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PERMANENT ADMINISTRATIVE RULES

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I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the
Department of Consumer and Business Services, Finance and Securities Regulation 441

Agency and Division

Administrative Rules Chapter Number

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To become effective Upon filing. Rulemaking Notice was published in the January 2016 Oregon Bulletin.

RULE CAPTION

Technical fixes to the licensing rules for securities brokers and salespersons.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND:

441-175-0002, 441-175-0010, 441-175-0015, 441-175-0020, 441-175-0040, 441-175-0041, 441-175-0046, 441-175-0050, 441-175-0055, 441-175-0060, 441-175-0070, 441-175-0085, 441-175-0100, 441-175-0110, 441-175-0120, 441-175-0130, 441-175-0140, 441-175-0150, 441-175-0160, 441-175-0165, 441-175-0171, 441-175-0175, 441-175-0030

REPEAL:

RENUMBER:

AMEND AND RENUMBER:

Statutory Authority:

ORS 59.165, 59.175, 59.185, 59.235, and 59.285

Other Authority:

Statutes Implemented:

ORS 59.135, 59.175, 59.205, 59.225, 59.235, and 59.720

RULE SUMMARY

This proposed rulemaking is meant to make technical fixes to the securities licensing rules. The proposed rulemaking does not make any substantive changes to the licensing rules. The proposed rules fix outdated references, update language, and generally clarify requirements. The proposed rules are consistent with the intent of Oregon Revised Statute Chapter 59 to ensure licensing of individuals engaged in brokering or selling securities to the public.

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DIVISION 175

LICENSING OF BROKER-DEALERS, INVESTMENT ADVISERS, AND SALESPERSONS

General Provisions

441-175-0002

Fees for Licensing or Notice Filing of Firms and Individuals

Pursuant to ORS 59.175, the director sets the following fees for licensing or notice filing of firms and individuals:

- (1) For a broker-dealer, an initial license fee of \$250 and a renewal license fee of \$250;
- (2) For a state investment adviser, an initial license fee of \$200 and a renewal license fee of \$200;
- (3) For a federal covered investment adviser, an initial notice filing fee of \$200 and a renewal notice filing fee of \$200;
- (4) For a broker-dealer salesperson, an initial license fee of \$60 and a renewal license fee of \$55;
- (5) For an investment adviser representative, an initial license fee of \$50 and a renewal license fee of \$50;
- (6) For an agent of an issuer, an initial license fee of \$50 and a renewal license fee of \$50; and
- (7) For a filing for use of a trade name or an assumed business name, a one time fee of \$50.

Stat. Auth.: ORS 59.175

Stats. Implemented: ORS 59.175

Hist.: FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 8-2010, f. 6-22-10, cert. ef. 7-1-10; FCS 1-2012, f. & cert. ef. 7-9-12

441-175-0010

Definitions

As used in these rules:

- (1) "Associated person" means any partner, officer, director, or branch manager of a broker-dealer, or investment adviser (or any person occupying a similar status or performing similar functions), or any person directly or indirectly controlling or controlled by such broker-dealer, or investment adviser, including any employee of such broker-dealer or investment adviser, except that for the purposes of OAR 441-195-0010, 441-195-0070, 441-205-0140, and 441-205-0210, the term "associated person" shall not include persons whose functions are only clerical or ministerial.
- (2) "CRD" means the Central Registration Depository of the Financial Industry Regulatory Authority, a database maintained by the Financial Industry Regulatory Authority to register broker-dealers and salespersons.
- (3) "The completion of the transaction" means:
 - (a) In the case of a customer who purchases a security through or from a broker-dealer except as provided in subsection (b) of this section, the time when such customer pays the broker-dealer any part of the purchase price, or if payment is effected by a bookkeeping entry, the time when such bookkeeping entry is made by the broker-dealer for any part of the purchase price;
 - (b) In the case of a customer who purchases a security through or from a broker-dealer and who makes payment therefor prior to the time when payment is requested or notification is given that payment is due, the time when such broker-dealer delivers the security to or into the account of such customer;
 - (c) In the case of a customer who sells a security through or to a broker-dealer except as provided in subsection (d) of this section, if the security is not in the custody of the broker-dealer at the time of sale,

the time when the security is delivered to the broker-dealer and, if the security is in the custody of the broker-dealer at the time of sale, the time when the broker-dealer transfers the security from the account of such customer; and

(d) In the case of a customer who sells a security through or to a broker-dealer and who delivers the security to such broker-dealer prior to the time when delivery is requested or notification is given that delivery is due, the time when such broker-dealer makes payment to or into the account of such customer.

(4) "Controlling security holder" means a person who exercises control as defined under ORS 59.015(2) or who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of an issuer.

(5) "Director" means the Director of the Department of Consumer and Business Services.

(6)(a) "Financial Industry Regulatory Authority" or "FINRA" means the self-regulatory organization registered as a national securities association under section 15A of the Securities Exchange Act of 1934, 15 U.S.C. §73o-3, to register and regulate broker-dealers and salespersons and approved by the SEC as a successor to the National Association of Securities Dealers, Inc.

(b) For purposes of ORS 59.025, 59.049, 59.065, 59.175, 59.331, and 59.370, references to the "National Association of Securities Dealers, Inc." or "NASD" shall refer to the Financial Industry Regulatory Authority or FINRA.

(7) "FINRA broker-dealer" means a broker-dealer subject to section 15 of the Securities Exchange Act of 1934, 15 U.S.C. §78o, as amended.

(8) "Form ADV" means the application for registration as an investment adviser under sections 203(c) or 203(g) of the Investment Advisors Act of 1940, 15 U.S.C. § 80b-3, as prescribed by 17 C.F.R. § 279.1, and available at <http://www.sec.gov/divisions/investment/iard/iastuff.shtml>.

(9) "Form BD" means the application for registration as a broker-dealer under the Securities Exchange Act of 1934, 17 U.S.C. §78a et seq., as prescribed by 17 C.F.R. § 249.501, and available at <http://www.sec.gov/about/forms/formbd.pdf>.

(10) "Form U-4" means the Uniform Application for Securities Industry Registration or Transfer, published by FINRA and available at <http://www.finra.org/industry/compliance/registration/crd/filingguidance/p005235>

(11) "Form U-5" means the Uniform Termination Notice for Securities Industry Registration, published by FINRA and available at <http://www.finra.org/industry/compliance/registration/crd/filingguidance/p005235>.

(12) "IARD" means the Investment Adviser Registration Depository maintained by the Financial Industry Regulatory Authority to register investment advisers and investment adviser representatives.

