

950 CMR 14.400: GENERAL PROVISIONS

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14.401: Definitions

When used in M.G.L. c. 110A and 950 CMR 10.00 through 14.413, unless the context otherwise requires:

Act means M.G.L. c. 110A.

Agent includes every individual who represents or acts for a broker-dealer in effecting or attempting to effect transactions in securities, including any person who solicits transactions or new accounts, renders advice concerning the purchase or sale of securities to particular customers, executes trades for particular customers, or supervises any of the foregoing individuals. Representation may be in the form of employment or independent contract and compensation may be in any form including hourly, salaried, transaction-based or based on assets under management.

Agent excludes:

- (1) an investment company employee who performs merely administrative duties in connection with the sale of that company's securities.
- (2) a lawyer, accountant, engineer or other professional adviser who engages in any activity set forth in M.G.L. c. 110A, § 401(b) incidental to the performance of professional services for his client and who receives no referral fee, finder's fee, commission or any part thereof, or similar transaction-based compensation either directly or indirectly.
- (3) An officer, director, partner, or limited liability company manager of an issuer who represents the issuer in effecting or attempting to effect purchases or sales of the issuer's securities, provided such person complies with the following conditions:
 - (a) such person receives no commission or other compensation for or contingent upon the offering or sale of a security by such person;
 - (b) such person is not subject to any disqualification set forth in 950 CMR 14.402(B)(9)(f) or Section 3(a)(39) of the Securities Exchange Act of 1934; and,
 - (c) such person is in compliance with any applicable provisions of M.G.L. c. 110A and 950 CMR 10.00 through 14.413.
- (4) An individual who represents an issuer in effecting transactions in covered securities exempted by Section 18(b)(4)(D) of the Securities Act of 1933, as amended, provided the filing mandated by 950 CMR 14.402 with respect to the covered security has been timely made.
- (5) A person who represents a registered broker-dealer in effecting or attempting to effect transactions solely with or for a customer who is temporarily present in the Commonwealth, with whom the person had a *bona fide* business-customer relationship for at least 30 days before the customer entered the Commonwealth.
- (6) A person who represents an issuer in effecting transactions in any security, including a revenue obligation, issued or guaranteed by the Commonwealth or any political subdivision thereof or any agency or corporate or other instrumentality of one or more of the foregoing or any certificate of deposit for any of the foregoing.

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Broker-dealer excludes:

- (1) private and institutional investors (including investment companies) effecting transactions as investors in their portfolio securities;
- (2) a lawyer, accountant, engineer, or other professional adviser who engages in any activity set forth in M.G.L. c. 110A, § 401(c) incidental to the performance of professional services for his client and who receives no referral fee, finder's fee, commission or any part thereof, or similar transaction-based compensation either directly or indirectly; and
- (3) an officer or employee of an issuer unless he receives remuneration directly or indirectly on account of purchases and sales of securities.
- (4) A person who has no office or other physical presence in the Commonwealth, and complies with the following conditions:
 - (a) Only effects or attempts to effect transactions in securities:
 1. With or through the issuers of the securities involved in the transactions, broker-dealers, banks, saving institutions, trust companies, insurance companies, investment companies (as defined in the Investment Company Act of 1940), pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;
 2. During any period of 12 consecutive months, with or for fewer than five customers resident in the Commonwealth other than those listed in 950 CMR 14.401(C)(4)(a)1. and 4., each of whom had a *bona fide* business-customer relationship with the person for at least 30 days before the customer moved to the Commonwealth;
 3. With or for a customer who is temporarily present in the Commonwealth, with whom the person had a *bona fide* business-customer relationship for at least 30 days before the customer entered the Commonwealth; or
 4. With or for a person previously or currently resident in Canada who is present in the Commonwealth, whose transactions are solely in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor; and
 - (b) If the person is effecting transactions with customers described in 950 CMR 14.401(C)(4)(a)4., files a notice in the form of his current application required by the state, province or territory in which his head office is located and a consent to service of process;
 - (c) If the person is resident in Canada, is a member of a self-regulatory organization or stock exchange in his home jurisdiction;
 - (d) Maintains his registration in his home state, province or territory and his membership in a self-regulatory organization or stock exchange in good standing; and,
 - (e) Is not in violation of M.G.L. c. 110A, § 101 and all the rules promulgated thereunder.

Certified, when used in connection with financial statements, means certified by an independent public accountant in accordance with generally accepted accounting principles.

Commonwealth means The Commonwealth of Massachusetts.

Control, Controlling, Controlled By, and Under Common Control With means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

Corporation includes any corporation organized under the laws of the U.S., Canada, any state or territory of the U.S. and any Canadian province. It shall also include any business entity registered as an investment company under the Investment Company Act of 1940, as amended, and any entity which has provisions in its chartering agreement which provide substantially similar protections to security holders with respect to the transactions at issue as provided by the state corporate laws of the jurisdiction where such entity is domiciled.

Director means the Director of the Securities Division.

Division means the Securities Division in the Office of the State Secretary.

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Employee, as used in M.G.L. c. 110A, § 402(a)(11), includes an officer, director, trustee, independent contractors and consultants.

Federal Registration Statement means a registration statement filed under the Securities Act of 1933.

FINRA means the Financial Industry Regulatory Authority, Inc.

Institutional Buyer, as used in M.G.L. c. 110A, § 401(c) and M.G.L. c. 110A, § 402(b)(8), includes, but is not limited to, the following:

- (1) a Small Business Investment Company licensed by the U.S. Small Business Administration under the Small Business Investment Act of 1958;
- (2) a private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940;
- (3) a Business Development Company as defined in Section 2(a)(48) of the Investment Company Act of 1940;
- (4) an entity with total assets in excess of \$5 million and which is either:
 - (a) a company (whether a corporation, a Massachusetts or similar business trust, partnership, limited liability company or limited liability partnership) not formed for the specific purpose of acquiring the securities offered; a substantial part of whose business activities consists of investing, purchasing, selling or trading in securities issued by others and whose investment decisions are made by persons who are reasonably believed by the seller to have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of investment; or
 - (b) an organization described in Section 501(c)(3) of the Internal Revenue Code; and
- (5) a Qualified Institutional Buyer as defined in 17 CFR 230.144A(a).

Investment Company Shares means securities issued by a face amount certificate company, or redeemable securities issued by an open-end management company or unit investment trust.

Investment Contract, as used in M.G.L. c. 110A, § 401(k), includes:

- (1) any investment in a common enterprise with the expectation of profit to be derived through the essential managerial efforts of someone other than the investor. As used in 950 CMR 14.401, a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with and dependent upon the efforts and successes of those seeking the investment or a third party; and
- (2) any investment by which an offeree furnishes initial value to an offeror, and a portion of this initial value is subject to the risks of the enterprise, and the furnishing of the initial value is induced by the offeror's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind over and above the initial value will accrue to the offeree as a result of the operation of the enterprise, and the offeree does not receive the right to exercise practical and actual control over the management of the enterprise.

Merger includes:

- (1) a transaction in which a subsidiary of the issuer is merged with another corporation; and
- (2) the acquisition by a corporation of all or substantially all of the outstanding capital stock of another corporation pursuant to a plan of acquisition or similar procedure adopted and carried out in accordance with applicable state, federal or provincial law.

NASAA means North American Securities Administrators Association, Inc.

Officer means a president, vice-president, treasurer, secretary, clerk, managing member and any other person who performs for a broker-dealer or an issuer, whether incorporated or unincorporated, functions corresponding to those ordinarily performed by the foregoing.

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Pension or Profit-sharing Trust, as used in M.G.L. c. 110A, § 401(c) and M.G.L. c. 110A, § 402(b)(8), includes the following:

- (1) any entity with total assets in excess of \$5 million and which is:
 - (a) an employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 (ERISA); or
 - (b) a self-directed employee benefit plan within the meaning of ERISA, with investment decisions made by a person that is an accredited investor as defined in § 501(a) of SEC Regulation D (17 CFR 230.501(a)); or
- (2) any employee benefit plan within the meaning of ERISA with investment decisions made by a plan fiduciary, as defined in Section 2(21) of ERISA, which is either a bank, savings and loan association, insurance company or registered investment adviser; or
- (3) an employee benefit plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions.

Person includes a limited liability company and a limited liability partnership.

Principal means general or managing partner in the case of a partnership, officer in the case of a corporation, or trustee in the case of a business trust.

Registration Under Prior Law as used in St. 1972, c. 694, § 7, means filings of the Notice of Intention to Sell required by M.G.L. c. 110A, § 5 which St. 1972, c. 694, § 1 repealed.

Rule or Rules refers to 950 CMR 10.00 through 14.413.

SEC means the United States Securities and Exchange Commission.

Stockholders and Shareholders mean holders of shares, transferable certificates of participation, or other equity interests in any corporation.

