

TITLE 230 – DEPARTMENT OF BUSINESS REGULATIONS

CHAPTER 50 – SECURITIES, FRANCHISES AND CHARITIES

SUBCHAPTER 05 - SECURITIES

PART 1 – Pre-Licensing Requirements

1.1 Authority

This regulation is promulgated by the Director of the Department of Business Regulation pursuant to R.I. Gen. Laws § 7-11-705.

1.2 Purpose

The purpose of this regulation is to clarify and set forth practices and procedures consistent with R.I. Gen. Laws Chapter 7-11.

1.3 Severability Provisions

If any provision of this Part or the application thereof to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality shall not affect other provisions or applications of this Part which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this regulation are severable.

1.4 Definitions

- A. In addition to the terms defined in R.I. Gen. Laws § 7-11-101, when used in this Part, the following definitions shall have the following meanings:
1. “3(c)(1) fund” means a private fund that is excluded from the definition of an investment company under § 3(c)(1) of the Investment Company Act of 1940, 15 U.S.C. § 80a-3(c)(1).
 2. “CRD” means the Central Registration Depository operated by FINRA.
 3. “Department” means the Securities Division of the Rhode Island Department of Business Regulation.
 4. “Director” means the Director of the Rhode Island Department of Business Regulation or his or her designee.

5. "FINRA" means the Financial Industry Regulatory Authority, which is a self-regulatory organization as that term is defined in R.I. Gen. Laws § 7-11-101(23).
6. "IARD" means the Investment Adviser Registration Depository, which is operated by FINRA.
7. "Private fund" means an issuer that would be an investment company as defined in § 3 of the Investment Company Act of 1940, 15 U.S.C. § 80a-3, but for 15 U.S.C. §§ 80a-3(c)(1) or 80a-3(c)(7) of that Act.
8. "Private fund adviser" means an investment adviser who provides advice solely to one or more private funds.
9. "Representatives" means Broker Dealer Sales Representatives and/or Investment Adviser Representatives.
10. "RIUSA" means the Rhode Island Uniform Securities Act set forth in R.I. Gen. Laws § 7-11-101 et seq.
11. "SCOR" means Small Corporate Offering Registration.
12. "SEC" means the United States Securities and Exchange Commission.
13. "Value of primary residence" means the fair market value of a person's primary residence, subtracted by the amount of debt secured by the property up to its fair market value.
14. "Venture capital fund" means a private fund that meets the definition of a venture capital fund in SEC Rule 203(l)-1, 17 C.F.R. § 275.203(l)-1.

1.5 Broker-Dealer Exemptions

- A. The following broker-dealers (as that term is defined in R.I. Gen. Laws § 7-11-101(1)) shall be exempt from the licensing requirements of R.I. Gen. Laws § 7-11-201:
 1. Any broker-dealer who is a resident of Canada, has no office or other physical presence in this State, and complies with the following conditions:
 - a. Only affects or attempts to affect transactions exempted by R.I. Gen. Laws § 7-11-402 unless otherwise expressly required by the terms of the exemption:
 - (1) with or for a person who is a resident of Canada who is temporarily present in Rhode Island and with whom the

Canadian broker-dealer had a bona fide business-client relationship before the person entered the State; or

(2) with or for a person who is a resident of Canada who is present in Rhode Island and whose transactions are in a self-directed tax advantages retirement plan in Canada of which the person is the holder or contributor;

- b. Files a notice with the Director of the Department in the form of the broker-dealer's current application for registration required by the jurisdiction in which the broker-dealer's head office is located, including any amendments thereto;
- c. Files a consent to service of process with the Director;
- d. Provides the Director, upon request, a copy of the broker-dealer's books and records relating to the broker-dealer's business in Rhode Island as a broker-dealer;
- e. Informs the Director promptly of any regulatory, disciplinary or criminal action being taken against the broker-dealer, and the Director determines that such action would not be grounds for denial of the exemption contained herein;
- f. Is a member in good standing of a self-regulatory organization or stock exchange in good standing and provides evidence thereof to the Director;
- g. Maintains provincial or territorial registration and membership in a self-regulatory organization or stock exchange in good standing and provides evidence thereof to the Director;
- h. Discloses in writing to its client's in Rhode Island that the broker-dealer is not subject to the full regulatory requirements of the RIUSA or any regulations promulgated thereunder; and
- i. Is not in violation of any of the provisions of the RIUSA or any rules and regulations promulgated thereunder and is not in violation of any federal securities law and any rules and regulations promulgated thereunder.