(13) "Independent accountant" means a certified public accountant (CPA) or public accountant (PA), who holds an Oregon permit pursuant to ORS 673.150 or similar permit or license from another state or province.

(14)(a) "Interim financial statement" means a financial statement prepared at a time other than year end. Interim financial statements must be prepared at month end, may be prepared by management, and must include at least a balance sheet and statement of income or operations. (b) The Focus Report filed with the Securities and Exchange Commission, Form X-17A-5 as required by 17 C.F.R. § 240.17a-5 and available at <http://www.sec.gov/about/forms/secforms.htm>, is acceptable as an interim financial statement.

(15) "NASD" means the National Association of Securities Dealers, Inc., the self-regulatory organization previously registered as a national securities association under section 15A of the Securities Exchange Act of 1934, 15 U.S.C. §73o-3, to register and regulate broker-dealers and salespersons and subsequently succeeded by the Financial Institution Regulatory Authority.

(16) "Non-FINRA broker-dealer" means a broker-dealer who is not a member of the Financial Industry Regulatory Authority.

(17) "S-63" means the Uniform Securities Agent State Law Examination published by the North American Securities Administrators Association in January 2010 and made available at <http://www.nasaa.org/industry-resources/exams/study-guides/>.

(18) "S-65" means the Series 65 Uniform Investment Adviser Law Examination published by the North American Securities Administrators Association in 2010 and made available at <http://www.nasaa.org/industry-resources/exams/series-65-66-resources/series-65-study-guide/>.

(19) "S-66" means the Series 66 Uniform Combined State Law Examination published by the North American Securities Administrators Association in January 2010 and made available at <http://www.nasaa.org/industry-resources/exams/study-guides/>.

(20) "SEC" means the United States Securities and Exchange Commission.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.175 & 59.285

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0161; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0065; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 7-2000; f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 9-2003, f. 12-30-03, cert. ef. 1-1-04; FCS 1-2012, f. & cert. ef. 7-9-12

441-175-0015

When Licensing Application Deemed Abandoned

(1) For purposes of this rule, the term "application" includes all documents, information and fees prescribed for the licensing of broker-dealers, state investment advisers, salespersons, or investment adviser representatives under ORS 59.175 and OAR 441, division 175.

(2) An application shall be deemed deficient when:

(a) Insufficient fees have been paid and the director has notified the applicant that fees are insufficient;

(b) Documents required by the rules in OAR 441, division 175 have not been submitted by the applicant; or

(c) Additional information requested by the director as permitted by the rules in OAR 441, division 175 has not been submitted to the director by the applicant.

(3) An application for licensing is deemed abandoned if:

(a) The application has been on file for a minimum of six (6) months;

(b) The application is deficient; and

(c) The applicant has failed to respond to the director's written notice of warning of abandonment within thirty (30) calendar days of the date of warning.

(4) Fees paid in connection with an abandoned licensing application shall not be refunded.

(5) An applicant whose application has been abandoned may reapply by submitting a new application including new fees.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.175

Hist.: FCS 7-2000, f. & cert. ef. 6-2-00; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

441-175-0020

Exclusion from Definition of "Broker-Dealer"

ORS 59.015 excludes from the definition of "broker-dealer" the following persons, provided the person is not otherwise licensed as a broker-dealer, investment adviser, or salesperson:

(1) Any person who effects sales of securities that are exempt under subsection (13) of ORS 59.025 and OAR 441-025-0040.

(2) Any person who is a bona fide officer, director or employee of an issuer whose securities are registered under OAR 441-065-0035, while effecting sales of the securities without special compensation.

(3) Any person, who serves as a dealer manager for an exchange offer of securities which have been registered under OAR 441-065-0035 and who does not perform any active solicitation activities in this state.

(4) Any person who is a licensed Principal Real Estate Broker or Real Estate Broker acting on behalf of that person's Principal Real Estate broker, provided that all of the following conditions are met:

(a) The person is actively licensed with the Oregon Real Estate Commissioner;

(b) The person, with respect to securities subject to the Oregon Securities Law, ORS Chapter 59, only effects transactions in securities that are registered under 59.065, and:

(A) Involve interests in a general or limited partnership, joint venture, cooperative, or unincorporated association, but not a corporation, formed for the purpose of investment in specified real property, including condominium securities; or

(B) Involve resale of those securities described under paragraph (A) of this subsection.

(c) The person complies with the rules of fair practice under OAR 441-175-0050 ; and

(d) The person does not engage exclusively in the management of rental real estate as defined in ORS 696.010.

(5) The director may, by order, as to any person or type of security or sale, withdraw or condition the exclusions allowed under this rule if the action would be in the public interest and would be in accordance with the purposes of the Oregon Securities Law. No person shall be liable under the Oregon Securities Law by reason of the withdrawal of the exclusions allowed under this rule if the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could not have known of such withdrawal.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.175 & 59.720

Hist.: CC 13, f. 9-19-73, ef. 10-5-73; Renumbered from 815-030-0015.1; CC 8-1981, f. 10-27-81, ef. 12-1-81; CC 1-1983, f. & ef. 1-19-83; Renumbered from 815-030-0005; FCS 4-1991, f. & cert. ef. 8-23-91; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94

441-175-0030

Exclusion from Definition of "Investment Adviser"

ORS 59.015 excludes from the definition of "state investment adviser" the following persons, provided the person is not otherwise licensed as a broker-dealer, state investment adviser, mortgage broker, salesperson, or investment adviser representative:

(1) Any person who conducts no public advertising or general solicitation in this state and whose only clients in this state are "accredited investors" as that term is defined in OAR 441-035-0010.

(2) Any person who is a bona fide officer, director or employee of an issuer whose securities are registered under OAR 441-065-0035, while providing advice, analyses, reports or other advisory services regarding the securities without special compensation.

(3) Any person who serves as a dealer manager for an exchange offer of securities which has been registered under OAR 441-065-0035 and who does not perform any active solicitation in this state.

(4) Any person whose advice, analyses or reports relate only to securities exempted by subsection (13) of ORS 59.025 and OAR 441-025-0040.