14.402: Exemptions

(A)(1) For the purposes of M.G.L. c. 110A, § 402(a)(1) only, the term "other instrumentality" shall include any political subdivision of any state other than the Commonwealth.

(A)(2) through (7): (Reserved)

(A)(8) The Secretary specifies that a security listed or approved for listing upon notice of issuance on the following exchanges or markets qualifies for the exemption provided under M.G.L. c. 110A, § 402(a)(8): the New York Stock Exchange; the NYSE American LLC; National Market System of the Nasdaq Stock Market ("Nasdaq/NGM"); Tier I of the NYSE Arca, Inc.; Tier I of the NASDAQ PHLX LLC; the Chicago Board Options Exchange, Incorporated; the Nasdaq Capital Market; Tier I and Tier II of Bats BZX Exchange, Inc.; Investors Exchange LLC.; as well as options listed on Nasdaq ISE, LLC.

(A)(9): (Reserved)

(A)(10) To coordinate the interpretation and administration of M.G.L. c. 110A with related federal regulations, "commercial paper", as used in M.G.L. c. 110A, § 402(a)(10), includes prime quality negotiable commercial paper of a type not ordinarily purchased by the general public, that is, paper used to facilitate well recognized types of current operational business requirements and a type eligible for discounting by Federal Reserve Banks, as set forth in SEC Release No. 33-4412.

(A)(11)(a) No notice pursuant to M.G.L. c. 110A, § 402(a)(11) need be given for the following:

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1. an employees' benefit plan qualified under Section 401 of the Internal Revenue Code of 1986, as amended from time to time, or which does not permit voluntary contributions by participating employees;
2. Blue Cross, group life, wage continuation, medical reimbursement, or any other plan whose primary purpose is to insure employees against a specified risk or loss; or,
3. an investment contract otherwise exempt under M.G.L. c. 110A or 950 CMR 14.400.

- (b) The notice that M.G.L. c. 110A, § 402(a)(11) requires is hereby waived.
(Note: The Secretary has also adopted an exemption for employee compensatory arrangements under 950 CMR 14.402(B)(13)(a).)

((A)(12) Reserved)

- (B) (1) (a) Isolated, as used in M.G.L. c. 110A, § 402(b)(1), means not in the course of repeated and successive transactions of like character. Two consecutive sales of securities made within such a period of time and in such circumstances as to indicate that they involve the same plan of financing or disposition are not isolated.

- (b) Non-Issuer Transaction or Distribution, as used in M.G.L. c. 110A, § 402(b)(1) through (3), shall exclude:

1. a transaction or distribution by an officer, director or controlling person of the issuer if such transaction or distribution, when aggregated with others by such person during the preceding three months, exceeds the amount permitted to be sold under 17 CFR 230.144(e)(1); or
2. a transaction or distribution by a broker-dealer, acting either as principal or market-maker, in the security:
 - (i) for a period of six months following the issuer's initial public distribution of the security involved in the transaction or distribution; or
 - (ii) until the security becomes a federal covered security under section 18(b)(4)(A) of the Securities Act of 1933, as amended.

- (2) (a) Recognized Securities Manual, as used in M.G.L. c. 110A, § 402(b)(2)(A), includes all manuals published by Standard & Poor's and Moody's, exclusively.

The issuer must have at a minimum a profit and loss statement covering a full year of operations thus excluding start-up companies with less than 12 months of operations. Anyone claiming an exemption under 950 CMR 14.402(B)(2)(a) shall bear the burden of showing that the financial statements meet the requirements of 950 CMR 14.402(B)(2)(a) and M.G.L. c. 110A.

- (b) Registered under the Securities Exchange Act of 1934 shall exclude for purposes of M.G.L. c. 110A, § 402(b)(2)(C) any security made exempt from registration by 17 CFR 240.12g3-2(b)-(c).

- (3) If the confirmation required by 950 CMR 14.402(B)(3) is conspicuously marked "Unsolicited Order," the customer need not acknowledge that the sale of a security exempt under M.G.L. c. 110A, § 402(b)(3) was unsolicited. Otherwise, the customer purchasing such a security shall acknowledge in writing that the sale was unsolicited. A broker-dealer shall preserve such acknowledgement in accordance with the record-keeping requirements of 950 CMR 12.200. A registered broker-dealer will not be deemed to have solicited an order or offer to buy a security purchased by or through him, merely by reason of the publication of bid and offer quotations for that security in an inter-dealer quotation service or in the financial columns of newspapers.

((B)(4) through (8) Reserved)

- (B) (9) (a) In applying the exemption allowed under M.G.L. c. 110A, § 402(b)(9), only offers which are part of the same offering will be aggregated for purposes of calculating the limitations thereunder. Offers which are exempt pursuant to 950 CMR 14.402(B)(13)(a) are deemed to be not part of the same offering for purposes of 950 CMR 14.402(B)(9)(a). Note 1: The following factors should be considered in determining if an offer is part of the same offering:

1. whether the offers are part of a single plan of financing;
2. whether the offers involve issuance of the same class of securities;
3. whether the offers have been made at or about the same time;
4. whether the same type of consideration is received; and

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5. whether the offers are made for the same general purpose.

Note 2: Offers, other than those exempt under M.G.L. c. 110A, § 402(b)(8), which are part of the same offering, are aggregated to calculate the limitations contained in 950 CMR 14.402(B)(9)(a) even if such offers are exempt under other subsections of M.G.L. c. 110A, § 402(b).

(b) If an offer is directed to more persons in The Commonwealth than permitted under M.G.L. c. 110A or 950 CMR 14.402(B)(9) during any period of twelve consecutive months, the exemption is not available as to all or any part of the offering or any transaction with respect thereto, unless the Director has before or after the offering is commenced, by order, increased the number of permitted offerees.

(c) The exemption allowed under M.G.L. c. 110A, § 402(b)(9) shall not be available for any issuer transaction involving the following:

1. a security registered under the Securities Act of 1933, as amended; or
2. the public distribution of a security registered under the laws of another state.

(d) A person offering or selling a security or effecting a transaction which is exempt from registration under M.G.L. c. 110A, § 402(a)(11), M.G.L. c. 110A, § 402(b)(9), or M.G.L. c. 110A, § 402(b)(11), shall preserve for three years following the completion of the offer and/or sale these records:

1. a copy of any required notice filed with the Secretary and all exhibits thereto;
2. a copy of all literature the issuer used to disclose the terms of the offer to offerees;
3. originals of all writings the issuer received and copies of all writings it sent relating to the offer, sale or transfer of the securities, including but not limited to purchase agreements and confirmations; and
4. a list of the names and addresses of persons to whom the securities were offered, setting forth next to each name the type and amount of such securities offered to each, the consideration paid or promised, the method of payment (cash, check, property, services, note, etc.), and the name of each person or persons representing the issuer in effecting the sale. A registered broker-dealer who represented the person in the offer or sale of a security or in effecting a transaction which M.G.L. c. 110A, § 402(a)(11), M.G.L. c. 110A, § 402(b)(9), or M.G.L. c. 110A, § 402(b)(11) exempts may, in lieu of such person, preserve copies of the notice, as required hereby.

(e) The exemption allowed under M.G.L. c. 110A, § 402(b)(9) shall not be available if the issuer or any person acting on its behalf offers or sells the securities by any form of general advertising, including, but not limited to, the following:

1. any advertisement, article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio; and
2. any seminar or meeting whose attendees have been invited by any general advertising.

(f) The exemption allowed under M.G.L. c. 110A, § 402(b)(9) shall not be available if the issuer or sponsor of the securities, any of its directors, executive officers, general partners or beneficial owners of ten percent or more of any class of its equity securities, any of its promoters currently connected with it in any capacity, any affiliates, or any person (other than a broker-dealer or agent currently registered under M.G.L. c. 110A, § 201) who has been or will be paid any commission, discount, fee or other remuneration, directly or indirectly, for soliciting any prospective purchaser of any security of the issuer or sponsor offered or sold to residents in The Commonwealth:

1. has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any state's 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;

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3. is currently subject to any state administrative enforcement order or judgment entered by that state's securities administrator within five years prior to the filing of the notice required under this exemption or is subject to any state's 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 required under this exemption;
4. is subject to any state's 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; or
6. is disqualified from utilizing the exemption available under Regulation A of the SEC from registration under the Securities Act of 1933, as amended.
7. The prohibition of 950 CMR 14.402(B)(9)(f)1., 2., 3., 4. and 5. 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 the Commonwealth and the Form BD filed with the Commonwealth discloses the order, conviction, judgment or decree relating to such person. No person disqualified under 950 CMR 14.402(B)(9)(f) may act in a capacity other than that for which the person is licensed or registered.
8. Any disqualification caused by 950 CMR 14.402(B)(9)(f) is automatically waived if the SEC, the state securities administrator or agency of the state which created the basis for disqualification, determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