B. Any person who will be representing a Canadian broker-dealer exempted by this Part shall also be deemed automatically exempt from licensing requirements so long as the person acting as a representative shall comply with all of the conditions of this Part.

1.6 Exempt Investment Adviser Representatives

- A. The following investment adviser representatives are exempt from the licensing requirement of R.I. Gen. Laws § 7-11-203:
1. Individuals who prepare reports or analyses concerning securities who are not identified to advisory clients as having prepared such reports or analyses and who do not provide any investment advice directly to advisory clients (unless required to be licensed due to their roles as investment adviser representatives under R.I. Gen. Laws § 7-11-101(12)(i)(A)(I)-(V).
 2. Individuals, who are not on the adviser's investment committee, who determine any investment advice to be given to advisory clients and who do not provide any investment advice directly to advisory clients. If no investment committee exists, this exemption applies to the individuals who determine any investment advice where there are more than five such individuals who are all supervised by one or more persons who are licensed as investment advisers or investment adviser representatives.
 3. Individuals who solicit, offer or negotiate for the sale of or sell investment advisory services provided such solicitation activities are solely incidental to the activities for which such individuals are employed and who would not be an investment adviser representative except for the performance of the activities described in § 1.6(A)(3) of this Part.
 4. Any partner, officer, director or person acting in a similar capacity who supervises employees only with respect to activities other than investment advisory activities requiring licensing under R.I. Gen. Laws § 7-11-101(12)(A)(I)-(IV).

1.7 Exemption of Certain Broker-Dealers, Investment Advisers, and Sales Representatives Using the Internet for General Dissemination of Information on Products and Services

- A. The following broker-dealers, investment advisers, broker-dealer sales representatives and investment adviser representatives (as those terms are defined in R.I. Gen. Laws § 7-11-101(1) (11),(12) and (20)) 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 postings on Bulletin Boards, displays on "Home Pages" or similar methods (hereinafter "Internet Communications") shall not be deemed as "transacting business" in this state for the purposes of R.I. Gen. Laws §§ 7-11-201 and 7-11-203 if the all following conditions are observed:

1. The Internet Communication does not involve either affecting or attempting to affect transactions in securities, or the rendering of personalized investment advice for compensation, but is limited to the dissemination of general information on products and services;
2. The Internet Communication indicates, either directly or indirectly, that the Representatives' services are not being offered to residents of the State of Rhode Island;
3. The Internet Communication is not otherwise directed to any person in Rhode Island by or on behalf of the Representatives;
4. No services are rendered by Representatives in Rhode Island until they are duly licensed under R.I. Gen. Laws §§ 7-11-201, 7-11-203; or exempt from licensing under R.I. Gen. Laws §§ 7-11-202, 7-11-204;
5. Follow-up, individualized responses to persons in Rhode Island by such Representatives that involve either the affecting or attempting to affect 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, or Representatives registration requirements, or an applicable exemption or exclusion;
6. The Internet Communication contains a mechanism, including and without limitation, technical "firewalls" or other implemented policies and procedures, designed reasonably to ensure that prior to any direct communication with prospective customers or clients in this state, said broker-dealer, investment adviser, or Representative is first registered in Rhode Island or qualifies for an exemption or exclusion from such requirement. Nothing in this paragraph shall be construed to relieve a state registered broker-dealer, investment adviser, or Representative from any applicable securities registration requirement in Rhode Island; and

B. In the case of Representatives:

1. The identities of the Representatives are prominently disclosed within the Internet Communication;
2. The broker-dealer or investment adviser with whom the Representatives are associated retains the responsibility for reviewing and approving the content of any Internet Communication by its Representatives;
3. The broker-dealer or investment adviser with whom the Representatives are associated first authorized the distribution of information on the particular products and services through the Internet Communication; and

4. In disseminating information through the Internet Communication, the Representatives act within the scope of the authority granted by the broker-dealer or investment adviser.
- C. Reliance on any exemption from registration under this Part does not preclude a Representative from relying on any other exemption provided under the Rhode Island General Laws or this Part.