(5) Any person who is a licensed Principal Real Estate Broker or Real Estate Broker acting on behalf of the Principal Real Estate broker if:

- (a) The person is actively licensed with the Oregon Real Estate Commissioner;
- (b) The person, with respect to securities activities, only renders advice, analyses, reports or other advisory services relating to securities that are registered under ORS 59.065, and:
 - (A) Involve interests in a general or limited partnership, joint venture, cooperative, or unincorporated association, but not a corporation, formed for the purpose of investment in specified real property, including condominium securities; or
 - (B) Involve the resale of those securities described in paragraph (A) of this subsection.
- (c) The person complies with the rules of fair practice under OAR 441-175-0050 ; and
- (d) The person does not engage exclusively in the management of rental real estate as defined in ORS 696.010.
- (6) Any person who acts as a purchaser representative under OAR 441-065-0060 through 441-065-0230 if the activity is merely an incidental part of the person's usual activities or occupation.
- (7) Any person who is licensed as a mortgage banker or mortgage broker under the provisions of ORS 59.840 to 59.965 and whose performance of advisory services relate solely to securities involving real estate paper, whose performance of the advisory services is solely incidental to the person's conduct of business as a mortgage banker or mortgage broker and who receives no special compensation for such services.
- (8) The director may, by order, as to any person or type of security or sale, withdraw or condition the exclusions allowed under this rule if the action would be in the public interest and would be in accordance with the purposes of the Oregon Securities Law. No person shall be liable under the Oregon Securities Law by reason of the withdrawal of the exclusions allowed under this rule if the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could not have known of such withdrawal.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.175 & 59.720

Hist.: CC 13, f. 9-19-73, ef. 10-5-73; Renumbered from 815-030-0015.7; CC 8-1981, f. 10-27-81, ef. 12-1-81; CC 1-1983, f. & ef. 1-19-83; Renumbered from 815-030-0010; FCS 4-1991, f. & cert. ef. 8-23-91; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 7-2000; f. & cert. ef. 6-2-00

441-175-0040

Exclusion from Definition of "Salesperson"

ORS 59.015 excludes from the definition of "salesperson" the following persons, provided the person is not otherwise licensed as a broker-dealer, investment adviser, or salesperson:

- (1) Subject to section (5) of this rule, any person, not otherwise excluded as a "broker-dealer" under ORS 59.015 or OAR 441-175-0020, who represents an excluded person.
- (2) Subject to section (5) of this rule, any person, not otherwise excluded as an "investment adviser" under ORS 59.015) or OAR 441-175-0030, who represents an excluded person.
- (3) Any person who is a bona fide officer, director or employee of an issuer whose securities are registered under OAR 441-065-0035, while effecting sales of the securities without special compensation.
- (4) Any person who serves as a dealer manager for an exchange offer of securities which have been registered under OAR 441-065-0035 and who does not perform any active solicitation in this state.
- (5) Any person who is a real estate broker, acting through or on behalf of a principal real estate broker exempt under OAR 441-175-0020 or 441-175-0030, if :
 - (a) The person is actively licensed with the Oregon Real Estate Commissioner;
 - (b) The person, with respect to securities activities, only acts as a salesperson in connection with securities that are registered under ORS 59.065, and:

- (A) Involve interests in a general or limited partnership, joint venture, cooperative, or unincorporated association, but not a corporation, formed for the purpose of investment in specified real property, including condominium securities; or
- (B) Involve the resale of those securities described in paragraph (A) of this subsection.
- (c) The person complies with the rules of fair practice in OAR 441-175-0050; and
- (d) The person does not engage exclusively in the management of rental real estate as defined in ORS 696.010.
- (6) Any person who acts as a purchaser representative under OAR 441-065-0060 through 441-065-0240 if the activity is merely an incidental part of the person's usual activities or occupation.
- (7) Any person who is compensated by a licensed broker-dealer, or investment adviser on a per capita referral basis without regard to present or future fee or commission income from any customer of the licensed broker-dealer, or investment adviser.
- (8) The director may, by order, as to any person or type of security or sale, withdraw or condition the exclusions allowed under this rule if the action would be in the public interest and would be in accordance with the purposes of the Oregon Securities Law. No person shall be liable under the Oregon Securities Law by reason of the withdrawal of the exclusions allowed under this rule if the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could not have known of such withdrawal.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.175 & 59.720

Hist.: CC 13, f. 9-19-73, ef. 10-5-73; Renumbered from 815-030-0015.12; CC 8-1981, f. 10-27-81, ef. 12-1-81; CC 1-1983, f. & ef. 1-19-83; Renumbered from 815-030-0015; FCS 4-1991, f. & cert. ef. 8-23-91; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 4-2007, f. 10-11-07, cert. ef. 1-1-08

441-175-0041

Exclusion from Definition of "Investment Adviser Representative"

ORS 59.015 excludes from the definition of "investment adviser representative" the following persons, provided that the person is not otherwise licensed as a broker-dealer, federal covered investment adviser, state investment adviser, salesperson or investment adviser representative:

- (1) Any person, not otherwise excluded as a "state investment adviser" under subsection (20)(b) except (20)(b)(l) of ORS 59.015 or OAR 441-175-0030, who represents an excluded person.
- (2) Any person who is compensated by a licensed broker-dealer, federal covered investment adviser or state investment adviser on a per capita referral basis without regard to present or future fee or commission income from any customer of the licensed broker-dealer, federal covered investment adviser or state investment adviser.
- (3) The director may, by order, as to any person or type of activity, withdraw or condition the exclusions allowed under this rule if the action would be in the public interest and would be in accordance with the purposes of the Oregon Securities Law. No person shall be liable under the Oregon Securities Law by reason of the withdrawal of the exclusions allowed under this rule if the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could not have known of such withdrawal.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.175

Hist.: FCS 12-2001, f. 12-27-01, cert. ef. 1-1-02

441-175-0046

Federal Covered Investment Adviser Representative

For purposes of ORS 59.015(8)(a)(B), the term "Investment Advisor Representative" who is employed by or associated with a federal covered investment advisor only includes an individual who has a "place of business," as that term is defined in rules or regulations promulgated under Section 203A of the Investment Advisors Act of 1940 by the U.S. Securities and Exchange Commission, in Oregon, and who either:

(1) Is an Investment Advisor Representative" as that term is defined in rules or regulations promulgated under Section 203A of the Investment Advisors Act of 1940 by the U.S. Securities and Exchange Commission; or

(2)(a) Is not a "supervised person" as that term is defined in rules or regulations promulgated under the Investment Advisor Act of 1940 by the U.S. Securities and Exchange Commission; and

(b) Solicits, offers or negotiates for the sale of or sells investment advisory services on behalf of a federal covered investment advisor.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.175

Hist.: FCS 2-1999, f. & cert. ef. 11-8-99

441-175-0050

Rules of Fair Practice for Real Estate Brokers

Any real estate broker relying on exclusions in OAR 441-175-0020, 441-175-0030 or 441-175-0040 must comply with the following rules of fair practice:

(1) All advertising involving securities registered under ORS 59.065 and OAR chapter 441, division 65 must be filed with the director before the advertising is used.

