

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, SEPTEMBER 26, 2017

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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

Ex Parte: In the matter of
Adopting a Revision to the Rules
Governing the Virginia Securities Act

CASE NO. SEC-2017-00034

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction. Section 13.1-523 of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of the Act.

The rules and regulations issued by the Commission pursuant to the Act are set forth in Title 21 of the Virginia Administrative Code. A copy also may be found at the Commission's website: <http://www.scc.virginia.gov/case>.

Proposed Revision to Chapter 20. Registration and Renewal Filing Fees for Agents.

The proposed amendment to Chapter 20 provides for an increase in the registration and annual renewal filing fee for broker-dealer agents (including Canadian agents) and agents of the issuer from \$30 to \$40. The fee has not been raised since it was adopted by rule in 1981. From that time to the present, the number and complexity of audits of these registrants' offices has increased, necessitating the increase in the registration fee. The Division of Securities and Retail Franchising ("Division") will apply the additional fees towards the cost to conduct audits.

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Proposed Revision to Chapter 30. Adoption of Statements of Policy.

The Division is a member of the North American Securities Administrators Association ("NASAA"), a trade association of state regulators. As a member of NASAA, the Division participates in a nationwide effort to use a uniform approach to the review of offerings registered in the states. From time to time, NASAA revises and adds to the list of standard policies applicable to certain offerings. The Division is updating and revising its list of these statements to add four additional items: Promotional Shares, Loans and Other Material Transactions, Impoundment of Proceeds, and Electronic Offering Documents and Electronic Signatures. The last item, Electronic Offering Documents and Electronic Signatures, will allow issuers to move away from providing investors with large cumbersome prospectuses and provide for the electronic delivery and signatures.

Proposed Revision to Chapter 40. Repeal of Regulation D, Rule 505.

In 1983, the Division adopted by rule (as amended) an exemption promulgated by the United States Securities and Exchange Commission ("SEC") known as Regulation D that provided for an exemption for offerings of up to \$5 million of securities in any 12-month period to an unlimited number of accredited investors and up to 35 non-accredited but sophisticated investors, as long as non-accredited investors are provided certain prescribed information about the issuer and the securities. Regulation D, Rule 505 of Section 3(a)(11) of the Securities Act of 1933 ("1933 Act"), and Rule 147 thereunder provide an exemption from the 1933 Act registration for offerings within a single state by issuers incorporated or organized, having their principal office and doing business in such state. In October 2016, the SEC repealed Rule 505, making the companion subsection under the current Commission regulations unnecessary. The Division proposes that the section be repealed.

Revision to Chapter 45. Adoption of Federal Crowdfunding.

In 2015, the Division proposed an exemption from registration for certain intrastate offerings known as crowdfunding. The Virginia Intrastate Crowdfunding Exemption was adopted by the Commission in July 2015 under Commission Rule 21 VAC 5-40-190. At the time that the Commission developed the intrastate crowdfunding exemption, the SEC was working on a crowdfunding proposal for interstate offerings. In May 2016, the SEC adopted the final rules for federal crowdfunding. The final rule can be found at <https://www.sec.gov/rules/final/2015/33-9974.pdf>.

When the SEC adopted the final rules governing interstate crowdfunding, the states were preempted from requiring the registration of such offerings. However, a state that is home to the principal place of business of the issuer, or in which residents have purchased 50% or greater of the aggregate offering amount, may require a notice filing that contains all documents filed with the SEC together with a consent to service of process.

In order to facilitate that process, NASAA developed a model notice filing so that the states could adopt the notice filing in a consistent manner. This will allow interstate offerings to comply with the federal crowdfunding rule and make the appropriate state notice filings.

The Division proposes that the Commission adopt the notice filing requirement for federal crowdfunding offerings to include the Form U-CF for notice filing.

Proposed Revision to Chapter 80. Registration and Renewal Filing Fees for Investment Advisor Representatives.

The proposed amendment to Chapter 80 provides for an increase in the registration and annual renewal filing fee for investment advisor representatives from \$30 to \$40. The fee has not been raised since it was adopted by rule in 1981. From that time to the present, the number

and complexity of audits of these registrants' offices has increased, necessitating the increase in the registration fee. The Division will apply the additional fees to the cost to conduct audits.

