify the material accuracy and completeness of the information therein contained.

Note: Issuers are reminded that nothing in this Exhibit 8.11 to Order 06-43-S alters their obligation under Section 5501(2) of the Act, which renders it unlawful to "make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading." In addition, issuers must otherwise comply with the antifraud provisions of the federal and state securities laws. With the exception of the legend requirement, no format for disclosure is prescribed. However, issuers should attempt to balance any discussion of the potential rewards of the offering with a discussion of possible risks. Issuers should take care to ensure that oral statements to prospective purchasers about the offering are consistent with the disclosures contained in the offering document.

(11) The issuer or applicant shall file with the Commissioner no later than ten calendar days prior to the commencement of any offering made in reliance on VSBOE:

(a) A notice which includes the name, address, telephone number and social security number for any of the issuer's officers, directors, partners, members, ten percent shareholders, promoters presently connected with the issuer in any capacity, a brief and general description of its business and products, and its intended use of the proceeds of the proposed offering;

(b) A consent to service of process which is duly executed and acknowledged by the issuer and accompanied by a properly executed corporate resolution, if applicable; and

(c) Included with the initial notice shall be the filing fee prescribed at Section 5510 of the Act payable to the Treasurer, State of Vermont.

(12) The issuer or applicant shall file with the Commissioner no later than five business days prior to initial use in Vermont, a copy of all advertising intended for publication or mass distribution including the script of any radio or television broadcast to be made. Such advertising must conform to a standard "tombstone" format and contain only the name of the issuer of the security and the name and address of the person(s) from whom an offering document may be obtained, the full title of the security and the amount being offered, a brief indication of the general type of business of the issuer, the price of the security and, in the case of a debt security, the yield. No advertisement may be published or distributed if the issuer has been notified by the Commissioner not to use such material.

(13) The issuer or applicant shall file with the Commissioner no later than thirty calendar days after the expiration of the offering a sales report on a form prescribed by the Commissioner. The Commissioner may require any issuer to file periodic reports not more often than quarterly to keep reasonably current the information contained in the notice and to disclose the progress of the offering.

IT IS FURTHER ORDERED THAT a broker-dealer that does not have a place of business in Vermont and any agent associated with an offering, offer or sale described herein shall be exempt from the registration requirements of Sections 5401 and 5402 of the Act to the extent such broker-dealer and agent limit their activities in Vermont to such transactions.

Notice Filing and Fees Payable with Respect to Federal Covered Securities Described in Sections 18(b)(4)(A)-(C) of the Securities Act of 1933

Section 18(c) of the Securities Act of 1933 (the "federal Securities Act") provides that a state may impose notice filing and fee requirements with respect to certain "covered securities" as defined in Section 18(b) of the federal Securities Act, including securities defined under Sections 18(b)(4)(A)-(C) of the federal Securities Act.

The following requirements shall apply with respect to the offer or sale or other transaction involving any federal covered security defined in Section 18(b)(4)(A), 18(b)(4)(B) and 18(b)(4)(C) of the federal Securities Act, to the extent such security is not exempt from notice filing requirements under the Act:

(i) the issuer or broker-dealer, as applicable, shall file with the Division written notice that includes the identity of the issuer and any broker-dealer involved, a description of the transaction, and a statement of the applicable provision of Section 18(b)(4) of the federal Securities Act;

(ii) the issuer or broker-dealer, as applicable, will pay to the Commissioner a fee computed as provided in Section 5302(d) of the Act; if the notice filing is withdrawn or otherwise terminated, the Commissioner shall retain the fee paid; and

(iii) at the request of the Commissioner, the issuer or broker-dealer, as applicable, shall file with the Division any other information or document filed with the federal Securities and Exchange Commission.

The provisions of Section 5302(f) of the Act shall apply to any security covered by this Exhibit 8.12 to Order 06-43-S.

Vermont Accredited Investor Exemption

WHEREAS, Section 5202(13)(C) of the Act provides for a transaction exemption from the registration and advertising filing requirements of Sections 5301 to 5306 and Section 5504 of the Act, for the "sale or offer to sell to . . . any . . . person exempted by rule or order issued" under the Act; and

WHEREAS, the Commissioner finds that it is not necessary or appropriate for the protection of investors to require registration of offers or sales of securities to accredited investors where such offerings satisfy the terms and conditions of this Order as set forth below.

THEREFORE IT IS HEREBY ORDERED that a transactional exemption, which shall be known and may be cited as the "Vermont Accredited Investor Exemption" or "VAIE," is available under Section 5202(13)(C) of the Act for any offer or sale of securities by an issuer to accredited investors where all of the following conditions are satisfied other than any condition or conditions waived by the Commissioner upon a showing of good cause:

(A) Sales of securities shall be made only to persons who are or the issuer reasonably believes, after inquiry, are accredited investors. "Accredited investor" shall mean any person who comes within any of the following categories, or who the issuer reasonably believes, after inquiry, comes within any of the following categories, at the time of the sale of the securities to that person:

1. Any bank as defined in section 3(a)(2) of the Securities Act of 1933 ("33 Act"), or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the 33 Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; any insurance company as defined in section 2(13) of the 33 Act; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act; any Small Business Investment Company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

2. Any private business development company as defined in section 202(a)22 of the Investment Advisers Act of 1940;

3. Any organization described in section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000;
4. Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer;
5. Any natural person whose individual net worth, or joint net worth with that person's spouse or fellow party to a civil union, at the time of his or her purchase exceeds \$1,000,000;
6. Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse or fellow party to a civil union in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;
7. Any trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in 17 CFR § 230.506(b)(2)(ii) and
8. Any entity in which all of the equity owners are accredited investors.