(2) All customer funds and securities must be segregated from those of the real estate broker, and:

(a) All customer funds must be deposited in a client trust account which is free from all claims, attachment or levy by creditors of the real estate broker; and

(b) All customer securities must be held in trust in a secure depository and the securities must be free from all claims, attachment or levy by creditors of the real estate broker.

(3)(a) The real estate broker must create and maintain the following books and records pertaining to securities activities for a period of six (6) years:

(A) Records of all securities sales and purchases;

(B) Investor information records;

(C) Trust account transactions;

(D) Discretionary account agreements;

(E) Investor complaints and resolution; and

(F) Financial information of the real estate broker.

(4)(a) A real estate broker may not recommend a securities transaction to an investor unless the real estate broker has reviewed the terms of the transaction and has reasonable grounds to believe that the recommendation is suitable for the investor on the basis of information furnished by the investor, after reasonable inquiry is made by the real estate broker, concerning the investor's investment objectives, financial situation and any other information known to and deemed relevant by the real estate broker;

(b) The requirements of subsection (a) of this section, except for the requirement to review the transaction, may be satisfied if the investment in fact is suitable for the particular investor;

(c) A real estate broker who is selling securities registered under OAR 441-065-0060 through 441-065-0240 to "sophisticated purchasers" shall comply with the suitability requirements for such purchasers instead of the requirements of subsection (a) of this section.

(5) The responsibility for supervision of all persons engaged by a real estate broker to effect securities transactions or render advisory services is that of the Principal Real Estate broker. Supervision includes reviewing and authorizing all securities activities engaged in by Real Estate Brokers affiliated with a Principal Real Estate Broker.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS , ORS 59.135 & ORS 59.235

Hist.: CC 6-1981(Temp), f. 10-27-81, ef. 11-2-81; CC 2-1982, f. 1-18-82, ef. 2-1-82; FCS 8-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 7-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-037-0025; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94

441-175-0055

Rules of Fair Practice for Mortgage Banker and Mortgage Broker Licensees

Any mortgage banker or mortgage broker licensed under ORS 59.840 to 59.980 and relying upon exclusion from the definition of "broker-dealer" pursuant to 59.015(1)(h) in connection with the offer and sale of registered offerings of securities involving real estate paper shall comply with the following rules of fair practice:

- (1) Securities Registration: All offerings shall be registered pursuant to the provisions of ORS 59.065 and OAR chapter 441, division 065.
- (2) Salesperson Licensing. All natural persons involved in the offer and sale of securities shall be licensed as issuer salespersons pursuant to the provisions of ORS 59.175 and OAR 441-175-0120. In addition, the employing mortgage banker or mortgage broker must file material amendments to the salesperson license application pursuant to the provisions of 441-175-0105.
- (3) Advertising. All advertising involving the offering must be filed with and accepted by the director prior to its use.
- (4) Supervision: The responsibility for supervision of all persons engaged by a licensee to effect securities transactions is that of the licensee. This supervision includes reviewing and authorizing all securities activities of the licensee's salespersons.
- (5) Investor Funds and Securities: All funds received in connection with an offering must be segregated from those of the licensee, and:
 - (a) All investor funds must be deposited in a client trust account which is free from all claims attachment or levy by creditors of the licensee; and
 - (b) All investor securities must be held in trust in a secure depository and the securities must be free from all claims, attachment or levy by creditors of the licensee.
- (6) Books and Records: The licensee must create and maintain those books and records required in OAR chapter 441, division 865.
- (7) Investor Suitability:
 - (a) A licensee shall not recommend a securities transaction to an investor unless the licensee has reviewed the terms of the transaction and, after reasonable inquiry by the licensee, the licensee has reasonable grounds to believe that the recommendation is suitable for the investor on the basis of:
 - (A) Information furnished by the investor (including the investor's investment objectives and financial situation); and
 - (B) Any other relevant information known to the licensee.
 - (b) The requirements of subsection (a) of this section, except for the requirement to review the terms of the transaction, may be satisfied if the investment is in fact suitable for the particular investor;
 - (c) Specific investor suitability requirements established pursuant to rule or order of the director shall take precedence over the general investor suitability requirements of subsection (a) of this section.

Stat. Auth.: ORS 59.235 & 59.285
Stats. Implemented: ORS 59.135 & 59.175
Hist.: FCS 7-1994, f. & cert. ef. 5-13-94; FCS 9-2003, f. 12-30-03, cert. ef. 1-1-04

441-175-0060

Licensing Rule Implementing, 1997 Oregon Laws Chapter 772 and the National Securities Markets Improvement Act of 1996

- (1) A FINRA broker dealer is not required to comply with the corporate surety bond, irrevocable letter of credit or net capital requirements for licensing in this state as described in OAR 441-175-0080 or 441-175-0110.
- (2)(a) A federal covered investment adviser that makes a notice filing under ORS 59.165(7) and section (4) of this rule does not have to comply with OAR 441-175-0100 and 441-175-0110.
- (b) A state investment adviser who has a principal place of business in a state other than this state and complies with that state's bonding or net capital requirements is not required to comply with the corporate surety bond, irrevocable letter of credit or net capital requirements for licensing in this state in OAR 441-175-0100 and 441-175-0110.
- (c) An out-of-state state investment adviser that is not exempt under the "de minimis" exemption of ORS 59.015(20)(b)(J) must license in this state and can only operate in this state through an investment adviser representative licensed in this state.
- (3) Surety bonds currently in effect in Oregon filed by a broker-dealer, federal covered investment adviser or out-of-state state investment adviser that no longer has to file a bond or letter of credit under ORS 59.175 and this rule shall continue in effect until canceled. However, the liability on the bond or letter of credit continues for six years following its cancellation.
- (4)(a) Notice filing by a federal covered investment adviser will be accepted by the director through IARD using a Form ADV and shall include the fee required by OAR 441-175-0002.
- (b) The renewal of the notice filing for a federal covered investment adviser will be accepted by the director through IARD and shall include the fee required under OAR 441-175-0002.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 59.165 & 59.285
Stats. Implemented: ORS 59.165
Hist.: CC 1-1987, f. & ef. 2-4-87; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 9-1987(Temp), f. & ef. 10-9-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0067; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 2-1998, f. & cert. ef. 4-30-98; FCS 4-1998, f. & cert. ef. 8-5-98; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 1-2012, f. & cert. ef. 7-9-12

441-175-0070

General Licensing Rules for Broker-Dealers, Investment Advisers and Salespersons, Succession and Acquisition

- (1) Incomplete applications will not be processed.
- (2) When all documents and fees have been submitted and reviewed by the director, a license for the broker-dealer or investment adviser, which may be conditioned or restricted under OAR 441-225-0030, shall be issued unless the director determines that licensing should be denied on one or more grounds set forth in ORS 59.205 to 59.225.
- (3) Licensees conducting business under any name other than the name in which their license is issued by the director shall comply with OAR 441-175-0171.