The Division recommended to the Commission that the proposed revisions should be considered for adoption. The Division also has recommended to the Commission that a hearing should be held only if requested by those interested parties who specifically indicate that a hearing is necessary and the reasons therefore.

A copy of the proposed revisions may be requested by interested parties from the Division by telephone, regular mail or e-mail request, and also can be found at the Division's website: <http://www.scc.virginia.gov/srf>. Any comments to the proposed rules must be received by November 1, 2017.

Accordingly, IT IS ORDERED THAT:

(1) The proposed revisions are appended hereto and made a part of the record herein.

(2) On or before November 1, 2017, comments or request for hearing on the proposed revisions must be submitted in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Requests for hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall reference Case No. SEC-2017-00034. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

(3) The proposed revisions shall be posted on the Commission's website at <http://www.scc.virginia.gov/case> and on the Division's website at <http://www.scc.virginia.gov/srf>. Interested persons also may request a copy of the proposed revisions from the Division by telephone, mail, or e-mail.

AN ATTESTED COPY hereof, together with a copy of the proposed revisions, shall be provided to the Registrar of Regulations for appropriate publication in the *Virginia Register of Regulations*.

AN ATTESTED COPY hereof shall be sent to the Director of the Division of Securities and Retail Franchising who shall forthwith provide notice of this Order via U.S. mail or a copy of this Order may be sent by e-mail to any interested persons as he may designate.

STATE CORPORATION COMMISSION, DIVISION OF SECURITIES AND RETAIL
FRANCHISING

2017 Securities Rules

Part II

Broker-Dealer Agents

21VAC5-20-90. Application for registration as a broker-dealer agent.

A. Application for registration as an agent of a FINRA member shall be filed on and in compliance with all requirements of CRD and in full compliance with the forms and regulations prescribed by the commission. The application shall include all information required by such forms.

An application shall be deemed incomplete for registration as a broker-dealer agent unless the applicant submits the following executed forms, fee, and information:

1. Form U4.
2. The statutory fee made payable to FINRA in the amount of ~~\$30~~ 40.
3. Evidence in the form of a FINRA exam report of passing within the two-year period immediately preceding the date of the application: (i) the Uniform Securities Agent State Law Examination, Series 63; (ii) the Uniform Combined State Law Examination, Series 66; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.
4. Any other information the commission may require.

B. Application for registration for non-FINRA member broker-dealer agents shall be filed on and in compliance with all requirements and forms prescribed by the commission.

An application shall be deemed incomplete for registration as a broker-dealer agent unless the applicant submits the following executed forms, fee, and information:

1. Form U4.
2. The statutory fee in the amount of \$30 40. The check must be made payable to the Treasurer of Virginia.
3. Evidence in the form of a FINRA exam report of passing within the two-year period immediately preceding the date of the application: (i) the Uniform Securities Agent State Law Examination, Series 63; (ii) the Uniform Combined State Law Examination, Series 66; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.
4. Any other information the commission may require.

C. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

21VAC5-20-110. Renewals.

A. To renew the registration or registrations of its broker-dealer agent or agents, a FINRA member broker-dealer will be billed by CRD the statutory fee of \$30 40 per broker-dealer agent. A renewal of registration or registrations shall be granted as a matter of course upon payment of

the proper fee or fees unless the registration was, or the renewal would be, subject to revocation under § 13.1-506 of the Code of Virginia.

B. A non-FINRA member broker-dealer shall file with the commission at its Division of Securities and Retail Franchising the following items at least 30 days prior to the expiration of registration.

1. Agents to be Renewed (Form S.D.4.A) accompanied by the statutory fee of \$~~30~~40 for each agent whose registration is to be renewed. The check must be made payable to the Treasurer of Virginia.
2. If applicable, Agents to be Canceled with clear records (Form S.D.4.B).
3. If applicable, Agents to be Canceled without clear records (Form S.D.4.C).

21VAC5-20-155. Limited Canadian broker-dealer agent registration.

A. An agent of a Canadian broker-dealer who has no office or other physical presence in the Commonwealth of Virginia may, provided the broker-dealer agent is registered under this section, effect transactions in securities as permitted for a broker-dealer registered under 21VAC5-20-85.

B. Application for registration as a broker-dealer agent under this section shall be filed with the commission at its Division of Securities and Retail Franchising or such other entity designated by the commission on and in full compliance with forms prescribed by the commission and shall include all information required by such forms.