(B) The exemption is not available to an issuer that is a "blind pool" or "blank check" company, i.e., an issuer that is in the development stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

(C) The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within 12 months of sale shall be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under Section 5303 or 5304 of the Act.

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

(a) within the last five years, has filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the United States Securities and Exchange Commission;

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

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

(d) is currently subject to any order, judgment or decree of any court of competent jurisdiction, entered within the last five years, temporarily, 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.

(2) Subparagraph (D)(1) shall not apply if:

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

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

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

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

(2) The general announcement shall include only the following information, unless additional information is specifically permitted by the Commissioner:

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

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

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

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

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

(f) A statement that:

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

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

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

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

(1) delivered through an electronic database that is restricted to persons who have been prequalified as accredited investors; or

(2) delivered after the issuer reasonably believes, after inquiry, that the prospective purchaser is an accredited investor.

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

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

(I) The issuer shall file with the Securities Division a notice of transaction, a consent to service of process, a copy of the general announcement, and the applicable registration fee set forth in Exhibit 3.1 to this Order within 15 days after the first sale in this state.

[Exemption --Shares of portfolios issued by a fund fall within the transactional exemption for sales to "other institutional investors."]

WHEREAS, Commonwealth Cash Reserve Fund, Inc. (the "Fund") has, by correspondence dated June 25, 2003, September 15, 2003 and September 25, 2003 (collectively, the "Request"), incorporated herein by reference, requested an exemption order from the Commissioner for a transactional exemption with respect to certain sales of the Fund's securities to state agencies and political subdivisions in Vermont and to educational institutions and health care providers in Vermont that are recognized as organized and operate as organizations described in Section 501(c)(3) of the Internal Revenue Code; and

WHEREAS, the Fund is a Virginia Corporation registered as an investment company with the Securities and Exchange Commission ("SEC") under the Investment Company Act of 1940 (the "1940 Act"); and

WHEREAS, the Fund has two separate portfolios, the Commonwealth Cash Reserve Fund ("CCRF") and the CCRF Federal Portfolio ("CCRF Federal"), (collectively, the "Portfolios"), both of which operate as money market funds under Rule 2a-7 of the 1940 Act; and

WHEREAS, the Portfolios are rated AAAM by Standard & Poors ("Rating"), which is the highest rating assigned by Standard & Poors to money market mutual funds; and

WHEREAS, the Portfolios are designed and managed to meet the special cash management needs of institutions, such as municipalities, other governmental agencies, universities, hospitals and not-for-profit organizations and ownership of the Portfolios' shares is limited to these types of investors; and

WHEREAS, the Fund has provided the combined prospectus for the Portfolios which are filed with the SEC, as well as a Consent to Service of Process; and

WHEREAS, the Commissioner finds that it is not necessary to require the Fund to notice file the shares of the Portfolios issued by the Fund in transactions involving the specific entities defined in the Request.

NOW, THEREFORE, IT IS HEREBY ORDERED that shares of the Portfolios issued by the Fund are exempt from the requirements of Sections 5301 to 5306 and Section 5504 of the Act, when such shares are offered to the entities defined in the Request, as long as the Fund maintains the Rating.

IT IS FURTHER ORDERED THAT nothing in this order shall relieve the Fund from the other provisions of the Act, including but not limited to the provisions regarding fraud and dishonest and unethical practices.

Broker-dealer/investment adviser Internet communications.

WHEREAS, Section 5401 of the Act provides that it is unlawful for a person to transact business in Vermont as a broker-dealer unless the person is registered under the Act as a broker-dealer or is exempt from registration as a broker-dealer under Section 5401, and Section 5402 of the Act provides that it is unlawful for a person to transact business in Vermont as an agent unless the person is registered under the Act as an agent or is exempt from registration as an agent under Section 5402; and

WHEREAS, Section 5403 of the Act provides that it is unlawful for a person to transact business in Vermont as an investment adviser unless the person is registered under the Act as an investment adviser or is exempt from registration as an investment adviser under Section 5403, and Section 5404 of the Act provides that it is unlawful for a person to transact business in Vermont as an investment adviser representative unless the person is registered under the Act as an investment adviser representative or is exempt from registration under Section 5404; and

WHEREAS, the Commissioner acknowledges that the Internet, the World Wide Web, and similar proprietary or common carrier electronic systems (collectively, the "Internet") have facilitated greatly the ability of broker-dealers, investment advisers, agents and investment adviser representatives to advertise and otherwise disseminate information on products and services to prospective customers and clients;

WHEREAS, the Commissioner also acknowledges that certain communications made on the Internet are directed generally to anyone having access to the Internet and may be transmitted through postings on Bulletin Boards, displays on Home Pages or similar methods (hereinafter, "Internet Communications");

WHEREAS, the Commissioner further acknowledges that in certain instances, by distributing information on available products and services through Internet Communications which may be accessed by persons in Vermont, broker-dealers, investment advisers, agents and investment adviser representatives could be construed as "transacting business" for purposes of the Act so as to require registration in Vermont, since Internet Communications would be received in Vermont regardless of the intent of the person originating such communication; and

WHEREAS, the Commissioner finds that it is not necessary or appropriate for the protection of investors to require registration of broker-dealers, investment advisers, agents and investment adviser representatives (hereinafter, "IA reps") who use 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 Internet Communications; and