(g) The notice required to be filed pursuant to M.G.L. c. 110A, § 402(b)(9)(B) shall contain the following information and documentation:

1. the issuer's or sponsor's name, form of organization, address and telephone number;
2. the identity of the person(s) who will be selling the securities in the Commonwealth (and in the case of such persons other than the issuer and its officers, partners and employees, describing their relationship with the issuer in connection with the transaction and the basis of their compliance with or exemption from the requirements of M.G.L. c. 110A, § 201) and describing any commissions, discounts, fees or other remuneration to be paid, directly or indirectly, to such person(s);
3. a description of the securities to be sold;
4. the anticipated aggregate dollar amount of the offering;
5. the anticipated required minimum investment, if any, by each purchaser of the securities to be offered;
6. a list of the states in which the securities are proposed to be sold;
7. a statement by the offeror that, after reasonable inquiry, it believes that it is in compliance with 950 CMR 14.402(B)(9)(f);
8. a copy of any written document or materials used or proposed to be used in connection with the offer and sale of the securities;
9. if the issuer is not a corporation organized under the laws of the Commonwealth, a consent to service of process naming the Massachusetts Secretary of State as service agent using the Uniform Consent to Service of Process (Form U-2) signed by the issuer and acknowledged before a notary public or other similar officer and accompanied by a properly executed Corporate Resolution (Form U-2A), if applicable;

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10. a non-refundable filing fee in the following amount:

<u>Total Amount of Offering</u>	<u>Filing Fee</u>
0-\$500,000	\$150
Over \$500,000-\$2,000,000	\$250
Over \$2,000,000-\$7,500,000	\$500
Over \$7,500,000	\$750

11. additional information or documents which the Director may request.

Any notice which is in compliance with 950 CMR 14.402(B)(9)(g)1. through 11. for which a Form D has been filed will also be deemed to be a notice in compliance with 950 CMR 14.402(B)(13)(i)3. and will be deemed filed as of the date filed under 950 CMR 14.402(B)(9), if so requested by the offeror. A notice on SEC Form D may be substituted for 950 CMR 14.402(B)(9)(g)1. through 7. if so requested by the offeror.

(h) It shall be grounds for the Director to enter an order denying or revoking the exemption provided under 950 CMR 14.402(B)(13)(i) for a particular offering if a non-corporate issuer purports to exculpate, exonerate or indemnify against loss, its general partner(s), trustee(s) or other persons performing similar functions, any affiliate of the foregoing, or any broker-dealer selling the securities of such issuer, for violations of federal or state securities laws, or any other intentional or criminal wrongdoing.

(i) For purposes of M.G.L. c. 110A, § 402(b)(9), if the number of offerees in Massachusetts in an offering exceeds 25, the number of offerees (other than those designated in M.G.L. c. 110A, § 402(b)(8)) permitted is hereby increased to the number to whom the offering is actually made by the offeror, provided the following conditions are met:

1. the number of persons within the Commonwealth (other than those designated in M.G.L. c. 110A, § 402(b)(8)) to whom the securities are sold does not exceed ten;
2. no commission, discount fee or other remuneration is paid directly or indirectly to any person for soliciting any purchaser in the Commonwealth (other than those designated in M.G.L. c. 110A, § 402(b)(8)) unless the person receiving such payment is appropriately registered as a broker-dealer or an agent; and
3. neither the issuer nor any person acting on its behalf offers or sells the securities by any form of general solicitation.

(j) For purposes of M.G.L. c. 110A, § 402(b)(9) and M.G.L. c. 110A, § 402(b)(11), Commission or Other Remuneration includes, but is not limited to, the following:

1. any consideration received by any person other than a director, officer or employee, including any fee, discount, or commission, the total amount of which is based directly or indirectly on the number or size of transactions effected;
2. any promotional interest (which is defined as any equity interest with a purchase price of less than 75% of the purchase price of the security being offered) in excess of 10% of the total of all securities of the issuer received either at the time of the sale of the interest being offered or in the preceding six month period; provided, however, that any such promotional interest which is subordinated to the return of the offeree's investment does not constitute a commission or other remuneration;
3. any payment for goods or services (other than compensation paid for performing the duties of an officer, director or employee) anticipated to be received within the following 12 months which would exceed 10% of the total amount of the offering;
4. any anticipated fee for goods or services which materially exceeds the expected fair market value of such goods or services when rendered;
5. any salary or other compensation paid to a director, officer or employee who has as a principal part of his duties the solicitation of purchasers for the issuer's securities; provided, however, that any salary or other compensation paid to a director, officer or employee of the issuer for solicitation which is only an incidental function of such person's regular duties and for which such person receives no additional compensation, does not constitute a commission or other remuneration; and
6. any fee paid to a person for finding or referring a prospective offeree.

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7. Nothing contained herein shall preclude the offeror claiming this exemption from establishing that the remuneration listed above was wholly unrelated to soliciting sales within the Commonwealth.

(k) The requirement that the notice be filed at least five full business days before the initial offer in the Commonwealth as set forth in subsection (B) of M.G.L. c.110A, § 402(b)(9), is hereby waived for all types of securities. The exemption allowed by M.G.L. c. 110A, § 402(b)(9) for offers in which payment of a commission or other remuneration is made, is not available unless a notice (as set forth in 950 CMR 14.402(B)(9)(g)) is filed with the Division no later than ten calendar days prior to the receipt of any consideration from, or the delivery of a subscription agreement by any purchaser which results from such offers.

(l) Any offer or sale of a security which is part of an offering or plan of financing which is in compliance with M.G.L. c. 110A, § 402(b)(9) and 950 CMR 14.402(B)(9) as in effect immediately prior to the date on which this Section takes effect, is exempt hereunder, provided that any such offer or sale is made within one year of such effective date.

(m) Any condition of M.G.L. c. 110A, § 402(b)(9) or any provision or condition in 950 CMR 14.402(B)(9) with respect to such Section may be waived by the Director upon a showing of cause.

(B) (10) (Reserved)

(B) (11) (a) The notice required to be filed pursuant to M.G.L. c. 110A, § 402(b)(11) shall contain the following information and documentation:

1. the issuer's or sponsor's name, form of organization, address and telephone number;
2. the identity of the person(s) who will be selling the securities in this state (and in the case of such person(s) other than the issuer and its officers, partners and employees, describing their relationship with the issuer in connection with the transaction and the basis of their compliance with or exemption from the requirements of M.G.L. c. 110A, § 201) and describing any commissions, discounts, fees, or other remuneration to be paid, directly or indirectly, to such person(s);
3. a description of the securities to be sold;
4. the anticipated aggregate dollar amount of the offering;
5. the anticipated required minimum investment, if any, by each purchaser of the securities to be offered;
6. a list of the states in which the securities are proposed to be sold;
7. a copy of any written document or materials used or proposed to be used in connection with the offer and sale of the securities;
8. a consent to service of process naming the Massachusetts Secretary of State as service agent using the Uniform Consent to Service of Process (Form U-2) signed by the issuer and acknowledged before a notary public or other similar officer and accompanied by a properly executed Corporate Resolution (Form U-2A), if applicable; and
9. a non-refundable filing fee in the amount of \$100, payable to the Commonwealth of Massachusetts.

(b) Transferable warrants exercisable within not more than 90 days of their issuance refers solely to such warrants which become exercisable and expire during such 90-day period.

(c) A copy of a registration statement designated by the U.S. Securities and Exchange Commission as Form F-7 and accompanied by the items listed under 950 CMR 14.402(B)(11)(a)8. and 9. may be substituted for the notice required under 950 CMR 14.402(B)(11)(a).

(B) (12) (Reserved)

14.402: continued

(B) (13) Pursuant to M.G.L. c. 110A, § 402(b)(13), the Secretary finds that registration of the following is not necessary or appropriate in the public interest or for the protection of investors:

(a) Compensatory Arrangements. An offer or sale of a security issued in connection with a stock purchase, savings, option, profit-sharing, pension or similar employee benefit plan, provided the offeror is in compliance with the following conditions:

1. The issuer, parent corporation or any of its majority-owned subsidiaries offers or sells the security pursuant to a written benefit plan and/or written agreement relating to the compensation of the buyer; and
2. The offer or sale is in compliance with any applicable federal securities law.

For purposes of 950 CMR 14.402(B)(13)(a) the term “employee” shall include an officer, director, trustee, independent contractors and consultants.

(Note: There is also an exemption for the issuance of securities in connection with an employee benefit plan under M.G.L. c. 110A, § 402(a)(11).)

(b) Put or Call Contracts. An offer or sale of a put or call contract, provided that the put or call contract is:

1. endorsed and its performance guaranteed by a broker-dealer registered with the SEC; or

issued by the Options Clearing Corporation (OCC) pursuant to a registration statement filed by the OCC with the SEC; and

2. the put or call contract is listed or quoted on the NASDAQ Global Market; or the underlying security to which it relates is exempt under M.G.L. c. 110A, § 402(a)(8); or the underlying security to which it relates is registered under Section 12(g) of the Securities Exchange Act of 1934.