(4) Licenses of non-FINRA broker-dealers or state investment advisers expire one year after the date of initial licensing, except licenses of state investment advisers that license through IARD will expire on December 31 of each year. The licensee may renew its license as provided in ORS 59.185 and OAR 441-175-0165.

(5) Licenses of FINRA broker-dealers expire December 31 of each year. The licensee may renew its license as provided in ORS 59.185 and OAR 441-175-0160.

(6) Any amendments to an application or license shall be filed in accordance with the provisions of OAR 441-175-0105.

(7)(a) If any person not licensed in the State of Oregon succeeds to the business and continues the business of a person licensed in Oregon, a new application must be filed. However, the license of the predecessor and predecessor salespersons or investment adviser representatives shall remain effective as the license of the successors for a period of 75 days after the succession, if a completed application is received by the director within 30 days of the succession. The salespersons or investment adviser representatives to the predecessor who were licensed in Oregon at the time of the acquisition will be licensed to the successor when the new license is issued. A new license will be issued reflecting the date of succession and a new effective date. There will be no charge for the transfer of salespersons' or investment adviser representatives' licenses from the predecessor to the successor;

(b) A Form BD or ADV filed by a person that is not licensed when such form is filed and which succeeds to and continues the business of a person licensed in the state of Oregon shall be deemed an application for licensing filed by that predecessor and adopted by the successor, even though designated as an amendment, if filed within 30 days of the succession and the succession is based on a change in the predecessor's date or state of incorporation, form or organization, or change in composition of a partnership and the amendment is filed to reflect these changes.

(8) If a broker-dealer or state investment adviser who is licensed in the State of Oregon is acquired by another person licensed in the State of Oregon, there will be no additional licensing requirements. However, the acquiring party must submit an amended Form BD, or Form ADV pursuant to OAR 441-175-0105. There will be no charge for the transfer of salespersons' or investment adviser representatives' licenses from the predecessor to the successor.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 59.175, & 59.285

Stats. Implemented: ORS 59.165, 59.175& 59.285

Hist.: FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0067.1; FCS 3-1989, f. & cert. ef. 2-1-89; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 8-1994, f. & cert. ef. 6-1-94; FCS 7-2000; f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 1-2012, f. & cert. ef. 7-9-12

441-175-0085

Limited Licensing of Canadian Broker-Dealers and Salespersons

(1) A broker-dealer that is resident in Canada and has no office or other physical presence in this state may, provided the broker-dealer is licensed in accordance with this rule, effect transactions in securities with or for, or induce or attempt to induce the purchase or sale of any security by,

(a) A person from Canada who is temporarily resident in this state, with whom the Canadian broker-dealer had a bona fide broker-dealer-client relationship before the person entered the United States; or

(b) A person from Canada who is resident in this state, whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor.

(2) A salesperson who will be representing a Canadian broker-dealer licensed under this rule may, provided the agent is licensed in accordance with this rule, effect transactions in securities in this state as permitted for the broker-dealer in section (1) of this rule.

(3) A Canadian broker-dealer may license under this rule provided that it:

- (a) Files an application in the form required by the jurisdiction in which it has its head office;
 - (b) Is registered as a broker or dealer in good standing in the jurisdiction from which it is effecting transactions in this state and files evidence thereof; and
 - (c) Is a member of a self-regulatory organization or stock exchange in Canada.
- (4) A salesperson who will be representing a Canadian broker-dealer licensed under this rule in effecting transactions in securities in this state may license under this rule provided that he or she:
- (a) Files an application in the form required by the jurisdiction in which the broker-dealer has its head office; and
 - (b) Is registered in good standing in the jurisdiction from which he or she is effecting transactions into this state and files evidence thereof.
- (5) If no denial order is in effect and no proceeding is pending under ORS 59.205, licensing becomes effective on the 30th day after an application is filed, unless earlier made effective, and expires on December 31 of every year.
- (6) A Canadian broker-dealer licensed under this rule shall:
- (a) Maintain its provincial or territorial registration and its membership in a self-regulatory organization or stock exchange in good standing;
 - (b) Provide the director upon request with its books and records relating to its business in this state as a broker-dealer;
 - (c) Inform the director forthwith of any criminal action taken against it or of any finding or sanction imposed on the broker-dealer as a result of any self-regulatory or regulatory action involving fraud, theft, deceit, misrepresentation or similar conduct; and disclose to its clients in the state that the broker-dealer and its salespersons are not subject to the full regulatory provisions in the Oregon Securities Law.
- (7) A salesperson of a Canadian broker-dealer licensed under this rule shall:
- (a) Maintain his or her provincial or territorial registration in good standing;
 - (b) Inform the director forthwith of any criminal action, taken against him or her, or of any finding or sanction imposed on the salesperson as a result of any self-regulatory or regulatory action involving fraud, theft, misrepresentation or similar conduct.
- (8)(a) Renewal applications for Canadian broker-dealers and salespersons under this rule must be filed by January 1 of each calendar year following the date of original licensing.
- (b) Renewal applications may be made by filing the most recent renewal application, if any, filed in the jurisdiction in which the broker-dealer has its head office, or if no such renewal application is required, the most recent application filed pursuant to subsection (3)(a) or (4)(a) of this rule.
- (9) Every applicant for licensing or renewal licensing under this rule shall pay the applicable non-refundable fee for broker-dealers and agents as set in OAR 441-175-0002.
- (10) A Canadian broker-dealer or salesperson licensed under this rule may only effect transactions in this state as permitted in sections (1) or (2) of this rule with or through:
- (a) The issuers of the securities involved in the transactions;
 - (b) Other broker-dealers;
 - (c) Banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or
 - (d) As otherwise permitted pursuant to the Oregon Securities Law.
- (11) A Canadian broker-dealer or agent licensed under this rule and acting in accordance with the limitations set out in section (10) is exempt from all of the requirements of the Oregon Securities Law,

except the anti-fraud provisions and the requirements set out in this rule. Such Canadian broker-dealer or salesperson may only have its notice filing under this rule denied, suspended or revoked for a breach of the anti-fraud provisions in ORS 59.135 or the requirements in this rule.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.175

Hist.: FCS 5-2001, f. & cert. ef. 6-7-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

441-175-0100

Applications for Licensing of Investment Advisers

(1) An applicant for licensing as a state investment adviser must apply through the IARD and the director.