WHEREAS, the Commissioner may exempt any person from the registration requirements for an agent, investment adviser, or investment adviser representative pursuant to Sections 5402(b)(9), 5403(b)(3) and 5404(b)(2); and

WHEREAS, a person is exempt from the registration requirements of a broker-dealer if the broker-dealer does not have a place of business in Vermont and the broker-dealer's only transactions are with various persons enumerated in Section 5401(b)(1) of the Act, including any person exempted by rule or order under the Act.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT broker-dealers, investment advisers, agents or IA reps who originate Internet Communications shall be deemed exempt from registration under the Act based solely on that fact if the following conditions are observed:

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

A. the broker-dealer, investment adviser, 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, agent or IA rep registration requirements; and

B. follow-up, individualized responses to persons in this state by such broker-dealer, investment adviser, 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, agent or IA rep registration requirements, or an applicable exemption or exclusion;

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

3. 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

4. In the case of an agent or IA rep:

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

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

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

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

5. In the case of a broker-dealer, the broker dealer does not maintain a place of business in the State of Vermont, and the broker-dealer's only transactions effected in the State of Vermont are with the persons listed in Section 5401(b)(1)(A)-(G) of the Act, and with any such other person covered under this Exhibit 8.15 to this Order. A "place of business" for this purpose is defined in Section 5102(21) of the Act.

UNIFORM LIMITED OFFERING REGISTRATION (ULOR)

Section 1. Authority, scope and purpose.

This Exhibit 8.16 to Order 06-43-S (the "Exhibit") applies to the registration of securities offerings that are exempt from registration with the Securities and Exchange Commission under Securities and Exchange Commission Regulation D, Rule 230.504 or under Regulation A as promulgated under the Securities Act of 1933. Such exemption is intended to simplify the registration of small corporate securities offerings and promote uniformity with other states.

Section 2. Incorporation by reference of Form U-7.

2.01. The term "Form U-7" as used herein refers to the Small Corporate Offering Registration Form (Form U-7) as adopted by the North American Securities Administrators Association, Inc. on April 29, 1992 and any subsequent revisions thereto.

Section 3. General rules.

3.01. Qualification. To be eligible for a Uniform Limited Offering Registration ("ULOR"), the following conditions apply:

- (a) The issuer must be a corporation organized under the laws of one of the states or possessions of the United States.
- (b) The issuer must not be an investment company subject to the Investment Company Act of 1940.
- (c) The issuer must not be subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934.
- (d) The offering must not be a "blind pool," "blank check," or other offering for which the specific business to be engaged in or property to be acquired by the issuer cannot be specified.
- (e) The issuer may not engage in, or propose to engage in, petroleum exploration or production or mining or other extractive industries.
- (f) The following issuers and programs will not be permitted to utilize ULOR unless written approval is obtained from the Commissioner, based upon a showing that adequate disclosure can be made to investors using the Form U-7 format:
 - (i) Holding companies or companies whose principal purpose is owning stock in, or supervising the management of, other companies;

(ii) Portfolio companies, such as real estate investment trusts as defined in Section 1(r) of the North American Securities Administrators Association's Statement of Policy regarding real estate investment trusts;

(iii) Issuers with complex capital structures;

(iv) Commodity pools;

(v) Equipment leasing programs;

(vi) Real estate programs; and

(vii) Other issuers that the Commissioner for good cause may find inappropriate for ULOR.

(g) The aggregate offering price of the securities offered (within or outside of this state) shall not exceed the aggregate offering price in Securities and Exchange Commission Regulation D, Rule 230.504 or Regulation A, Rule 230.251 as promulgated under the Securities Act of 1933, or successor rules, whichever aggregate offering price is higher, less the aggregate offering price for all securities sold within twelve months before the start of, and during the offering of, the securities in reliance on any exemption under the Securities Act of 1933 or in violation of Section 5(a) of that act.

(h) There is no minimum price for common stock, or for the exercise price of options, warrants or rights for common stock, or for the conversion price of securities convertible into common stock if these types of securities are to be offered; provided, the Commissioner may determine a minimum price for all or any of such purposes if the Commissioner determines, in his or her discretion, that a minimum price should be maintained in the interest of investor protection.

(i) The issuer may not split its common stock or declare a stock dividend for two (2) years after effectiveness of the registration.

(j) The issuer may engage selling agents to sell the securities. Commissions, fees or other remuneration for soliciting any prospective purchaser in this state in connection with an offering may only be made by persons who, if required to be registered, the issuer believes and has reason to believe, are appropriately registered in this state.

(k) The securities must be offered and sold only on behalf of the issuer and Form U-7 may not be used by any selling security-holder to register his or her securities for resale.

3.02. Disqualification for ULOR .

(a) ULOR shall not be available for the securities of any issuer if such issuer, any of its predecessors or any affiliated issuer:

(i) Has filed a registration statement which is the subject of any pending proceeding or examination under Section 8 of the Securities Act of 1933, or is the subject of any refusal order or stop order entered thereunder within five years prior to the filing of the application to register securities;

(ii) Is subject to any pending proceeding under Regulation A, Rule 230.258, of the Securities Act of 1933 or any similar rule adopted under Section 3(b) of the Securities Act of 1933, or to an order entered thereunder within five years prior to the filing of the application to register securities;

(iii) Has been convicted within five years prior to the filing of such application of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Securities and Exchange Commission;

(iv) Is subject to any order, judgment or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the Securities and Exchange Commission; or

(v) Is subject to a United States Postal Service false representation order entered under Section 3005 of title 39, United States Code, within five years prior to the filing of the application to register securities; or is subject to a temporary restraining order or preliminary injunction entered under Section 3007 of title 39, United States Code, with respect to conduct alleged to have violated Section 3005 of title 39, United States Code.