C. An application for registration as a broker-dealer agent under this section shall be deemed incomplete for purposes of applying for registration unless the following executed forms, fee, and information are submitted to the commission:

1. An application in the form required by the jurisdiction in which the broker-dealer maintains its principal place of business.
2. Statutory fee payable to the Treasurer of Virginia in the amount of \$30 40 United States currency pursuant to § 13.1-505 G of the Act.
3. Evidence that the applicant is registered as a broker-dealer agent in the jurisdiction from which it is effecting the transactions.
4. Any other information the commission may require.

D. A broker-dealer agent registered under this section shall:

1. Maintain his provincial or territorial registration in good standing;
2. Immediately notify the commission of any criminal action taken against him or of any finding or sanction imposed on him as a result of any self-regulatory or regulatory action involving fraud, theft, deceit, misrepresentation or similar conduct.

E. A broker-dealer agent's registration under this section, and any renewal thereof, shall expire annually at midnight on the 31st day of December unless renewed in accordance with subsection F of this section.

F. To renew the registrations of its agents, a broker-dealer registered under this section shall file with the commission at its division the most recent renewal application, if any, filed in the jurisdiction in which the broker-dealer maintains its principal place of business, or if no such renewal application is required, the most recent application filed pursuant to subdivision C 1 of this section along with the statutory fee in the amount of \$30 40 United States currency pursuant to § 13.1-505 G of the Act.

G. A Canadian broker-dealer agent registered under this section and acting in accordance with the limitations set out in this section is exempt from all other rules applicable to a broker-

dealer agent except the anti-fraud provisions of the Act and the requirements set out in this section.

Part III

Agents of the Issuer

21VAC5-20-160. Application for registration as an agent of the issuer.

A. Application for registration as an agent of the issuer shall be filed on and in compliance with all requirements and forms prescribed by the commission.

B. An application shall be deemed incomplete for registration as an agent of the issuer unless the following executed forms, fee and information are submitted:

1. Form U4.
2. The statutory fee in the amount of ~~\$30~~ 40. The check must be made payable to the Treasurer of Virginia.
3. Evidence in the form of a FINRA exam report of passing within the two-year period immediately preceding the date of the application: (i) the Uniform Securities Agent State Law Examination, Series 63; (ii) the Uniform Combined State Law Examination, Series 66; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.
4. Any individual who meets the qualifications set forth in subdivision B 3 of this section and has been registered in any state jurisdiction requiring registration within the two-year period immediately preceding the date of the filing of an application shall not be required to comply with the examination requirement set forth in subdivision B 3 of this section, except that the Director of Securities and Retail Franchising may require additional

examinations for any individual found to have violated any federal or state securities laws.

5. Any other information the commission may require.

C. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

21VAC5-20-180. Renewals.

An issuer, on behalf of its agent or agents, shall file with the commission at its Division of Securities and Retail Franchising at least 30 days prior to the expiration of registration a registration renewal form (Form S.D.4) accompanied by the statutory fee of \$30 40 for each agent whose registration is to be renewed. The check must be made payable to the Treasurer of Virginia.

21VAC5-30-80. Adoption of NASAA statements of policy.

The commission adopts the following NASAA statements of policy that shall apply to the registration of securities in the Commonwealth. It will be considered a basis for denial of an application if an offering fails to comply with an applicable statement of policy. While applications not conforming to a statement of policy shall be looked upon with disfavor, where good cause is shown, certain provisions may be modified or waived by the commission.

1. Options and Warrants, as amended March 31, 2008.
2. Underwriting Expenses, Underwriter's Warrants, Selling Expenses and Selling Security Holders, as amended March 31, 2008.

3. Real Estate Programs, as amended May 7, 2007.
4. Oil and Gas Programs, as amended ~~May 7, 2007~~ May 6, 2012.
5. Cattle-Feeding Programs, as adopted September 17, 1980.
6. Unsound Financial Condition, as amended March 31, 2008.
7. Real Estate Investment Trusts, as amended May 7, 2007.
8. Church Bonds, as adopted April 29, 1981.
9. Small Company Offering Registrations, as adopted April 28, 1996.
10. NASAA Guidelines Regarding Viatical Investment, as adopted October 1, 2002.
11. Corporate Securities Definitions, as amended March 31, 2008.
12. Church Extension Fund Securities, as amended April 18, 2004.
13. Promotional Shares, as amended March 31, 2008.
14. Loans and Other Material Transactions, as amended March 31, 2008.
15. Impoundment of Proceeds, as amended March 31, 2008.
16. Electronic Offering Documents and Electronic Signatures, as adopted May 8, 2017.