(2) An applicant must submit to the IARD:

(a) A completed Form ADV, including Parts 1 and 2 of Form ADV;

(b) An investment adviser licensing fee as required by OAR 441-175-0002;

(c) At least one completed Form U-4. All licensed state investment advisers must have at least one representative licensed continuously throughout the licensing period of the investment adviser; and

(d) A licensing fee for each investment adviser representative as required by OAR 441-175-0002.

(3) An applicant must submit To the director:

(a) A surety bond or letter of credit under OAR 441-175-0110 if the person is an Oregon based state investment adviser applicant;

(b) The name of the designated compliance person or persons on the Form ADV. A notice of change in the designated compliance person must be filed with the director within 30 days following the change;

(c) A copy of any proposed client contracts if the applicant is an Oregon based state investment adviser;

(d) A copy of a current balance sheet; and

(e) Any form or portion of any form which cannot be submitted through the IARD.

(4) An Oregon based investment adviser applicant who has custody or possession of a client's funds or securities or requires payment of advisory fees six months or more in advance and in excess of \$500 per client must file with the director financial statements as defined in OAR 441-011-0040 and prepared by an "independent accountant" as defined in 441-175-0010(13) as follows:

(a) If the applicant has been in operation for more than two years, and the application is made less than 90 days after the end of the applicant's fiscal year, the applicant must provide financial statement for the two most recent fiscal years, not including the most recently completed fiscal year.

(b) If the applicant has been in operation for less than two years, the applicant must provide financial statements for the periods of operation.

(c) If the year-end financial statements are dated more than 90 days from the date of the completed application, the applicant must provide interim financial statements that were completed within 90 days of the application.

(5) All applicants must comply with the provisions of OAR 441-175-0070.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 59.175& 59.285

Stats. Implemented: ORS 59.175

Hist.: FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0067.4; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 8-1994, f. & cert. ef. 6-1-94; FCS 7-2000; f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03

thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 8-2010, f. 6-22-10, cert. ef. 7-1-10; FCS 1-2012, f. & cert. ef. 7-9-12

441-175-0110

Surety Bond; Letter of Credit

(1) Every applicant for a license as an Oregon based state investment adviser, must file with the director a surety bond as specified in section (4) of this rule or a letter of credit as specified in section (5) of this rule.

(2) Every person licensed as an Oregon based state investment adviser must maintain a surety bond as specified in section (4) of this rule or a letter of credit as specified in section (5) of this rule during the period of licensing and for at least six years after the person ceases to be licensed as an Oregon based state investment adviser.

(3) In no less than six years after a person ceases to be required to maintain a surety bond or a letter of credit, the person may apply to the director for release of the surety bond or letter of credit. Unless the director determines that claims are pending against the person for violation of the Oregon Securities Law, the director shall release the surety bond or letter of credit.

(4) A surety bond shall be in a form and on terms approved by the director in the sum of \$10,000 from a corporation authorized by the director to transact insurance in the State of Oregon.

(5) A letter of credit shall be in the form and on terms approved by the director in the sum of \$10,000 from a financial institution authorized to transact banking business in the State of Oregon.

Stat. Auth.: ORS 59.175

Stats. Implemented: ORS 59.175& ORS 59.225

Hist.: CC 1-1987, f. & ef. 2-4-87; FCS 1-1987(Temp), f. & ef. 8-7-87; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 3-1988, f. 2-2-88, cert. ef. 2-3-88; Renumbered from 815-030-0068; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 7-2000; f. & cert. ef. 6-2-00

441-175-0120

Licensing of Salespersons or Representatives to Non-FINRA Broker-Dealers, State or Federal Covered Investment Advisers, Issuers and Owners of Securities

(1) For purposes of ORS 59.175, all salespersons or investment adviser representatives, except salespersons desiring to work for a FINRA broker-dealer, must be licensed as provided in this rule.

(2) A non-FINRA broker-dealer, an issuer, or an owner of securities must submit to the director a complete application to license a salesperson including:

(a) A completed Form U-4 or an alternate form approved by the director;

(b) A licensing fee for each salesperson as set in OAR 441-175-0002;

(c) Official notice of a passing score of the appropriate examinations under section (5), if required for licensing under this rule; and

(d) If employed by more than one broker-dealer or state or federal covered investment adviser, an undertaking required in section (10) of this rule.

(3) A state or federal covered investment adviser must submit a complete application to the CRD if the CRD is capable of accepting the application and if the CRD cannot accept the documentation it must be submitted to the director. An application must contain the following:

(a) A completed Form U-4 or an alternate form approved by the director;

(b) A licensing fee for each investment adviser representative as set in OAR 441-175-0002;

(c) Official notice of a passing score on the appropriate examination, if required for licensing under section (6) of this rule; and

(d) If employed by more than one broker-dealer or state or federal covered investment adviser, an undertaking required in section (10) of this rule.

(4) The following salespersons or investment adviser representatives are exempt from the examination requirements of section (5) or (6) of this rule:

(a) Salespersons or investment adviser representatives who have been licensed at any time in Oregon during the two years immediately prior to filing an application for licensing and whose current application is for the same type of license;

(b) Salespersons licensed to an issuer or owner of securities where the securities have been registered under ORS 59.065 and OAR chapter 441, division 65; and

(c) Salespersons or investment adviser representatives who have been licensed at any time in any jurisdiction during the two years immediately prior to filing an application for licensing in Oregon. For salespersons, this exemption is limited to the extent a salesperson has previously taken and passed the examinations required by section (5) of this rule.

(d) Salespersons that have received a waiver from FINRA under Rule 9600, as in effect on the effective date of this rule.

(5) A salesperson to a non-FINRA broker-dealer, or an issuer or owner of securities, who is not exempt from the examination requirements under section (4) of this rule is required to pass the S-63 examination. In addition, a salesperson is required to pass the specific examination which corresponds to the salesperson's authorized sales activity.:

(6)(a) An investment adviser representative to a state or federal covered investment adviser, who is not exempt from the examination requirements under section (4) or subsection (6)(b) of this rule, is required to pass the examinations in one of the following paragraphs:

(A) If the applicant has passed the FINRA S-7 General Securities Representative Qualification examination, then either the S-65 examination if taken prior to January 1, 2000 or the S-66 examination if taken after January 1, 2000; or

(B) The S-65 examination if taken after January 1, 2000.