(b) ULOR shall not be available for the securities of any issuer if any of its directors, officers, ten percent shareholders of any class of its equity securities, promoters presently connected with it in any capacity, or selling agents of the securities to be offered or any officers, directors, or partners of such selling agents:

(i) Has been convicted within ten years prior to the filing of the application to register securities of any felony or misdemeanor in connection with the purchase or sale of any security, involving the making of a false filing with the Securities and Exchange Commission or arising out of the conduct of the business of an underwriter, broker, dealer, agent, municipal securities dealer, investment adviser, federal covered investment adviser, or investment adviser representative;

(ii) Is subject to any order, judgment or decree entered by any court of competent jurisdiction temporarily or preliminarily enjoining or restraining, or is subject to any order, judgment or decree of any court of competent jurisdiction

entered within five years prior to the filing of the application to register securities, permanently enjoining or restraining such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security, involving the making of a false filing with the Securities and Exchange Commission or arising out of the conduct of the business of an underwriter, broker, dealer, agent, municipal securities dealer, investment adviser, federal covered investment adviser, or investment adviser representative;

(iii) Is subject to an order of the Securities and Exchange Commission entered pursuant to Sections 15(b), 15B(a), or 15B(c) of the Securities Exchange Act of 1934; or is subject to an order of the Securities and Exchange Commission entered pursuant to Section 203(e) or (f) of the Investment Advisers Act of 1940;

(iv) Is suspended or expelled from membership in, or suspended or barred from association with a member of an exchange registered as a national securities exchange pursuant to Section 6 of the Securities Exchange Act of 1934, an association registered as a national securities association under Section 15A of the Securities Exchange Act of 1934, or a Canadian securities exchange or association for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade; or

(v) Is subject to a United States Postal Service false representation order entered under Section 3005 of title 39, United States Code, within five years prior to the filing of the application to register securities; or is subject to a restraining order or preliminary injunction entered under Section 3007 of title 39, United States Code, with respect to conduct alleged to have violated Section 3005 of title 39, United States Code.

(c) ULOR shall not be available for the securities of any issuer if any promoter presently connected with it in any capacity or any selling agent of the securities to be offered was, or was named as, an underwriter of any securities:

(i) Covered by any registration statement which is the subject of any pending proceeding or examination by the Securities and Exchange Commission under Section 8 of the Securities Act of 1933, or is the subject of any refusal order or stop order entered thereunder within five years prior to the filing of the application to register securities; or

(ii) Covered by any filing which is subject to any pending proceeding under Regulation A, Rule 258 promulgated under the Securities Act of 1933 or any similar rule adopted under Section 3(b) of the Securities Act of 1933, or to an order entered thereunder within five years prior to the filing of the application to register securities.

(d) ULOR shall not be available for the securities of any issuer if such issuer, any of its directors, officers, ten percent shareholders of any class of its equity securities,

promoters presently connected with it in any capacity, or selling agents of the securities to be offered or any officers, directors, or partners of such selling agents:

(i) Is the subject of an adjudication or determination within the last five years by a securities agency or administrator of another state or a court of competent jurisdiction that the person has violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or the securities law of any other state;

(ii) Within the last ten years, has plead guilty or nolo contendere to, or been convicted in a domestic or foreign court of an offense that the Commissioner finds:

(A) Involves the purchase or sale of a security, taking a false oath, making a false report, bribery, perjury, burglary, robbery, or attempt or conspiracy to commit any of those offenses;

(B) Arises out of the conduct of business as a broker-dealer, investment adviser, federal covered investment adviser, depository institution, insurance company, or fiduciary; or

(C) Involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities or an attempt or conspiracy to commit any of those offenses;

(iii) Is permanently or temporarily enjoined by a court of competent jurisdiction from acting as an investment adviser, federal covered investment adviser, investment adviser representative, underwriter, broker-dealer, , agent, or as an affiliated person or employee of an investment company, depository institution, or insurance company, or from engaging in or continuing conduct or practice in connection with any of the foregoing activities, or in connection with the purchase or sale of a security;

(iv) Is the subject of an order of the Commissioner denying, suspending, revoking, or barring the person as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative; or

(v) Is the subject of any of the following orders that are currently effective and were issued within the last five years:

(A) An order by the securities agency or administrator of another state or Canadian province or territory, or by the Securities and Exchange Commission, denying, suspending, or revoking the person's license as a broker-dealer, agent, investment adviser, federal covered

investment adviser, or investment adviser representative, or the substantial equivalent of those terms;

(B) A suspension or expulsion from membership in or association with a member of a self-regulatory organization;

(C) A United States Postal Service fraud order;

(D) A cease and desist order by the Commissioner, the securities agency or administrator of another state, or a Canadian province or territory, the Securities and Exchange Commission, or the Commodity Futures Trading Commission; or

(E) An order by the Commodity Futures Trading Commission denying, suspending, or revoking registration under the Commodity Exchange Act.

3.03. Disclosure Document. Application for ULOR shall be made by the issuer of the securities by filing with the Department a disclosure document on Form U-7, with Exhibits as required by Part V of the Instructions For Use of Form U-7, and such other documents as are required by Part III(A) of the Instructions For Use of Form U-7.