(c) Cooperative Associations. An offer or sale of a security, including a patronage refund certificate, issued by EITHER:

1. a cooperative association as defined in the Agricultural Marketing Act (1929), 12 USC § 114j (1982); or

a federation of such cooperative associations that possesses no greater powers or purposes than cooperative associations as defined in the Agricultural Marketing Act (1929), 12 U.S.C. § 113j (1982), if:

- a. the security qualifies its holder for membership in the cooperative association or federation (or in the case of a patronage refund certificate is issuable only to members); and
- b. the security is transferable only to the issuer, or a successor in interest of the transferor that qualifies for membership in the cooperative association or federation; or

2. a mutual or cooperative organization that deals in commodities, or supplies related services in transactions primarily with and for the benefit of its members, if:

- a. the security is part of a class issuable only to persons who deal in commodities with, or obtain services from, the issuers; and
- b. the security is transferable only to the issuer or a successor in interest of the transferor; and
- c. no dividends, other than patronage refunds are payable to holders of the security, except on a complete or partial liquidation; or

3. a cooperative housing corporation described in Section 216(b)(1) of the Internal Revenue Code of 1986, if its activities are limited to the ownership, leasing, management or construction of residential properties of its members and activities incidental thereto.

((d) Reserved)

(e) Bankruptcy. An offer or sale of a security specifically exempt from state securities laws under USC Title 11.

14.402: continued

(f) Pooled Income Funds. An offer or sale of an interest in a trust that Section 642(c)(5) of the Internal Revenue Code of 1986, defines as a "pooled income fund." The issuer of such an interest includes the fund itself and the public charity which establishes and maintains it.

(g) Commodity Contracts. An offer or sale of commodity contracts, provided this exemption does not include an offer or sale of options to buy or sell commodity contracts which confer on the purchaser, in return for a cash payment, the right, within a stated period of time, to purchase or sell a stated contract in a particular commodity, except to the extent that Section 2(a)(1) of the Commodity Exchange Act grants to the Commodity Futures Trading Commission exclusive jurisdiction with respect to such options.

(h) NASDAQ Global Market. An offer or sale of a security designated or approved for designation upon notice of issuance on the NASDAQ Global Market, or any other security of the same issuer which is of senior or substantially equal rank, any security called for by subscription rights or warrants so designated or approved, or any warrant or right to purchase or subscribe to any of the foregoing.

(i) Massachusetts Uniform Limited Offering Exemption. (Reserved)

14.402: continued

(j) MJDS. 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 U.S. Securities and Exchange Commission (SEC) on Form F-8, F-9 or F-10 which has been declared effective by the SEC.

(k) Solicitations of Interest Prior to the Filing of the Registration Statement.

1. An offer, but not a sale, of a security made by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving a prospectus (or its equivalent) for such security is exempt from M.G.L. c. 110A, § 301 if all of the following conditions are satisfied:

14.402: continued

- a. The issuer is or will be a business entity organized under the laws of one of the states or possessions of the United States or one of the provinces or territories of Canada, is engaged in or proposes to engage in a business other than petroleum exploration or production or mining or other extractive industries and is not a "blind pool" offering or other offering for which the specific business or properties cannot now be described.
- b. The offerer intends to register the security in the Commonwealth, or offer the security pursuant to the exemption from registration available under M.G.L. c. 110A, § 402(a)(8).
- c. Ten business days prior to the initial solicitation of interest under 950 CMR 14.402(B)(13)(k), the offerer files with the Director a Solicitation of Interest Form along with any other materials to be used to conduct solicitations of interest, including, but not limited to, the script of any broadcast to be made and a copy of any notice to be published.
- d. Five business days prior to usage, the offerer files with the Director any amendments to the foregoing materials or additional materials to be used to conduct solicitations of interest, except for materials provided to a particular offeree pursuant to a request by that offeree.
- e. No Solicitation of Interest Form, script, advertisement or other material which the offerer has been notified by the Director not to distribute is used to solicit indications of interest.
- f. Except for scripted broadcasts and published notices, the offerer does not communicate with any offeree about the contemplated offering unless the offeree is provided with the most current Solicitation of Interest Form at or before the time of the communication or within five days from the communication.
- g. During the solicitation of interest period, the offerer does not solicit or accept money or a commitment to purchase securities.
- h. No sale is made until seven days after delivery to the purchaser of a final prospectus, or in those instances in which delivery of a preliminary prospectus is allowed hereunder, a preliminary prospectus.
- i. The offerer does not know, and in the exercise of reasonable care, could not know that the issuer or any of the issuer's officers, directors, 10% shareholders or promoters:
 - i. 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 filing of the Solicitation of Interest Form.
 - ii. Has been convicted within five years prior to the filing of the Solicitation of Interest Form 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.
 - iii. Is currently subject to any federal or state administrative enforcement order or judgment entered by any state securities administrator or the Securities and Exchange Commission within five years prior to the filing of the Solicitation of Interest Form or is subject to any federal or state administrative enforcement order or judgment entered within five years prior to the filing of the Solicitation of Interest Form in which fraud or deceit, including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found.
 - iv. 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.

14.402: continued

v. 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 Solicitation of Interest Form.

The prohibitions listed 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 the Form B-D filed with this state 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. Any disqualification caused by this section is automatically waived if the agency which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

2. A failure to comply with any condition of 950 CMR 14.402(B)(13)(k)1. will not result in the loss of the exemption from the requirements of M.G.L. c. 110A, § 301 for any offer to a particular individual or entity if the offerer shows:

- a. the failure to comply did not pertain to a condition 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 conditions of 950 CMR 14.402(B)(13)(k)1..

Where an exemption is established only through reliance upon 950 CMR 14.402(B)(13)(k)2., the failure to comply shall nonetheless be actionable as a violation of M.G.L. c. 110A by the Secretary under M.G.L. c. 110A, §§ 407A and 408 and constitute grounds for denying or revoking the exemption as to a specific security or transaction.

3. The offerer shall comply with the requirements set forth in 950 CMR 14.402(B)(13)(k)3.. Failure to comply will not result in the loss of the exemption from the requirements of M.G.L. c. 110A, § 301, but shall be a violation of M.G.L. c. 110A, be actionable by the Secretary under M.G.L. c. 110A, §§ 407A and 408, and constitute grounds for denying or revoking the exemption as to a specific security or transaction.

- a. Any published notice or script for broadcast must contain at least the identity of the chief executive officer of the issuer, a brief and general description of its business and products, and the following legends:
 - i. NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED;
 - ii. NO SALES OF THE SECURITIES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED UNTIL DELIVERY OF AN OFFERING CIRCULAR THAT INCLUDES COMPLETE INFORMATION ABOUT THE ISSUER AND THE OFFERING;
 - iii. AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND; and
 - iv. THIS OFFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE FEDERAL AND STATE SECURITIES LAWS. NO SALE MAY BE MADE UNTIL THE OFFERING STATEMENT IS QUALIFIED BY THE SEC AND IS REGISTERED IN THIS STATE.

14.402: continued

b. All communications with prospective investors made in reliance on 950 CMR 14.402(B)(13)(k) must cease after a registration statement is filed in this state, and no sale may be made until at least 20 calendar days after the last communication made in reliance on 950 CMR 14.402(B)(13)(k).

c. A preliminary prospectus (or its equivalent) may only be used in connection with an offering for which indications of interest have been solicited under 950 CMR 14.402(B)(13)(k) if the offering is conducted by a registered broker-dealer.

4. The Director may waive any condition of the exemption in 950 CMR 14.402(B)(13)(k) in writing, upon application by the offerer and cause having been shown. Neither compliance nor attempted compliance with 950 CMR 14.402(B)(13)(k), nor the absence of any objection or order by the Director with respect to any offer of securities undertaken pursuant to 950 CMR 14.402(B)(13)(k), shall be deemed to be a waiver of any condition of the rule or deemed to be a confirmation by the Director of the availability of 950 CMR 14.402(B)(13)(k).

5. Offers made in reliance on 950 CMR 14.402(B)(13)(k) will not result in a violation of M.G.L. c. 110A, § 301 by virtue of being integrated with subsequent offers or sales of securities unless such subsequent offers and sales would be integrated under federal securities laws.

6. Issuers on whose behalf indications of interest are solicited under 950 CMR 14.402(B)(13)(k) may not make offers or sales in reliance on M.G.L. c. 110A, § 402(b)(9) or 950 CMR 14.402(B)(13)(i) until six months after the last communication with a prospective investor made pursuant to 950 CMR 14.402(B)(13)(k).