1.8 Registration Exemption for Investment Advisers to Private Funds

A. Exemption for Private Fund Advisers

1. A private fund adviser shall be exempt from the registration requirements of R.I. Gen. Laws § 7-11-203 if the private fund adviser satisfies each of the following conditions:
 - a. Neither the private fund adviser nor any of its advisory affiliates are subject to a disqualification as described in Rule 262 of SEC Regulation A, 17 C.F.R. § 230.262;
 - b. The private fund adviser files with the state each report and amendment thereto that an exempt reporting adviser is required to file with the Securities and Exchange Commission pursuant to SEC Rule 204-4, 17 C.F.R. § 275.204-4; and
 - c. The private fund adviser pays the same fee as that specified for a federal covered adviser in R.I. Gen. Laws § 7-11-206(a)(5).
2. A private fund adviser who advises at least one (3)(c)(1) fund that is not a venture capital fund shall also comply with all of the following requirements:
 - a. The private fund adviser shall advise only those 3(c)(1) funds (other than venture capital funds) whose outstanding securities (other than short-term paper) are beneficially owned entirely by persons who, after deducting the value of the primary residence from the person's net worth, would each meet the definition of a qualified client in SEC Rule 205-3, 17 C.F.R. § 275.205-3, at the time the securities are purchased from the issuer.
 - b. At the time of purchase, the private fund adviser shall disclose the following in writing to each beneficial owner of a 3(c)(1) fund that is not a venture capital fund:
 - (1) All services, if any, to be provided to individual beneficial owners;

- (2) All duties, if any, the investment adviser owes to the beneficial owners; and
 - (3) Any other material information affecting the rights or responsibilities of the beneficial owners.
 - c. The private fund adviser shall obtain on an annual basis audited financial statements of each 3(c)(1) fund that is not a venture capital fund, and shall deliver a copy of such audited financial statements to each beneficial owner of the fund.
- B. Federal Covered Investment Advisers. If a private fund adviser is registered with the Securities and Exchange Commission, the adviser shall not be eligible for this exemption and shall comply with the state notice filing requirements applicable to federal covered investment advisers in R.I. Gen. Laws § 7-11-203.
- C. Investment Adviser Representatives. A person is exempt from the registration requirements of R.I. Gen. Laws § 7-11-203 if he or she is employed by or associated with an investment adviser that is exempt from registration in this state pursuant to this regulation and does not otherwise act as an investment adviser representative.
- D. Electronic Filing. The report filings described in § 1.8(A)(1)(b) of this Part above shall be made electronically through the IARD. A report shall be deemed filed when the report and the fee required by R.I. Gen. Laws § 7-11-206(a)(5) are filed and accepted by the IARD on the state's behalf.
- E. Transition from Exemption to Registration.
 - 1. An investment adviser who becomes ineligible for the exemption provided by this rule must comply with all applicable laws and rules requiring registration or notice filing within ninety (90) days from the date the investment adviser's eligibility for this exemption ceases.
- F. Grandfathering for Investment Advisers to 3(C)(1) Funds with Non-Qualified Clients
 - 1. An investment adviser for a 3(c)(1) fund (other than a venture capital fund) that is beneficially owned by one or more persons who are not qualified clients as described in § 1.8(A)(2)(a) of this Part may qualify for the exemption contained in § 1.8(A)(1) of this Part if the following conditions are satisfied:
 - a. The subject fund existed prior to May 17, 2012; and,

- b. As of May 17, 2012, the subject fund stopped accepting beneficial owners who were not qualified clients, as described in § 1.8(A)(2)(a) of this Part.