21VAC5-40-30. ~~Uniform limited offering exemption. (Repealed.)~~

~~A. Nothing in this exemption is intended to relieve, or should be construed as in any way relieving, issuers or persons acting on their behalf from providing disclosure to prospective investors adequate to satisfy the anti-fraud provisions of the Act.~~

~~In view of the objective of this section and the purpose and policies underlying the Act, this exemption is not available to an issuer with respect to a transaction which, although in technical~~

~~compliance with this section, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this section.~~

~~Nothing in this section is intended to exempt registered broker-dealers or agents from the due-diligence standards otherwise applicable to such registered persons.~~

~~Nothing in this section is intended to exempt a person from the broker-dealer or agent registration requirements of Article 3 (§ 13.1-504 et seq.) of Chapter 5 of Title 13.1 of the Code of Virginia, except in the case of an agent of the issuer who receives no sales commission directly or indirectly for offering or selling the securities and who is not subject to subdivision B-2 of this section.~~

~~B. For the purpose of the limited offering exemption referred to in § 13.1-514 B-13 of the Act, the following securities are determined to be exempt from the securities registration requirements of Article 4 (§ 13.1-507 et seq.) of Chapter 5 of Title 13.1 of the Code of Virginia:~~

~~Any securities offered or sold in compliance with the Securities Act of 1933, Regulation D (Reg. D), Rules 230.501-230.503 and 230.505 and which satisfy the following further conditions and limitations:~~

~~1. The issuer and persons acting on its behalf shall have reasonable grounds to believe, and after making reasonable inquiry shall believe, that all persons who offer or sell securities subject to this section are registered in accordance with § 13.1-505 of the Act except in the case of an agent of the issuer who receives no sales commission directly or indirectly for offering or selling the securities and who is not subject to subdivision 2 of this subsection.~~

~~2. No exemption under this section shall be available for the securities of any issuer if any of the persons described in the Securities Act of 1933, Regulation A, Rule 230.262(a), (b), or (c) (17 CFR 230.262):~~

~~a. Has filed a registration statement which is the subject of a currently effective stop order entered pursuant to any state's securities law within five years prior to the beginning of the offering.~~

~~b. Has been convicted within five years prior to the beginning of the offering of a felony or misdemeanor in connection with the purchase or sale of a security or a felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud.~~

~~c. Is currently subject to a state's administrative order or judgment entered by that state's securities administrator within five years prior to the beginning of the offering or is subject to a state's administrative order or judgment in which fraud or deceit, including but not limited to making untrue statements of material facts or omitting to state material facts, was found and the order or judgment was entered within five years prior to the beginning of the offering.~~

~~d. Is currently subject to a state's administrative order or judgment which prohibits the use of any exemption from registration in connection with the purchase or sale of securities.~~

~~e. Is currently subject to an order, judgment, or decree of a court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to an order, judgment or decree of any court of competent jurisdiction, entered within five years prior to the beginning of the offering, permanently 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 a false filing with a state.~~

~~f. The prohibitions of subdivisions a, b, c and e of this subdivision shall not apply if the party subject to the disqualifying order, judgment or decree is duly licensed or~~

~~registered to conduct securities related business in the state in which the administrative order, judgment or decree was entered against such party.~~

~~g. A disqualification caused by this subsection is automatically waived if the state securities administrator or agency of the state which created the basis for disqualification, or the State Corporation Commission, determines upon a showing of good cause that it is not necessary under the circumstances that the exemption under this section be denied.~~

~~3. The issuer shall file with the commission no later than 15 days after the first sale in this state from an offering being made in reliance upon this exemption:~~

~~a. A notice on Form D (17 CFR 239.500), as filed with the SEC.~~

~~b. A filing fee of \$250 payable to the Treasurer of Virginia.~~

~~4. In sales to nonaccredited investors, the issuer and persons acting on its behalf shall have reasonable grounds to believe, and after making reasonable inquiry shall believe, that the investment is suitable for the purchaser as to the purchaser's other security holdings and financial situation and needs.~~