COMMENTS:

1. All communications made in reliance on 950 CMR 14.402(B)(13)(k) are subject to the anti-fraud provisions of M.G.L. c. 110A.
2. The Division may or may not review the materials filed pursuant to 950 CMR 14.402(B)(13)(k). Materials filed, if reviewed, will be judged under anti-fraud principles. Any discussion in the offering documents of the potential rewards of the investment must be balanced by a discussion of possible risks.
3. Any offer effected in violation of 950 CMR 14.402(B)(13)(k) may constitute an unlawful offer of an unregistered security for which civil liability attaches under M.G.L. c. 110A, § 410. Likewise any misrepresentation or omission may give rise to civil liability. Under M.G.L. c. 110A, the Uniform Securities Act, a subsequent registration of the security for the sale of the security does not "cure" the previous unlawful offer. Only a rescission offer made in accordance with the provisions of M.G.L. c. 110A can accomplish such a "cure". See commentary under M.G.L. c. 410, § 410.

Form to be used when using the exemption found in 950 CMR 14.402(B)(13)(k):

NOTE TO USERS: The following form sets forth the minimum informational requirement for soliciting indications of interest under federal and state securities laws. You may include additional information if you think it necessary or desirable. Remember that any discussion in this document is subject to the anti-fraud provisions of the federal and state securities laws and must thereby be complete. Also, any discussion of potential rewards of the proposed investment must be balanced by a discussion of possible risks. You may alter the graphic presentation of the form in any way as long as the minimum information is clearly presented.

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SOLICITATION OF INTEREST FORM

NAME OF COMPANY

Street Address of Principal Office:

Company Telephone Number:

Date of Organization:

Amount of the Proposed Offering: _____

Name of Chief Executive Officer: _____

THIS IS A SOLICITATION OF INTEREST ONLY. NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED.

NO SALES OF THE SECURITIES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED UNTIL THE DELIVERY OF A FINAL OFFERING CIRCULAR THAT INCLUDES COMPLETE INFORMATION ABOUT THE ISSUER AND THE OFFERING.

AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND.

THIS OFFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE FEDERAL AND STATE SECURITIES LAWS. NO SALE MAY BE MADE UNTIL THE OFFERING STATEMENT IS QUALIFIED BY THE SEC AND IS REGISTERED IN THIS STATE.

This Company:

- Has never conducted business operations.
- Is in the development stage.
- Is currently conducting operations.
- Has shown a profit for the last fiscal year.
- Other (specify) _____.

BUSINESS:

1. Describe in general what business the company does or proposes to do, including what products or goods are or will be produced or services that are or will be rendered.
2. Describe in general how these products or services are to be produced or rendered and how and when the company intends to carry out its activities.

OFFERING PROCEEDS:

3. Describe in general how the company intends to use the proceeds of the proposed offering.

KEY PERSONNEL OF THE COMPANY:

4. Provide the following information for all officers and directors or persons occupying similar positions:

Name, Title, Office Street Address, Telephone Number, Employment History (Employers, titles and dates of positions held during the past five years), and Education (degrees, schools and dates).

(end of form)

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(l) Transactions Under Rule 506 - Filing Requirements. Any offer or sale of a security offered or sold in compliance with the Securities Act of 1933, Regulation D, Rule 506 (17 CFR 230.506), and that satisfies the following further conditions:

1. Within 15-calendar days after the first sale in the Commonwealth, a notice on SEC Form D (17 CFR 239.500) is filed with the Division, together with;
2. A consent to service of process on Form U-2 (with Form U-2A, if applicable) naming the Secretary; and
3. A non-refundable filing fee, payable to The Commonwealth of Massachusetts, in the amount as follows:

<u>Total Amount of Offering</u>	<u>Filing Fee</u>
0 - \$2,000,000	\$250
Over \$2,000,000 - \$7,500,000	\$500
Over \$7,500,000	\$750.

(m) Internet Offers. An offer, but not a sale, of a security communicated through proprietary or "common carrier" electronic delivery systems, Internet and the World Wide Web or a similar medium; provided that such offers are not directed specifically toward any investor or group of investors in the Commonwealth and no sales are made in the Commonwealth unless the securities are registered or exempt from registration under M.G.L. c. 110A and 950 CMR 14.400. If an offer made hereunder contains indications that the offer is not being made in jurisdictions where it is not registered or appropriately exempted, then it will be presumed that this offer is not being specifically directed to prospective investors in the Commonwealth.

(n) Certain Canadian Securities. An offer or sale of a security in a transaction effected by a person located in Canada who is excluded from the definition of broker-dealer under 950 CMR 14.401(C)(4).

(o) Massachusetts Crowdfunding Exemption. An offer or sale of a security meeting the following requirements:

1. The issuer is a business entity:
 - a. Formed under the laws of the Commonwealth;
 - b. Having its principal place of business in the Commonwealth; and
 - c. Authorized to do business in the Commonwealth.
2. The offering is sold only to residents of the Commonwealth in compliance with the requirements of § 3(a)(11) of the Securities Act of 1933 (15 U.S.C. § 77c(a)(11)) or SEC Rule 147 or 147A (17 C.F.R. 230.147 or 230.147A);
3. The securities offered and sold pursuant to 950 CMR 14.402(B)(13)(o) are equity or debt securities of the issuer.
4. The sum of all cash and other consideration to be received for all securities sold in reliance upon the exemption provided under 950 CMR 14.402(B)(13)(o) shall not exceed:
 - a. \$1,000,000, if the issuer has not undergone and made available to each prospective investor and the Secretary the documentation resulting from a financial audit with respect to its most recently completed fiscal year and meeting generally accepted accounting principles; or
 - b. \$2,000,000, if the issuer has undergone and made available to each prospective investor and the Secretary the documentation resulting from a financial audit with respect to its most recently completed fiscal year and meeting generally accepted accounting principles.

An offer or sale to an officer, director, partner, trustee, person owning 10% or more of outstanding shares of the issuer or a person occupying similar status with respect to the issuer shall not be subject to the limitation in 950 CMR 14.402(B)(13)(o)4.

5. The aggregate amount of securities sold to any investor by an issuer in reliance on 950 CMR 14.402(B)(13)(o) shall not exceed the greater of:

- a. \$2,000 or 5% of annual income or net worth of the investor, whichever is greater, if both the annual income and net worth are less than \$100,000; and

14.402: continued

b. 10% of annual income or net worth of the investor, whichever is greater (not to exceed an amount sold of \$100,000) if either the annual income or net worth of the investor is equal to or more than \$100,000;

Note: To determine the investment limit for a natural person, the person's annual income and net worth shall be calculated as those values are calculated for purposes of determining accredited investor status in accordance with Rule 501 of SEC Regulation D, 17 CFR 230.501. The person's annual income or net worth shall come within the levels described in 950 CMR 14.402(B)(13)(o)5. or the issuer shall reasonably believe that such person's annual income or net worth comes within such levels; the issuer shall take reasonable steps to verify such information. The person's annual income and net worth may be calculated jointly with the annual income and net worth of the person's spouse.

6. The issuer shall not, before or as a result of the offering, be:
 - a. An investment company as defined by 15 U.S.C. § 80a-3;
 - b. A hedge fund, commodity pool, or similar investment vehicle;
 - c. Subject to the reporting requirements of the Securities Exchange Act of 1934;
 - d. A development stage company without a specific business plan or purpose, or which has indicated that its business is to engage in a merger or acquisition with an unidentified company or companies, or other unidentified entities or persons, or without an allocation of proceeds to sufficiently identifiable properties or objectives (*i.e.*, "blind pool" or "blank check" offerings); or
 - e. A business involving petroleum exploration or production, mining, or other extractive industries.
7. No commission, fee, or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser for a transaction in reliance upon the exemption provided by 950 CMR 14.402(B)(13)(o) unless such person is registered as a broker-dealer or agent under Securities Exchange Act of 1934.
8. The issuer shall establish a minimum offering amount, which shall be set at a level that the issuer's board or other governing body reasonably believes is sufficient to implement the plan of business disclosed in the offering materials. Such minimum offering amount shall be no less than 30% of the maximum offering amount set by the issuer and disclosed in the offering materials.
9. The issuer shall place all funds received from investors in an escrow account at an insured bank or depository institution authorized to do business in the Commonwealth. Such funds shall be released from escrow when the minimum offering amount is met. If the minimum offering amount is not met within one year of the earlier of the commencement of the offering or the first posting of the offering on the internet, the issuer shall return all funds to investors.
10. a. The exemption under 950 CMR 14.402(B)(13)(o) shall not be available if the issuer; any predecessor of the issuer; any affiliated issuer; any director, executive officer, other officer participating in the offering, general partner, or managing member of the issuer; any beneficial owner of 20% or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power; any promoter connected with the issuer in any capacity at the time of making an exemption filing under 950 CMR 14.402(B)(13)(o); any person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with the offering of securities; or any director, executive officer or other officer participating in the offering of any such solicitor, general partner, or managing member of such solicitor:
 - i. Has been convicted, within ten years before making an exemption filing under 950 CMR 14.402(B)(13)(o) or five years, in the case of issuers, their predecessors, and affiliated issuers, of any felony or misdemeanor:
 - (i) In connection with the purchase or sale of any security;
 - (ii) Involving the making of any false filing with the Securities and Exchange Commission or a state securities commission (or an agency or officer of a state performing like functions); or
 - (iii) Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser, or paid solicitor of purchasers of securities;