1.9 Licensing Applications

- A. The application and consent to service of process requirements of R.I. Gen. Laws § 7-11-205 are met as follows:
 - 1. The application for initial registration as a broker-dealer shall be made by completing Form BD in accordance with the form instructions and by filing the form with CRD. The annual renewal shall be filed with the CRD. The application for initial registration as a sales representative shall be made by filing Form U-4 with the CRD. The annual renewal shall be filed with the CRD. If the broker-dealer is not a FINRA member, the application, amendments, fee and renewal shall be filed with the Department.
 - 2. The application for initial registration as an investment adviser shall be made by completing Form ADV in accordance with the form instructions and by filing the form with the IARD. The application for an investment adviser annual renewal shall be filed with the IARD.
 - 3. The application for initial registration as an investment adviser representative shall be made by filing Form U-4 with the CRD. The annual renewal shall be made with the CRD.

1.10 Multiple Licensing of Sales Representatives

- A. Pursuant to R.I. Gen. Laws § 7-11-208(d), the Director may authorize multiple licensing if each employer files a written undertaking with the Director containing the following information:
 - 1. A statement by each employer that it consents to the multiple employment of the sales representative and setting forth the effective date of the multiple employment; and
 - 2. A statement by each employer that it agrees to assume joint and several liability with all of the other employers for any act or omission of the sales representative during the stated employment period.

1.11 Multiple Licensing of Investment Advisers

- A. Pursuant to R.I. Gen. Laws § 7-11-208(g), the Director may authorize multiple licensing if each licensed or registered entity submits a written undertaking with the Department containing the following information:

1. A statement by each licensed or registered entity that it consents to the multiple employment of the investment adviser representative and setting forth the effective date of the multiple employment; and
2. A statement by each licensed or registered entity that it agrees to assume joint and several liability with all other named licensed or registered entities for any act or omission of any investment adviser representative during the employment period.

1.12 Multiple Licensing of Sales Representatives and Investment Advisers with Unaffiliated Firms

- A. Pursuant to R.I. Gen. Laws § 7-11-208(i), the Director may authorize dual licensing of sales representatives and investment adviser representatives with unaffiliated broker dealer and investment adviser firms if each licensed or registered entity submits a written undertaking with the Director containing the following information:
1. A statement by each licensed or registered entity that it consents to the multiple employment of the sales representative or investment adviser representative and setting forth the effective date of the multiple employment; and
 2. A statement by each licensed or registered entity that it agrees to assume joint and several liability with all other named licensed or registered entities for any act or omission of any sales representative or investment adviser representative during the employment period.

1.13 Examinations

- A. Examination Requirements
1. Any person applying to be registered as an investment adviser or investment adviser representative under the Act shall provide the Department with proof of obtaining a passing score on one of the following examinations:
 - a. The 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). For applicants applying on or after October 1, 2018, the Securities Industry Essentials (“SIE”) Exam will also be required.
 2. Grandfathering

- a. Any individual who is registered as an investment adviser or investment adviser representative in any jurisdiction in the United States as of December 3, 1999, shall not be required to satisfy the examination requirements for continued registration, except that the Director may require additional examinations for any individual found to have violated any state or federal securities law.
- b. An individual who has not been registered in any jurisdiction for a period of two (2) years shall be required to comply with the examinations requirements of this Part.

3. Waivers

- a. The examination requirement shall not apply to an individual who currently holds one of the following professional designations:
 - (1) Certified Financial Planner™/CFP® certification awarded by the International Board of Standards and Practices for Certified Financial Planners, 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;
 - (5) Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.; or
 - (6) Such other professional designation as the Director may by rule or order recognize.

B. Each applicant for an initial license as a sales representative must pass, as above, the Securities Industry Essentials (“SIE”) Exam, the Series 63 or the Series 66, and either the Series 2 or the Series 7 examinations, unless the applicant’s proposed securities activities will be restricted, in which case the applicant is required to pass, as above, each examination administered by the FINRA which relates to the applicant’s proposed activities.

C. Prior to issuance of an initial broker-dealer license, and at all times thereafter, at least one (1) person located in the principal office of the broker-dealer shall be designated in the license application to act in a supervisory capacity and be licensed as a registered representative of the broker-dealer. Each designated supervisor shall meet the examination requirement of § 1.13(B) of this Part and

pass, as above, the FINRA General Securities Principal Qualification exam (Series 24), unless the broker-dealer's proposed securities activities will be restricted, in which case the designated supervisor is required to pass, as above, each examination administered by the FINRA which relates to the broker-dealer's securities activities.