3.04. Financial Statements. The financial statements included in the application for ULOR shall be in the form provided in Part IV(K) of the Instructions For Use of Form U-7.

3.05. Debt Service. If the offering includes debt securities or preferred stock, the application for registration must include information that demonstrates the ability of the issuer to service its debt or pay the preferred stock dividends.

3.06. Registration Fee. An application for ULOR under this Regulation shall be accompanied by a nonrefundable fee in the applicable amount set forth in Exhibit 3.1 to this Order.

3.07. Other Requirements. After ULOR, the Commissioner may require the issuer to file such reports as the Commissioner may deem appropriate or necessary in such manner and form as may be required by the Commissioner.

3.08. Waiver. The Commissioner may, for good cause shown, waive or modify any of the requirements of this Section 3.

Vermont Uniform Limited Offering Exemption

Section 5203 of the Act provides that the Commissioner may by rule or order exempt any security from the registration provisions of the Act; and

WHEREAS, registration is not presently deemed necessary or appropriate for the protection of Vermont investors for limited offerings that are compatible with Regulation D, Rule 230.505 of the Securities Act of 1933 and that further the objective of uniformity among the states.

Preliminary Notes

1. Nothing in this Exhibit 8.17 to Order 06-43-S ("Exhibit") is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the anti-fraud provisions of the Act.

2. In view of the object of this Exhibit and the purposes and policies underlying the Act, the exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this Exhibit is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this Exhibit.

3. Nothing in this Exhibit is intended to relieve registered broker-dealers or agents from the due diligence, suitability, or know-your-customer standards or any other requirements of law otherwise applicable to such registered persons.

Order

THEREFORE, IT IS HEREBY ORDERED that the following transactions are determined to be exempt from the registration provisions of the Act:

1. Any offer or sale of securities offered or sold in compliance with Regulation D, Rule 230.505 of the Securities Act of 1933, including any offer or sale made exempt by application of Rule 508(a), as made effective in Release No. 33-6389 and as amended in Release Nos. 33-6437, 33-6663, 33-6758 and 33-6825, and which satisfies the following further conditions and limitations:

A. No commission, fee or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in this state unless such person is appropriately registered in this state. It is a defense to a violation of this subsection if the issuer sustains the burden of proof to establish that he or she did not know and in the exercise of reasonable care could not have known that the person who received a commission, fee or other remuneration was not appropriately registered in this state.

B. No exemption under this Exhibit shall be available for the securities of any issuer if any of the parties described in the Securities Act of 1933, Regulation A, Rule 230.252 sections (c), (d), (e), or (f):

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

2. Has been convicted within five years prior to the filing of the notice required under this exemption of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including, but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud.

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

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

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

6. The prohibitions of paragraphs 1-3 and 5 above shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against such person or if the broker-dealer employing such party is licensed or registered in this state and such registration discloses the order, conviction, judgment or decree relating to such person. No person disqualified under this subsection may

act in a capacity other than that for which the person is licensed or registered.

7. Any disqualification caused by subsection B. is automatically waived if the state securities administrator or agency of the state which created the basis for disqualification determines upon a showing of good cause that is not necessary under the circumstances that the exemption be denied.

It is a defense to a violation of subsection B. if the issuer sustains the burden of proof to establish that he or she did not know and in the exercise of reasonable care could not have known that a disqualification under this subsection existed.

C. The issuer shall file with the Commissioner a notice on Form D (17 C.F.R. § 239.500), manually signed by a person duly authorized by the issuer and designating compliance with all sections of this exemption and listing every person who will receive compensation for soliciting any prospective purchasers in this state, no later than 10 calendar days prior to the date of receipt of any consideration from or the delivery of a subscription agreement by any purchaser in this state which results from an offer being made in reliance upon this exemption and at such other times and in the form required under Regulation D, Rule 230.503 to be filed with the Securities and Exchange Commission.

1. Included with the initial notice shall be a copy of any information, materials, or offering documents furnished or proposed to be furnished to a prospective purchaser in connection with the offer.

2. Unless otherwise available, included with or in the initial notice shall be a Uniform Consent to Service of Process (Form U-2) which is duly executed and acknowledged by the issuer and accompanied by a properly executed Corporate Resolution (Form U-2A), if applicable.

3. Included with the initial notice shall be the filing fee prescribed in Exhibit 3.2 to this Order, payable to the Vermont Department of Banking, Insurance, Securities and Health Care Administration.

4. The Commissioner may request the filing of additional information or documents.

D. In all sales to investors who are not "accredited investors", as defined by the Securities Act of 1933, Regulation D, Rule 501(a) in this state, each of the following conditions must be satisfied or the issuer and any person acting on its behalf shall believe and have reasonable grounds to believe, after

making reasonable inquiry, that each of the following conditions has been satisfied:

1. The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to the purchaser's other security holdings, financial situation and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed 10% of the investor's net worth exclusive of home, home furnishings and automobiles, it is suitable.

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

3. Each purchaser who accepts an offer to purchase securities directly from an issuer or an affiliate of an issuer shall have the right to withdraw his or her acceptance without incurring any liability to the issuer or any other person within (3) three calendar days after first tender of consideration is made by such purchaser to the issuer, an agent of the issuer, or an escrow agent, or within (3) three calendar days after the availability of that privilege is communicated to such purchaser, whichever occurs later.