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- b. Is subject to any order, judgment or decree of any court of competent jurisdiction, entered within five years before making an exemption filing under 950 CMR 14.402(B)(13)(o), that, at the time of filing, restrains or enjoins such person from engaging or continuing to engage in any conduct or practice:
- i. In connection with the purchase or sale of any security;
 - ii. Involving the making of any false filing with the Securities and Exchange Commission or a state securities commission (or an agency or officer of a state performing like functions); or
 - iii. Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser, or paid solicitor of purchasers of securities;
- c. Is subject to a final order of a state securities commission (or an agency or officer of a state performing like functions); a state authority that supervises or examines banks, savings associations, or credit unions; a state insurance commission (or an agency or officer of a state performing like functions); an appropriate federal banking agency; the U.S. Commodity Futures Trading Commission; or the National Credit Union Administration that:
- i. At the time of making an exemption filing under 950 CMR 14.402(B)(13)(o), bars the person from:
 - (i) Association with an entity regulated by such commission, authority, agency, or officer;
 - (ii) Engaging in the business of securities, insurance or banking; or
 - (iii) Engaging in savings association or credit union activities; or
 - ii. Constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct entered within ten years before making an exemption filing under 950 CMR 14.402(B)(13)(o);
- d. Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to the Massachusetts Uniform Securities Act, M.G.L. c.110A, or any other state's securities law, within five years prior to making an exemption filing for an offering under 950 CMR 14.402(B)(13)(o);
- e. Is currently subject to any state administrative enforcement order or judgment entered by the Secretary or any other state's securities administrator within five years prior to making an exemption filing for an offering under 950 CMR 14.402(B)(13)(o) or is subject to any state's 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 making an exemption filing for an offering under 950 CMR 14.402(B)(13)(o);
- f. Is subject to an order of the Securities and Exchange Commission entered pursuant to § 15(b) or 15B(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b) or 78o-4(c)) or § 203(e) or (f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3 (e) or (f)) that, at the time of making an exemption filing under 950 CMR 14.402(B)(13)(o):
- i. Suspends or revokes such person's registration as a broker, dealer, municipal securities dealer or investment adviser;
 - ii. Places limitations on the activities, functions or operations of such person; or
 - iii. Bars such person from being associated with any entity or from participating in the offering of any penny stock;
- g. Is subject to any order of the Securities and Exchange Commission entered within five years before making an exemption filing under 950 CMR 14.402(B)(13)(o) that, at the time of filing, orders the person to cease and desist from committing or causing a violation or future violation of:
- i. Any scienter-based anti-fraud provision of the federal securities laws, including without limitation § 17(a)(1) of the Securities Act of 1933 (15 U.S.C. 77q(a)(1)), § 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b)) and 17 C.F.R. 240.10b-5, § 15(c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c)(1)) and § 206(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-6(1)), or any other rule or regulation thereunder; or

14.402: continued

- ii. § 5 of the Securities Act of 1933 (15 U.S.C. 77e).
 - h. Is suspended or expelled from membership in, or suspended or barred from association with a member of, a registered national securities exchange or a registered national or affiliated securities association for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade;
 - i. Has filed (as a registrant or issuer), or was named as an underwriter in, any registration statement or Regulation A offering statement filed with the Securities and Exchange Commission that, within five years before such sale, was the subject of a refusal order, stop order, or order suspending the Regulation A exemption, or is, at the time of such sale, the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued; or
 - j. Is subject to a United States Postal Service false representation order entered within five years before the making of an exemption filing under 950 CMR 14.402(B)(13)(o), or is, at the time of such filing, subject to a temporary restraining order or preliminary injunction with respect to conduct alleged by the United States Postal Service to constitute a scheme or device for obtaining money or property through the mail by means of false representations.
 - k. For purposes of 950 CMR 14.402(B)(13)(o)10.a., "final order" shall mean a written directive or declaratory statement issued by a federal or state agency described in 950 CMR 14.402(B)(13)(o)10.c. under applicable statutory authority that provides for notice and an opportunity for hearing, which constitutes a final disposition or action by that federal or state agency.
 - l. 950 CMR 14.402(B)(13)(o)10.a. shall not apply:
 - i. Upon a showing of good cause and without prejudice to any other action by the Secretary, if the Secretary determines that it is not necessary under the circumstances that an exemption be denied;
 - ii. If, before the relevant filing, the court or regulatory authority that entered the relevant order, judgment or decree advises in writing (whether contained in the relevant judgment, order or decree or separately to the Secretary or his staff) that disqualification under 950 CMR 14.402(B)(13)(o)10.a. should not arise as a consequence of such order, judgment, or decree; or
 - iii. If the issuer establishes that it did not know and, in the exercise of reasonable care, could not have known that a disqualification existed under 950 CMR 14.402(B)(13)(o)10.a. An issuer will not be able to establish that it has exercised reasonable care unless it has made, in light of the circumstances, factual inquiry into whether any disqualifications exist. The nature and scope of the factual inquiry will vary based on the facts and circumstances concerning, among other things, the issuer and the other offering participants.
 - m. For purposes of 950 CMR 14.402(B)(13)(o)10.a., events relating to any affiliated issuer that occurred before the affiliation arose will be not considered disqualifying if the affiliated entity is not:
 - i. In control of the issuer; or
 - ii. Under common control with the issuer by a third party that was in control of the affiliated entity at the time of such event.
11. The issuer shall disclose to each prospective purchaser all of the following:
- a. A description of the issuer and its business, and the address, telephone number, and website address of its principal office;
 - b. A description of the intended use of the offering proceeds;
 - c. A description of any current or pending litigation, legal proceedings, or pending regulatory action involving the issuer or its management;
 - d. The identity of all persons owning 10% or more of the ownership interests of any class of securities of the issuer;
 - e. The identity of the executive officers, directors, managing members, and other persons occupying a similar status or performing functions in the name of and on behalf of the issuer;

14.402: continued

- f. The identity of any person who has been or will be retained by the issuer to assist the issuer in conducting the offer and sale of securities, including any Internet web site operator but excluding persons acting solely as accountants or attorneys, and employees whose primary responsibilities involve the operating business of the issuer rather than assisting the issuer in raising capital;
- g. The names and addresses of each Internet web site that will be used by the issuer to offer or sell securities under 950 CMR 14.402(B)(13)(o); and
- h. Any additional information material to the offering, including, if appropriate, a discussion of significant factors that make the offering speculative or of high risk.

Note: The issuer is required to provide full and fair disclosure to offerees and investors of all material facts relating to the issuer and the securities being offered, in accordance with M.G.L. c.110A, § 101.

12. Among other risk disclosures, the issuer must provide the substance of the following disclosures to all prospective purchasers and investors:
 - a. There is no ready market for the sale of the securities acquired in this offering; it may be difficult or impossible for an investor to sell or otherwise dispose of this investment. An investor may be required to hold and bear the financial risks of this investment indefinitely.
 - b. The securities have not been registered under federal or state securities laws and, therefore, cannot be resold unless the securities are registered or qualify for an exemption from registration under federal and state law.
 - c. 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.
 - d. No federal or state securities commission or regulatory authority has confirmed the accuracy or determined the adequacy of the disclosures provided.

Note: Since 950 CMR 14.402(B)(13)(o) requires that the offering be in compliance with SEC Rule 147 or 147A, the issuer must also provide written disclosures concerning the limitations on resale of the securities contained in SEC Rule 147(e) and (f) or 147A(e) and (f), (17 CFR § 230.147 or 230.147A). Additionally, an issuer must place a required legend disclosing such limitations on resale on the securities certificate or other document evidencing the securities issued in the offering.
13. The exemption provided under 950 CMR 14.402(B)(13)(o) shall be effective for up to 12 months, subject to annual renewal.
14. Upon the first to occur of:
 - a. the completion of the offering;
 - b. the termination of the offering; or
 - c. 12 months from the commencement of the offering, the issuer shall file with the Secretary a sales report indicating the number and value of securities sold in the offering, and the number of purchasers in the offering.
15. The issuer shall file with the Secretary no later than 15 days after the first sale made in reliance upon the exemption provided under 950 CMR 14.402(B)(13)(o):
 - a. a notice specifying that the issuer is conducting an offering in reliance on the exemption provided under 950 CMR 14,402(B)(13)(o) and providing the names and addresses of:
 - i. officers, directors and control persons of the issuer;
 - ii. all persons who will be involved in the offer or sale of securities on behalf of the issuer;
 - iii. the bank or depository institution in which the issuer will deposit investment funds;
 - b. a copy of all materials used in connection with the solicitation, offer, or sale of the issuer's securities, including the disclosure required in 950 CMR 14.402(B)(13)(o)11. and 12.; and
 - c. a consent to service of process on Form U-2.