(b) The examinations in subsection (6)(a) shall be waived for an individual who currently holds one of the following professional designations:

(A) Chartered Financial Analyst (CFA) granted by the Association for Investment Management and Research;

(B) Certified Financial Planner (CFP) issued by the Certified Financial Planner Board of Standards, Inc.;

(C) Chartered Financial Consultant (ChFC) awarded by The American College, Bryn Mawr, Pennsylvania;

(D) Chartered Investment Counselor (CIC) granted by the Investment Counsel Association of America;

(E) Personal Financial Specialist (PFS) administered by the American Institute of Certified Public Accountants; or

(F) Such other professional designation as the director may by order recognize.

(7) Limited licensed salespersons or investment adviser representatives may only effect transactions in or provide investment advice concerning securities for which their license is issued.

(8) Alternate equivalent examinations will be considered upon a written request to the director, stating the examination to be replaced, the type of examination, and the material covered in the alternate examination. Examinations which have been replaced by a new examination will be accepted as an alternate equivalent examination without written request.

(9) Waiver of the examination requirement will be considered upon a written request to the director. Waivers will be limited to applications showing a minimum of three continuous years of securities related activity immediately prior to the application and a pre-existing business relationship with a person who is now in this state.

(10)(a) A person may be licensed simultaneously in this state as a salesperson with more than one broker-dealer or as an investment adviser representative with a state or federal covered investment adviser if all employers enter into an undertaking on a form approved by the director. The undertaking shall contain the following provisions:

(A) The effective date of the salesperson's or investment adviser representative's employment with the respective employers;

(B) Consent by each employer to the employment of the salesperson or investment adviser representative by all other employers;

(C) An agreement by each employer to assume joint and several liability with all other employers for any act or omission of the person during the period of employment which violates the Oregon Securities Law. This agreement will continue until written notice is given to the director of the termination of the employment relationship; and

(D) An agreement that each employer will license the salesperson or investment adviser representative with the director and pay the applicable fees.

(b) No undertaking is required where:

(A) The salesperson is employed by one or more issuers registered under the Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq, under common management or control; or

(B) The employer, a single entity, is licensed or has filed notice in Oregon as both a broker-dealer and a state or federal covered investment adviser.

(c) Any changes in employment by a salesperson or investment adviser representative which would result in requiring an undertaking or changing the existing undertaking must be immediately filed on a new undertaking form with the director.

(11) Where a salesperson desires to work for an issuer or owner of securities:

(a) The salesperson must be a bona fide officer, director or employee of the issuer or owner. No salesperson may be licensed to more than one issuer or owner of securities simultaneously. No person described in this subsection may be licensed to another issuer or owner of securities until two years from the date of the original licensing or last renewal of the prior offering. However, salespersons licensed to a single issuer to sell a continuing issue may be renewed. A waiver of this subsection may be requested from the director as provided in OAR 441-011-0020;

(b) Persons not otherwise licensed, who are selling securities of an issuer for which notice has been filed under ORS 59.049 do not have to meet the requirements of subsection (a) of this section.

(12) Once the requirements of this rule are met, the director shall issue a license, which may be conditioned or restricted under OAR 441-225-0030, for the salesperson or investment adviser representative unless the director determines that licensing should be denied on one or more grounds as set forth in ORS 59.205 to 59.225.

(13) If the application, the undertaking, any supporting material or any representations made to the director are inaccurate or incomplete in any material respect, the license shall be void.

(14) A salesperson or investment adviser representative license issued pursuant to this rule automatically expires without further action of the director as follows:

(a) The license of an issuer's or owner's salesperson expires when the securities are no longer authorized for sale;

(b) The license of every salesperson or investment adviser representative licensed to a broker-dealer or state or federal covered investment adviser expires on the same date that the license of the broker-dealer or state investment adviser or the notice filing of the federal covered investment adviser expires.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 59.175

Stats. Implemented: ORS 59.165 & 59.175

Hist.: CC 13, f. 9-19-73, ef. 10-1-73; CC 16, f. 5-13-74, ef. 6-11-74; Renumbered from 815-030-0165.2; CC 9-1986(Temp), f. & ef. 1-16-86; CC 1-1987, f. & ef. 2-4-87; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0070; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 5-1999, f. & cert. ef. 12-23-99; FCS 13-2000, f. & cert. ef. 11-6-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 1-2012, f. & cert. ef. 7-9-12; FCS 5-2013, f. & cert. ef. 11-15-13

441-175-0130

Licensing of Salespersons to FINRA Broker-Dealers

(1) For purposes of ORS 59.175, all FINRA salespersons will be eligible for automatic licensing as provided in this rule if:

(a) The salesperson is licensed by the FINRA to a broker-dealer who is a member in good standing of the FINRA;

(b) The salesperson is employed by a broker-dealer who is licensed in Oregon under ORS 59.175;

(c) An application to license the salesperson has been submitted to the CRD by the employer as provided in this rule;

(d) The salesperson has filed with the director an undertaking as required in section (8) of this rule, if applicable; and

(e) The salesperson is not disqualified under OAR 441-175-0140.

(2) The employing broker-dealer must submit an application to license a salesperson in Oregon to the CRD including:

(a) A completed Form U-4;

(b) A salesperson licensing fee for each salesperson as set in OAR 441-175-0002; and

(c) Official notice of a passing score of the appropriate examination as required for licensing under section (4) of this rule.

(3) The following salespersons are exempt from the examination requirements of section (4) of this rule:

(a) Salespersons licensed in Oregon at any time during the two years immediately prior to filing an application. The application must be for the same type of license; or

(b) Salespersons licensed in any jurisdiction at any time during the two years immediately prior to filing an application for licensing in Oregon. This exemption is limited to the extent a person has previously taken and passed the examinations required by section (4) of this rule.

(c) Salespersons that have received a waiver from FINRA under Rule 9600, as in effect on the effective date of this rule.

(4) A salesperson who is not exempt from the examination requirements under section (3) of this rule is required to pass the S-63 examination. In addition to the S-63 examination, a salesperson is required to pass the specific examination which corresponds to the salesperson's authorized sales activity.:

(5) Limited licensed salespersons may only effect transactions in securities for which their license is issued.

(6) Alternate equivalent examinations will be considered upon a written request to the director, stating the examination to be replaced, the type of examination and the material covered in the alternate examination. Examinations which have been replaced by a new examination will be accepted as an alternate equivalent examination without written request.