2. A failure to comply with a term, condition or requirement of Sections 1.A, C, and D of this Exhibit will not result in loss of the exemption from the requirements of for any offer or sale to a particular individual or entity if the person relying on the exemption shows:

A. the failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity; and

B. the failure to comply was insignificant with respect to the offering as a whole; and

C. a good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of Sections 1.A, C and D.

3. Where an exemption is established only through reliance upon section 2 of this Exhibit, the failure to comply shall nonetheless be actionable by the Commissioner under the Act.

4. Transactions that are exempt under this Exhibit will not be integrated with offers and sales exempt under any other Exhibit or section of the Act; however, nothing in this limitation shall act as an election. Should for any reason the offer and sale fail to

comply with all of the conditions for this exemption, the issuer may claim the availability of any other applicable exemption.

5. The Commissioner may require additional disclosure to prospective purchasers or impose additional conditions on the offering in order to further compliance with the anti-fraud provisions of the Act.

6. The Commissioner may, by order, increase the number of purchasers or waive any other conditions of this exemption.

7. The exemption in this Exhibit shall be known and may be cited as the "Vermont Uniform Limited Offering Exemption" or "VULOE."

Transactions involving self-directed Canadian retirement accounts.

WHEREAS Section 5203 of the Act provides that the Commissioner may by rule or order exempt any transaction from the registration requirements of the Act if the Commissioner finds that registration is not necessary or appropriate for the protection of investors; and

WHEREAS the term "Canadian retirement account" in this Exhibit means a trust or other arrangement that is managed by a Participant, operated to provide retirement benefits to a Participant, established in Canada, administered under Canadian law, and qualified for tax-deferred treatment under Canadian law. The term "Canadian retirement account" includes, but is not limited to, a Registered Retirement Savings Plan ("RRSP") or Registered Retirement Income Fund ("RRIF") administered under Canadian law; and

WHEREAS the term "Participant" in this Exhibit 8.18 to Order 06-43-S ("Exhibit") means a natural person who is a resident of the United States, or is temporarily present in the United States, and who contributes to, or is or will be entitled to receive the income and assets from, a Canadian retirement account; and

WHEREAS a Participant is responsible for managing his or her Canadian retirement account, i.e. selecting or controlling the securities in the account; and

WHEREAS most securities that are held in Canadian retirement accounts are not registered in the United States. Consequently, Participant transactions in those securities cannot generally occur without violating domestic securities law; and

WHEREAS Participants who have established Canadian retirement accounts and later moved to the United States have faced problems with respect to managing the securities held in their Canadian retirement accounts to meet their changing financial needs; and

WHEREAS the Securities and Exchange Commission ("SEC") has adopted Rule 237, which allows securities of foreign issuers to be offered and sold to Participants without registration under the Securities Act of 1933; and

WHEREAS the SEC has also issued an order exempting Canadian broker-dealers that maintain Canadian retirement accounts for Participants from the registration requirements of the Exchange Act of 1934; and

WHEREAS a number of U.S. states have similarly extended limited registration or an exemption from registration to certain Canadian broker-dealers and sales representatives effecting securities transactions in Canadian retirement accounts; and

WHEREAS the Commissioner finds that it is not necessary or appropriate to apply the Act's securities and broker-dealer registration provisions to Canadian retirement

account transactions in Vermont involving the offer or sale of foreign issuer securities to a Participant.

THEREFORE IT IS HEREBY ORDERED that a transactional exemption is available under Section 5203 of the Act for transactions that comply with SEC Rule 237, as adopted or subsequently amended, provided that that any such transaction seeking the benefit of this Exhibit shall be effected by a Canadian broker-dealer that is a registered member in good standing of a self-regulatory organization or stock exchange in Canada. A Canadian broker-dealer shall further effect any transaction under this Exhibit in a manner that complies with SEC Release No. 34-42906 dated June 7, 2000 ("Order Granting Exemption: In the Matter of the Investment Dealers Association of Canada").

IT IS FURTHER ORDERED that a broker-dealer and any agent associated with such transactions shall be exempt from the registration requirements of Sections 5401 and 5402 of the Act to the extent such broker-dealer and agent limit their activities in Vermont to such transactions, where all of the following conditions are met:

1. The Canadian broker-dealer is resident in Canada and has no office or other physical presence in Vermont and is not an office of, branch of, or a natural person associated with, a broker-dealer otherwise registered in Vermont; and

2. The Canadian broker-dealer:

a.) Is a member of a self-regulatory organization or stock exchange in Canada;

b.) Maintains its provincial or territorial registration and its membership in a self-regulatory organization or stock exchange in good standing; and

c.) Discloses to its clients in Vermont that it is not subject to the full regulatory requirements of the Act.

IT IS FURTHER ORDERED that nothing in this Exhibit shall preclude a Canadian broker-dealer or agent from relying upon any other applicable registration exemption under the Act, nor shall this Exhibit relieve a broker-dealer or agent from the other provisions of the Act.

Transactions involving Canadians temporarily in Vermont.

WHEREAS the Commissioner acknowledges the practical need of Canadians temporarily in Vermont to manage their accounts and maintain their relationships with Canadian broker-dealers; and

WHEREAS the Commissioner finds that it is not necessary or appropriate to apply the Act's securities and broker-dealer registration provisions to securities transactions effected by Canadian broker-dealers for Canadians temporarily in Vermont; and

WHEREAS Section 5401(d)(1) of the Act provides, in relevant part, that an order issued under the Act may permit a broker-dealer that is registered in Canada and that does not have a place of business in this state to effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by 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; and

WHEREAS Section 5401(d)(2) provides, in relevant part, that an order issued under the Act may exempt an agent associated with a broker-dealer exempted under Section 5401(d)(1) from the agent registration requirements of Section 5402 of the Act; and

WHEREAS with a view toward achieving uniformity between states, the Commissioner is aware that the transactional exemption established herein is similar to regulatory relief granted by other states to transactions involving Canadians temporarily in those other states.