14.402: continued

(p) Notice Filing Requirement for Federal Crowdfunding Offerings. The following provisions apply to offerings made under federal Regulation Crowdfunding 17 CFR § 227 and Sections 4(a)(6) and 18(b)(4)(C) of the Securities Act of 1933:

1. Initial Filing.

a. An issuer that offers and sells securities in the Commonwealth in an offering exempt under federal Regulation Crowdfunding shall file the following with the Director, subject to the conditions in 950 CMR 14.402(B)(13)(p)(1)(b):

- i. A Uniform Notice of Federal Crowdfunding Offering (Form U-CF);
- ii. A consent to service of process on Form U2 (with Form U-2A, if applicable).

b. If the issuer has its principal place of business in the Commonwealth, the filing required under 950 CMR 14.402(B)(13)(p)1.a. shall be filed with the Director when the issuer makes its initial Form C filing concerning the offering with the Securities and Exchange Commission. If the issuer does not have its principal place of business in the Commonwealth but residents of the Commonwealth have purchased 50% or greater of the aggregate amount of the offering, the filing required under 950 CMR 14.402(B)(13)(p)1.a. shall be filed when the issuer becomes aware that such purchases have met this threshold, and in no event later than 15 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 Director.

2. Renewal Filing. 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 the following with the Director on or before the expiration of the notice filing. A Uniform Notice of Federal Crowdfunding Offering (Form U-CF) designated as “renewal” filing and/or a cover letter or other document requesting renewal of the initial notice filing pursuant to 950 CMR 14.402(B)(13)(p)1.

3. Time of Enforcement. 950 CMR 14.402(B)(13)(p) shall be enforced as of June 1, 2019.

(q) Notice Filing Requirement for Regulation A - Tier 2 Offerings. The following provisions apply to offerings made under Tier 2 of federal Regulation A and Section 3(b) of the Securities Act of 1933 and subject to Section 18(b)(4) of the Securities Act of 1933:

1. Initial Filing. An issuer proposing to offer and sell securities in the Commonwealth in an offering exempt under Tier 2 of federal Regulation A shall file the following with the Director at least 21 calendar days prior to the initial sale in the Commonwealth:

- a. A completed Uniform Notice of Regulation A - Tier 2 Offering form or copies of all documents filed with the Securities and Exchange Commission;
- b. A consent to service of process on Form U-2 if not filing on the Uniform Notice of Regulation A - Tier 2 Offering form;
- c. Form U-2A (if applicable); and
- d. A filing fee of $\frac{1}{20}$ of 1% of the aggregate amount of the offering with a minimum of \$300 and a maximum of \$1500 annually.

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

2. Renewal. For each additional 12-month period in which the same offering is continued, an issuer conducting a Tier 2 offering under federal Regulation A may renew its notice filing by filing with the Director the following on or before the expiration of the notice filing:

- a. The Uniform Notice of Regulation A - Tier 2 Offering form marked “renewal” and/or a cover letter or other document requesting renewal; and
- b. A renewal fee of $\frac{1}{20}$ of 1% of the aggregate amount of the offering with a minimum of \$300 and a maximum of \$1500 annually.

3. Amendment. An issuer may increase the amount of securities offered in the Commonwealth by filing a Uniform Notice of Regulation A - Tier 2 Offering form marked “amendment” or other document describing the transaction. If the amount of securities subject to the notice filing is being increased, the issuer shall submit an additional increment of funds under the formula set out in 950 CMR 14.402(B)(13)(q) 1.d. or 950 CMR 14.402(B)(13)(q)2.b., to cover the increase in the amount of securities to be offered.

4. Time of Enforcement. 950 CMR 14.402(B)(13)(q) shall be enforced as of June 1, 2019.

14.403: Filing of Sales and Advertising Literature

(A) Any person, including a broker-dealer, its agent or an issuer's agent, other than an issuer of a security, must file any sales literature used in connection with the offer or sale of a security in the Commonwealth unless such security is exempt from registration under M.G.L. c. 110A, § 402.

(B) No sales literature used in connection with the offer or sale of a federal covered security or of a security which is a revenue or general obligation security issued or guaranteed by The Commonwealth or any political subdivision thereof or any agency or corporate or other instrumentality of one or more of the foregoing need be filed with the Director.

(C) The term "sales literature" includes any prospectus, pamphlet, circular, form letter, advertisement or other literature or advertising communication addressed or intended for distribution to prospective investors. The term also includes all materials, including materials for internal use, distributed to agents of a broker-dealer during the period when such broker-dealer is obligated to deliver a prospectus under state or federal law, if the contents of such materials may be used in any way in connection with the offer of a particular security.

(D) One copy of each item of sales literature shall be filed with the Director either before or simultaneously with its first use.

14.404: Misleading Filings: (Reserved)

14.405: Unlawful Representations Concerning Registration or Exemptions: (Reserved)

14.406: Administration of Chapter

(A) (1) There is hereby established in the Office of the State Secretary the Securities Division. The Division shall, under the supervision of the Secretary and the Deputy Secretary of the Commonwealth for the Commercial Bureau, administer and enforce the M.G.L. c. 110A and 950 CMR 10.00 through 14.413, and, without limiting the foregoing, may issue written interpretations of M.G.L. c. 110A and 950 CMR 10.00 through 14.413. The head of the Securities Division shall have the title "Director". He shall, subject to the approval of the Secretary and the Deputy Secretary of State for the Commercial Bureau, make, amend and rescind such rules, forms, and orders as are necessary to carry out the statutory policy of M.G.L. c. 110A. The Director is empowered to hear, examine, and investigate matters in accordance with M.G.L. c. 110A. In the absence of the Director, the Deputy Secretary of the Commonwealth for the Commercial Bureau is empowered to take any action allowed to the Director under 950 CMR 10.00 through 14.413.

(A) (2) All writings shall be addressed or delivered to:
Director, Securities Division
Office of the Secretary of the Commonwealth
John W. McCormack Building, 17th Floor
One Ashburton Place
Boston, MA 02108

All writings are deemed "filed" with the Secretary when received in the office of the Director.

(A) (3) Unless otherwise specifically provided by law or 950 CMR 10.00 through 14.413, computation of any time period referred to in M.G.L. c. 110A or 950 CMR 10.00 through 14.413 shall begin with the first day following the act which initiates the running of the time period. The last day of the time period so computed is to be included unless it is a Saturday, Sunday or legal holiday, or another day on which the Division is closed, in which event the period shall run until the end of the next business day. When a time period is less than seven days, intervening days when the Division is closed shall be excluded from the computation.

14.406: continued

- (B) (1) 950 CMR 14.406 applies to all transactions effected by or on behalf of an employee of the Division, including transactions for the accounts of other persons effected by the employee, directly or indirectly, under a power of attorney or otherwise. An employee is considered to have sufficient interest in the securities transactions of his or her spouse or minor child so that such transactions must be reported and are subject to all the terms of 950 CMR 14.406.
- (B) (2) No employee shall effect or cause to be effected any transaction in a security except for *bona fide* investment purposes. 950 CMR 14.406(B)(2) does not apply to securities purchased by an employee prior to the commencement of his or her employment with the Division. Any employee who believes the application of 950 CMR 14.406(B)(2) will result in undue hardship in a particular case may make written application to the Secretary (through his Deputy) setting out, in detail, the reasons for his belief and requesting a waiver.
- (B) (3) No employee shall carry securities on margin. Also, no employee shall borrow funds or securities, with or without collateral, for the purpose of purchasing or carrying securities with the proceeds unless prior approval of the Secretary has been secured.
- (B) (4) No employee shall sell a security which he does not own, or the sale of which is consummated by the delivery of a security borrowed by or for such employee's account.
- (B) (5) No employee shall purchase any security which is the subject of a registration statement filed under M.G.L. c. 110A, § 301 or any security which is exempted from such registration requirement under M.G.L. c. 110A, § 402 and for which the Division receives communication regarding the exemption, for the period from the filing with the Division of such registration statement or claim of exemption to 60 days after the effective date of the registration statement or, in the case of claim of exemption, 60 days after the date of filing.
- (B) (6) No employee shall purchase any security in an offeror or target company after the first communication with the Division regarding the pendency of a takeover bid or during the pendency of a takeover bid subject to the provisions of M.G.L. c.110C. These provisions shall apply for a period of 60 days after said bid is completed, withdrawn, otherwise terminated or reasonably believed not to have been undertaken.
- (B) (7) No employee shall have a beneficial interest in any broker or dealer through ownership of securities or otherwise.
- (B) (8) No employee shall purchase any security which to his knowledge is involved in any pending investigation by the Division or in any proceeding before the Division. Nor shall any employee conduct any business with any respondent (broker, dealer, agent or otherwise) who to his knowledge is involved in any pending investigation by the Division or in any proceeding before the Division.
- (B) (9) No employee shall purchase any securities of any company which is in receivership or for which a petition has been filed under Chapter 10 or Chapter 11 of the Bankruptcy Act.
- (B) (10) Employees shall report every transaction in any security within five business days to the Secretary through the Director of the Securities Division. Other changes in holdings resulting from inheritance or from reclassification, gifts, stock dividends or split ups, for example, shall be reported promptly. In addition, every employee owning securities shall, on or before May 1st of each year, furnish a complete list of all securities held by him, his spouse or minor child, as well as all securities held in a trust or estate of which he is a fiduciary or beneficiary. New employees shall make the foregoing disclosure prior to the commencement of employment with the Division.