- D. The examination or program/designation requirements in §§ 1.13(A) and (B) of this Part may be waived for any applicant who meets the requirements of either of the following:
1. The applicant has been licensed in the same capacity under the RIUSA at any time within two (2) years prior to the date the application is filed; or
 2. The applicant, within two (2) years prior to the date the application is filed, has been:
 - a. Licensed as a sales representative under the securities law of any other state which required passage of the Series 63 or Series 66 and registered with FINRA; or
 - b. Licensed as an investment adviser representative under the securities law of any other state which requires passage of the Series 65 or Series 66.
- E. A bona fide officer or director of an issuer selling securities registered under SCOR is exempt from the examination requirements for sales representative registration if that person will not be receiving sales related compensation so long as:
1. Any officer or director who offers or sells securities registered under SCOR must provide a copy of the "Consumers Guide to Small Business Investments" to all offerees at or before the time the offering document is required to be delivered.
 2. The registration of any person relying on the exemption set forth in this section may be suspended or revoked if that person fails to deliver a copy of the "Consumers Guide to Small Business Investments" to any person to whom securities are offered or sold pursuant to the SCOR offering for which that person is registered.
 3. To qualify for the exemption set forth above, a person must submit to the Director an affidavit representing that the person:
 - a. Is a bona fide officer or director of the SCOR issuer;
 - b. Will provide all persons to whom securities are offered or sold with a copy of "Consumers Guide to Small Business Investments";

- c. Will not be receiving sales related compensation for the sale of the SCOR securities;
- d. Understands that the sales representative registration will only authorize the offer and sale of securities on behalf of the issuer of the SCOR offering to be carried out pursuant to the registration statement that has been filed with the Department; and
- e. Understands that failure to provide all offerees with a copy of "Consumers Guide to Small Business" is grounds for revocation or suspension of the sales representatives' registration.

1.14 Minimum Net Capital

- A. Every broker-dealer, whether or not subject to Rule 15c3-1 under the Securities Exchange Act of 1934, 17 C.F.R. § 240.15c3-1, shall maintain net capital in such minimum amounts as are designated in that rule for the activities to be engaged in by a broker-dealer in this state.
- B. The aggregate indebtedness of each broker-dealer, whether or not subject to Rule 15c3-1 under the Securities Exchange Act of 1934, 17 C.F.R. § 240.15c3-1, to all other persons shall not exceed the levels prescribed in that rule.
- C. If a broker-dealer is an individual, the person shall segregate from personal capital an amount sufficient to satisfy the net capital requirement, and the amount so segregated shall be utilized solely for the business for which the broker-dealer is licensed.
- D. An investment adviser licensed under RIUSA, but exempt from registration under the Investment Advisers Act of 1940, 15 U.S.C. § 80b-6a, must at all times maintain net worth of not less than \$5,000. This applies only to investment advisers that do not take or retain custody of securities or funds of a client. Investment advisers that take or retain custody must comply with the provisions of § 2.12 of this Subchapter.

1.15 Broker-Dealer Bond

- A. Every broker-dealer who is not registered under the Securities Exchange Act of 1934 shall file with the Department a surety bond in the amount set by order of the Director with a minimum of \$100,000 and a maximum of \$1,000,000, except:
 - 1. Broker-dealers who are members of the Securities Investor Protection Corporation; or
 - 2. Broker-dealers who do not have custody or possession of any customer's funds or securities.

- B. Every sales representative associated with a broker-dealer who is not registered under the Securities Exchange Act of 1934 shall file with the director a surety bond in the amount set by order of the director with a minimum of \$10,000 and a maximum of \$100,000, unless the broker-dealer with whom the sales representative is associated is exempt pursuant to §§ 1.15(A)(1) or (2) of this Part.

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**TITLE 230 - DEPARTMENT OF BUSINESS REGULATION (INCLUDES
THE OFFICE OF THE HEALTH INSURANCE COMMISSIONER)**

CHAPTER 50 - SECURITIES, FRANCHISES AND CHARITIES

SUBCHAPTER 05 - SECURITIES

PART 1 - PRE-LICENSING REQUIREMENTS (230-RICR-50-05-1)

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