NOW, THEREFORE IT IS HEREBY ORDERED THAT a transactional exemption is available under Section 5203 of the Act with respect to securities in transactions effected by a Canadian broker-dealer for a Canadian client temporarily in Vermont, and such broker-dealer and any agent associated with such transactions shall be exempt from the registration requirements of Sections 5401 and 5402 of the Act to the extent such broker-dealer and agent limit their activities in Vermont to such transactions, where all of the following conditions are met:

1. The securities business effected or attempted by the Canadian broker-dealer in Vermont must be limited to transactions with or for a Canadian person temporarily in Vermont with whom the Canadian broker-dealer had a bona fide broker-dealer/client relationship before the person entered Vermont;

2. The Canadian broker-dealer is resident in Canada and has no office or other physical presence in Vermont and is not an office of, branch of, or a natural person associated with, a broker-dealer otherwise registered in Vermont; and

3. The Canadian broker-dealer:

- a.) Is a member of a self-regulatory organization or stock exchange in Canada;
- b.) Maintains its provincial or territorial registration and its membership in a self-regulatory organization or stock exchange in good standing; and
- c.) Discloses to its clients in Vermont that it is not subject to the full regulatory requirements of the Act.

IT IS FURTHER ORDERED that as used herein, the term "temporarily present in this state" is intended to apply to vacationers and other Canadians in Vermont who intend to return to Canada within a reasonable time.

IT IS FURTHER ORDERED that nothing in this Exhibit 8.19 to Order 06-43-S ("Exhibit") shall preclude a Canadian broker-dealer or agent from relying upon any other applicable registration exemption under the Act, nor shall this Exhibit relieve a Canadian broker-dealer or agent from the other provisions of the Act.

Charitable Organization.

WHEREAS many Vermont residents support charitable organizations through planned gifts and such planned gifts are implemented through the creation of a trust or fund; and

WHEREAS under the terms of the trust or fund agreement, a charitable organization may serve as trustee or administrator, may have the power to remove or to designate a trustee or administrator, and such trust may be obligated to make payments to the donor or donor's designees; and

WHEREAS a charitable organization that serves as a trustee or an administrator or that has the power to remove or to designate a new trustee or administrator are considered to maintain such trust or fund; and

WHEREAS the Commissioner has determined that the Act's registration provisions are not necessary in transactions involving securities of pooled income funds as defined under section 642(c)(5) of the Internal Revenue Code of 1986 (the "Code"); charitable remainder annuity trusts or charitable remainder unitrusts as defined under section 664(d) of the Code; and charitable gift annuities as defined under section 501(m)(5) and 514(c)(5) of the Code maintained by certain charitable organizations.

THEREFORE IT IS HEREBY ORDERED that:

1. The following transactions are determined to be exempt from the provisions of Sections 5301 through 5306 and Section 5504 of the Act:

a. Any offer or sale of a charitable gift annuity within the meaning of and maintained in compliance with Title 9, Chapter 68 of the Vermont Statutes Annotated.

b. Any offer or sale of a security of a fund, other than a charitable gift annuity, that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940 and which satisfies all of the following conditions and limitations:

A. The fund qualifies as a Pooled Income Fund under section 642(c)(5) of the Internal Revenue Code or a Charitable Remainder Annuity Trust or a Charitable Remainder Unitrust under section 664(d) of the Internal Revenue Code and is maintained by an Eligible Charitable Organization.

i. "Eligible Charitable Organization" means an entity that is described in paragraphs (1) through (5) of section 170(c) or section 501(c)(3) of the Code.

ii. "Maintained" means the Eligible Charitable Organization serves as a trustee or administrator of a fund or has the power to remove the trustees or administrator of a fund and designate new trustees or administrators.

B. Donors receive written information describing the material terms of the operation of a fund.

2. The following persons are exempt from registration and notice filing provisions to the extent their activities are limited to the offer or sale of any security, or the solicitation of a donation, described in Section 1:

- (i) a broker-dealer that does not have a place of business in Vermont is exempt from the registration requirements of Section 5401(a) of the Act;
- (ii) an agent is exempt from the registration requirements of Section 5402(a) of the Act;
- (iii) an investment adviser is exempt from the registration requirements of Section 5403(a) of the Act;
- (iv) an investment adviser representative is exempt from the registration requirements of Section 5404(a) of the Act; and
- (v) a federal covered investment adviser is exempt from the notice filing requirements of Section 5405(a) of the Act;

provided, a person shall not be exempt as described in any of the preceding clauses (i) through (v) to the extent such person receives, directly or indirectly, commissions or other remuneration based on the number or value of sales or contributions made in connection with the transactions described in Section 1.

3. The Commissioner may deny, revoke or further condition this exemption if, in the Commissioner's opinion, the availability of this exemption to a person would work a fraud or imposition upon the purchaser.

4. This exemption shall not be construed to provide any exemption or waiver of the anti-fraud provisions of the Act.

NASAA periodic payment plan guidelines.

The Vermont Securities Division adopts the Guidelines for Registration of Periodic Payment Plans as adopted by NASAA on March 29, 1992.