14.406: continued

- (B) (11) 950 CMR 14.406(B)(2) and (10) do not apply to personal notes, individual real estate mortgages, U. S. Government Securities and securities issued by building and loan association or cooperatives.
- (B) (12) The Secretary or his designee is authorized to require the disposition of securities acquired as a result of the unintentional violation of the provisions of 950 CMR 14.406(B). Any intentional violation of 950 CMR 14.406(B) shall be reported to the Secretary for appropriate disciplinary action.

14.407: Investigations and Subpoenas

The Director and the Associate Director of the Securities Division are designated as officers who may subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which are deemed relevant or material to the inquiry.

14.407A: Cease and Desist Orders

The Director may afford persons an opportunity to enter into voluntary agreements to cease and desist from certain acts and practices when it appears that such procedure fully safeguards the public interest. All such agreements and orders shall be matters of public record.

14.408: Injunctions (Reserved)

14.409: Criminal Penalties (Reserved)

14.410: Civil Liabilities (Reserved)

14.411: Judicial Review of Orders (Reserved)

14.412: Rules, Forms, Orders, and Hearings

- (A) (1) The forms prescribed for use under M.G.L. c. 110A and 950 CMR 10.00 through 14.413, which are identified and described in 950 CMR 14.412, are hereby incorporated by reference and made a part of 950 CMR 14.000:
 - (a) Uniform Application to Register Securities (Form U-1) (used for registration by coordination and for registration by qualification);
 - (b) Uniform Consent to Service of Process (Form U-2) (used with registration of securities);
 - (c) Uniform Form of Corporate Resolution (Form U-2A) (used with Form U-2);
 - (d) Application for Registration as a Broker-Dealer (SEC Form BD) (used to register as broker-dealer);
 - (e) Uniform Application for Securities and Commodities Industry Representative and/or Agent (Form U-4) (Used to register or transfer agents of Broker-Dealers and representatives of Investment Advisers);
 - (f) Application for Registration or Transfer of Agent of Issuers (Form U-4)) (used to register or transfer issuer-agents);
 - (g) Uniform Termination Notice for Securities Industry Representative and/or Agent (Form U-5) (used to terminate employment of agents and representatives);
 - (h) Termination Notice for Issuer-Agent (Form U-5) (used to terminate employment of issuer-agents);
 - (i) Renewal Form (Form RF) (used to renew broker-dealer, agent, and issuer-agent registration);
 - (j) Notice of Withdrawal from Registration as Broker-Dealer (SEC Form BDW) (used to withdraw or terminate registration as broker-dealer);
 - (k) Small Corporate Offering Registration Form (NASAA Form U-7) (used to register corporate offerings of \$1,000,000 or less);
 - (l) Application for Registration as an Investment Advisor (SEC Form ADV) (used to register as an investment adviser)

14.412: continued

- (m) Notice of Withdrawal from Registration as an Investment Advisor (SEC Form ADV-W) (used to withdraw or terminate registration as an investment advisor);
 - (n) Uniform Investment Company Notice Form (Form NF);
 - (o) Uniform Disciplinary Action Reporting Form (Form U-6);
 - (p) Uniform Notice of Federal G
 - (p) Uniform Notice of Federal Crowdfunding Offering (Form U-CF);
 - (q) Uniform Notice of Regulation A - Tier 2 Offering.
- (Note: Copies of the NASAA multi-state forms may be obtained from the Internet site www.nasaa.org. Users should click the buttons for “Blue Sky Practitioners” and then “Uniform Forms”.)

(A)(2) The forms prescribed in 950 CMR 10.00 through 14.413, except SEC Forms BD, BDW, and Forms U-4 and U-5 may, be obtained on a request addressed to the Division. However, accurate reproductions may be used. SEC Forms BD and BDW may be obtained from the SEC; and Forms U-4 and U-5 from any national securities exchange or from the FINRA. The Division reserves the right to and may issue from time to time revisions or amendments of the forms.

(A)(3) Only an executed copy of any form should be filed.

(A)(4) All forms and documents shall be printed, lithographed, mimeographed, typewritten, or prepared by a photocopying process which, in the opinion of the Director, produces copies suitable for a permanent record. All forms and documents shall be clear, easily readable, and suitable for repeated photocopying. Exhibits may be attached to additional sheets or filed separately. A document filed as an exhibit to a prior application may be incorporated by reference into a subsequent application.

(A)(5) All applications and other documents received and filed with the Division become a part of its permanent record and will not be returned to the applicant or correspondent.

(A)(6) The Director may by order exempt a person, security or transaction from a specific provision of 950 CMR 10.00 through 14.413. 950 CMR 10.00 through 14.413 supersedes any administrative orders, rules, and regulations issued pursuant to M.G.L. c. 110A.

(A)(7) Any Rule requiring compliance with a federal statute, rule or interpretive opinion of the SEC or other administrative agency, incorporates said statute, rule, or interpretive opinion, by reference and makes it a part of 950 CMR 10.00 through 14.413.

(A)(8) Filing fees are not refundable. Fees shall be remitted by check, draft, or money order (but not by personal checks or by cash) payable to the Commonwealth of Massachusetts.

(B) (Reserved)

(C) Unless 950 CMR 10.00 through 14.413 provides otherwise, all financial statements M.G.L. c. 110A and/or 950 CMR 10.00 through 14.413 requires shall be certified and prepared in accordance with generally accepted accounting principles applied on a consistent basis. The Director may, upon the request of the applicant, permit the omission of one or more of the financial statements herein required or the filing in substitution therefor of appropriate financial statements of comparable character. The Director may also require the filing of other financial statements in addition to, or in substitution for, the financial statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any entity or person whose financial statements are required, or whose financial statements are otherwise necessary for the protection of investors.

14.413: Nonpublic Records and Information

Certain records are nonpublic, but any reasonably segregable portion of a record shall be provided to any person requesting such records after deletion of the portions which are considered nonpublic under 950 CMR 14.413. Except for such reasonably segregable portions of records, the Division will generally not publish or make available to any person matters that are listed in 950 CMR 14.143 (A) through (D):

14.413: continued

(A) Investigatory materials necessarily received or compiled out of the public view by employees of the Division, the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest. 950 CMR 14.413(A) restricts the production of such materials which would:

- (1) interfere with enforcement activities undertaken or likely to be undertaken by the Division or any federal, state, local or foreign governmental authority, any professional association, or any securities industry self-regulatory organization;
- (2) deprive a person of a right to a fair trial or an impartial adjudication;
- (3) constitute an unwarranted invasion of personal privacy;
- (4) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, confidential information furnished only by the confidential source;
- (5) disclose investigative techniques and procedures; or
- (6) endanger the life or physical safety of law enforcement personnel.

(B) The term "investigatory materials" as used in 950 CMR 14.413(A) includes, but is not limited to, all documents, records, transcripts, evidentiary materials of any nature, correspondence, related memoranda, or work product concerning any examination, any investigation (whether formal or informal), or any related litigation, which pertains to or may disclose, the possible violation by any person of any provision of any statute, rule, or regulation administered by the Division, by any other federal, state, local or foreign governmental authority, by any professional association, or by any securities industry self-regulatory organization. The term "investigatory materials" also includes all written communications from, or to, any person complaining or otherwise furnishing information respecting such possible violations, as well as all correspondence or memoranda in connection with such complaints or information.

(C) Supplemental materials, filed at the request of the Division, which are deemed to have been filed in confidence or to be confidential at the request of the registrant or person who has filed such materials, including, but not limited to, trade secrets, contracts, commercial information and financial information provided to the Division.

(D) Materials, including, but not limited to, forms, business plans, private placement memoranda, notices and filings made in connection with securities offerings which by the provisions of M.G.L. c. 110A or 950 CMR 14.400 are not permitted for public offering. Such materials shall be nonpublic only so long as the security is being offered in connection with such materials.

REGULATORY AUTHORITY

950 CMR 14.400: M.G.L. c. 110A, § 412(a).