~~5. Offers and sales of securities which are exempted by this section shall not be combined with offers and sales of securities exempted by another regulation or section of the Act; however, nothing in this limitation shall act as an election. The issuer may claim the availability of another applicable exemption should, for any reason, the securities or persons fail to comply with the conditions and limitations of this exemption.~~

~~6. In any proceeding involving this section, the burden of proving the exemption or an exception from a definition or condition is upon the person claiming it.~~

~~C. The exemption authorized by this section shall be known and may be cited as the "Uniform Limited Offering Exemption."~~

21VAC5-45-40. Federal crowdfunding offerings.

A. An issuer that offers and sells securities in this Commonwealth in an offering exempt under federal Regulation Crowdfunding (17 CFR §227.100 through 17 CFR 227.503) and Sections 4(a)(6) and 18(b)(4)(c) of the Securities Act of 1933 (15 USC § 77a), and that either (i) has its principal place of business in this Commonwealth or (ii) sells 50% or greater of the aggregate amount of the offering to residents of this Commonwealth, shall file the following with the commission:

1. A completed Uniform Notice of Federal Crowdfunding Offering form or copies of all documents filed with the SEC; and

2. A consent to service of process on Form U-2 if not filing on the Uniform Notice of Federal Crowdfunding form.

B. If the issuer has its principal place of business in this Commonwealth, the filing required under subsection A shall be filed with the commission when the issuer makes its initial Form C filing concerning the offering with the SEC. If the issuer does not have its principal place of business in this Commonwealth but residents of this Commonwealth have purchased 50% or greater of the aggregate amount of the offering, the filing required under subsection A shall be filed when the issuer becomes aware that such purchases have met this threshold and in no event later than 30 days from the date of completion of the offering.

C. The initial notice filing is effective for 12 months from the date of the filing with the commission.

D. For each additional 12 month period in which the same offering is continued, an issuer conducting an offering under federal Regulation Crowdfunding may renew its notice filing by filing on or before the expiration of the notice filing a completed Uniform Notice of Federal

Crowdfunding Offering form marked "renewal" or a cover letter or other document requesting renewal.

E. An issuer may increase the amount of securities offered in this Commonwealth by submitting a completed Uniform Notice of Federal Crowdfunding Offering form marked "amendment" or other document describing the transaction.

FORMS (21VAC5-45)

Form D, Notice of Exempt Offering of Securities, U.S. Securities and Exchange Commission, SEC1972 (rev. 2/2012)

Uniform Consent to Service of Process, Form U-2 (7/1981)

Uniform Notice of Regulation A - Tier 2 Offering (undated, filed 10/2016)

Uniform Notice of Federal Crowdfunding Offering, Form U-CF (undated, filed 9/2017)

Part II

Investment Advisor Representative Registration, Expiration, Updates and Amendments,
Termination, and Changing Connection from One Investment Advisor to Another

21VAC5-80-70. Application for registration as an investment advisor representative.

A. Application for registration as an investment advisor representative shall be filed in compliance with all requirements of CRD and in full compliance with forms and regulations prescribed by the commission. The application shall include all information required by such forms.

B. An application shall be deemed incomplete for registration as an investment advisor representative unless the following executed forms, fee and information are submitted:

1. Form U4.

2. The statutory fee made payable to FINRA in the amount of \$~~30~~ 40.
3. Evidence of passing: (i) the Uniform Investment Adviser Law Examination, Series 65; (ii) the Uniform Combined State Law Examination, Series 66, and the General Securities Representative Examination, Series 7; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.
4. All individuals listed on Part 1 of Form ADV in Schedule A and Item 2. A. of Part 1B as having supervisory responsibilities of the investment advisor shall take and pass the examinations as required in subdivision 3 of this subsection, and register as a representative of the investment advisor.
5. Any other information the commission may require.

C. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

21VAC5-80-90. Renewals.

To renew the registration of its investment advisor representatives, an investment advisor or federal covered advisor will be billed by IARD the statutory fee of \$~~30~~ 40 per investment advisor representative. A renewal of registration shall be granted as a matter of course upon payment of the proper fee or fees unless the registration was, or the renewal would be, subject to revocation under § 13.1-506 of the Act.