Advertising

The following provisions shall apply to any security, including but not limited to a security with respect to which Section 5504 applies due to the denial, suspension, condition, limitation or revocation of an exemption pursuant to Section 5204(a) of the Act, and excluding, other than as provided in subsection (e), a security exempt from the provisions of Section 5504 of the Act pursuant to Section 5201, 5202 or 5203 of the Act:

(a) No person shall directly or through agents or otherwise, publish, circulate, distribute or cause to be published, circulated or distributed in any manner, any circular, prospectus, advertisement, printed matter, document, pamphlet, leaflet or other matter, hereinafter referred to as advertising matter, containing or constituting an offer to sell any securities which have not been registered under the Act.

(b) In connection with a registration by coordination under Section 5303 of the Act, if requested by the Commissioner, advertising matter, addressed or intended for distribution to prospective investors, shall be submitted to and reviewed by the Commissioner before being published, circulated, distributed, or caused to be published, circulated, or distributed in any manner. Any time before the effective date of registration, the Commissioner may disapprove any such advertising matter that the Commissioner deems in conflict with the purposes of the Act.

(c) The Commissioner shall have power to prohibit the publication, circulation or distribution of any such advertising matter that the Commissioner deems in conflict with the purposes of the Act.

(d) All such advertising matter shall carry the name and address of the issuer circulating, publishing or distributing the same and shall make no reference to the registration of the securities or the issuance of a license by the Commissioner.

(e) The Commissioner may prohibit the publication, circulation or distribution of any advertising matter containing or constituting an offer to sell such securities, except federal covered securities, which the Commissioner deems in conflict with the purposes of the Act.

(f) No person shall make, publish or circulate any representation, statement, or advertisement that any securities are or have been approved by the Commissioner or the Division.

(g) The anti-fraud provisions of the Act shall apply to all advertising.

Mutual fund prospectus wrapper brochures.

Section 3.18 of Exhibit 6.1 to this Order provides, in pertinent part, that the use of advertising or sales material in a deceptive or misleading fashion or in a manner designed to detract from, supersede or defeat the effect of a prospectus constitutes an unethical or dishonest practice by a broker-dealer or agent.

The Division has determined that the format, content or presentation of a prospectus wrapper brochure within which an open-end investment company ("mutual fund") prospectus is bound or enclosed may at times operate to induce or influence an investor to rely primarily, if not exclusively, on the informational content of promotional materials in making an investment decision rather than on the information disclosed in the enclosed prospectus. A prospectus wrapper brochure under these circumstances may be viewed as detracting from, superseding or defeating the purpose of the prospectus within the meaning of Section 3.18 of Exhibit 6.1 to this Order. The seriousness of this problem is compounded where the brochure lacks a balanced and developed discussion of both risk and reward.

To address these concerns, the Division requires that prospectus wrapper brochures contain the following, except to the extent such requirements are preempted under applicable federal law:

1. The cover page of the brochure must include a prominent legend in bold-face roman type stating:

**THIS BROCHURE INCLUDES A PROSPECTUS WHICH DESCRIBES IN
DETAIL THE FUND'S OBJECTIVES, INVESTMENT POLICIES, RISKS,
SALES CHARGES, FEES AND OTHER MATTERS OF INTEREST. PLEASE
READ THE PROSPECTUS CAREFULLY BEFORE YOU INVEST OR SEND
MONEY.**

2. Each page of the brochure must include a statement in bold-face type (or made prominent in some other fashion) that the brochure is not part of the prospectus.

Advertising material containing or constituting an offer to sell any securities which have been registered in compliance with the Act may not be published, circulated or distributed in any manner unless and until such advertising material has been submitted to the Division for its approval. The Division may disapprove any advertising material which is deemed to be in conflict with the purposes of the Act. A filing of a prospectus wrapper brochure must be so identified and submitted with the prospectus enclosed therein.

Accordingly, the Division will review mutual fund prospectus wrapper brochures to ensure compliance with the intent of Section 3.18 of Exhibit 6.1 to this Order and the requirements set forth above. The Division's compliance review will generally take into consideration the content and format of the brochure as well as the presentation and

placement of the prospectus that is or will be enclosed therein. The Division will not approve any brochure which may be viewed as unduly influencing or encouraging the investor to make an investment decision chiefly on the basis of the information contained in the brochure or which otherwise undermines or subordinates the importance of the prospectus or obscures its presentation or inclusion within the brochure.

Civil Unions

Act 91 of the 1999-2000 Vermont Legislature provides parties to a civil union with the same benefits, protections and responsibilities under law as are granted to spouses in marriage. Civil unions are established in Vermont between individuals of the same sex in the same manner that marriages are formed. Dissolution of civil unions also follow the same procedures for divorce and modification of the terms of the civil union can be accomplished through a contract just as married persons can enter into prenuptial agreements. Pursuant to Section 3 of the Act, a party to a civil union shall be included in any definition or use of the terms "spouse," "family," "immediate family," "dependent," "next of kin," and any other terms that denote the spousal relationship, as those terms are used throughout the law. The term law is broadly defined to include any statute, administrative or court rule, policy, common law or any other source of civil law. Consequently, wherever any terms denoting a marital relationship appear in Vermont statutes, the Department's Securities regulations, orders, bulletins and policy statements, those terms shall be construed to include the parties to a civil union.

The benefits, protections and responsibilities provided under Vermont law to parties to a civil union may not be recognized by another state. Benefits, protections and responsibilities provided under federal law to married couples may not be extended to parties to a civil union.