(7) Waiver of the examination requirement will be considered upon a written request to the director. Waivers will be limited to applications showing a minimum of three continuous years of securities-related activity immediately prior to the application and a pre-existing business relationship with a person who is now in this state.

(8)(a) A person may be licensed simultaneously in Oregon as a salesperson with more than one broker-dealer, mortgage banker, mortgage broker, or investment adviser if all employers enter into an undertaking on a form provided by the director. The undertaking shall contain the following provisions:

(A) The effective date of the salesperson's employment with the respective employers;

(B) Consent by each employer to the employment of the salesperson by all other employers;

(C) An agreement by each employer to assume joint and several liability with all other employers for any act or omission of the salesperson during the period of employment which violates the Oregon Securities Law. This agreement will continue until written notice is given to the director of the termination of the employment relationship; and

(D) An agreement that each employer will license the salesperson with the director and pay the applicable fees.

(b) No undertaking is required where the employer, a single entity, is licensed in Oregon as both a broker-dealer and an investment adviser; and

(c) Any changes in employment by a salesperson which would result in requiring an undertaking or changing the existing undertaking must be immediately filed on a new undertaking form with the director.

(9) Unless disqualified for automatic licensing in Oregon under OAR 441-175-0140, the salesperson will be automatically licensed in Oregon upon meeting the requirements as stated in this rule.

(10) If automatic licensing occurs, the effective date of licensing in Oregon will be the Oregon approved date as shown on the CRD.

(11) If the salesperson is disqualified from automatic licensing under OAR 441-175-0140, the director will either approve the application, condition or restrict the license under 441-225-0030, or deny it under ORS 59.205 to 59.225. If the director denies the application, the salesperson will be notified of the facts forming the basis for the denial, the statutory grounds for the denial and the person's right to a hearing under ORS chapter 183.

(12) A salesperson licensed under this rule is licensed in Oregon only for the same classification for which the salesperson is licensed with FINRA.

(13) If the application, the undertaking, any supporting material or any representations made to the director are inaccurate or incomplete in any material respect, the license shall be void.

(14) The license for an FINRA salesperson expires on December 31 of each year. The FINRA broker-dealer shall renew the salesperson's license as provided in ORS 59.185 and OAR 441-175-0160.

[ED. NOTE: Forms referenced available from the agency.]

Stat. Auth.: ORS 59.175 & 59.285

Stats. Implemented: ORS 59.165 & 59.175

Hist.: CC 4-1986(Temp), f. & ef. 1-16-86; CC 1-1987, f. & ef. 2-4-87; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0071; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; Administrative correction 12-4-97; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 9-2003, f. 12-30-03, cert. ef. 1-1-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 1-2012, f. & cert. ef. 7-9-12

441-175-0140

Disqualification from Automatic Licensing

(1) For purposes of this rule, principal means a person who is engaged in the management of an enterprise including supervision, solicitation, conduct of the enterprise, or training of persons associated

with the enterprise. Principal includes sole proprietors, officers, partners, directors, and persons owning ten percent or more of the outstanding voting securities of the enterprise or of a control person of the enterprise.

(2) A person is not qualified for automatic licensing if the person:

(a) Has been a principal of a broker-dealer or state or federal covered investment adviser which has had its license or notice denied, suspended or revoked by the director;

(b) Has had a license or notice suspended or revoked by the director or a previous application for license denied by the director;

(c) Has been convicted of or pleaded guilty or no contest to any felony;

(d) Has been convicted of or pleaded guilty or no contest to any misdemeanor involving investments or an investment-related business, fraud, false statements or omissions, wrongful taking of property or bribery, counterfeiting, extortion or gambling;

(e) Has been charged, either individually or as a member of an enterprise in which the person was a principal, with any felony or with a misdemeanor specified in subsection (d) of this section;

(f) Has been enjoined by a court in connection with any investment-related activity or has been found by a court to have violated investment-related statutes or regulations;

(g) Has been found by the Securities and Exchange Commission or the Commodity Futures Trading Commission:

(A) To have made a false statement or omission;

(B) To have violated investment-related statutes or regulations; or

(C) To have been a cause of an investment-related enterprise having its authorization to do business denied, suspended, revoked, or restricted.

(h) Has been the subject of an order by the Securities and Exchange Commission or the Commodity Futures Trading Commission denying, suspending, or revoking a registration or restricting activities;

(i) Has been found by any federal or state regulatory agency:

(A) To have made a false statement or omission or to have been dishonest, unfair, or unethical;

(B) To have violated investment-related statutes or regulations; or

(C) To have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted.

(j) Has been the subject of an order by any federal or state agency in connection with any investment-related activity;

(k) Has had any federal or state agency deny, suspend, or revoke a registration, license or notice or otherwise prevent the person from associating with an investment-related business or otherwise discipline the person by restriction of activities;

(l) Has had any federal or state agency revoke or suspend a professional license as an attorney, accountant, or public contractor;

(m) Has been found by any self-regulatory organization or commodities exchange:

(A) To have made a false statement or omissions;

(B) To have violated the rules of the self-regulatory organization or commodities exchange; or

(C) To have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted.

(n) Has been disciplined by expulsion or suspension from membership of any self-regulatory organization or commodities exchange;

- (o) Has been barred or suspended from association with a member of a self-regulatory organization or commodities exchange;
- (p) Has had activities restricted by any self-regulatory organization or commodities exchange;
- (q) Has been the subject of an order issued by a foreign government, court, regulatory agency, or exchange relating to investments or fraud;
- (r) Has been the subject of an investment-related complaint or proceeding initiated by a consumer which:
 - (A) Resulted in an arbitration award or civil judgment against the appellant regardless of the amount, alleged sales practices violations which is still pending, or was settled for an amount of \$10,000 or more; or
 - (B) Was settled or decided against the person individually or as part of a group for \$10,000 or more; or
 - (C) Within the past 24 months, alleged sales practices violations and compensatory damages of \$5,000 or more, or alleged forgery, theft, misappropriation or conversion of funds or securities.
- (s) Is the subject of any complaint, investigation, or proceeding specified in subsections (2)(a) through (r) of this rule;
- (t) Has been denied a securities-related bond or similar instrument, has had such a bond or similar instrument revoked, or has been the cause for payout on such a bond or similar instrument;
- (u) Has any unsatisfied judgments or liens against the person;
- (v) Has failed in business, made a compromise with creditors, filed a bankruptcy petition, or been declared bankrupt;
- (w) Has been a principal of a firm which failed in business, made a compromise with creditors, filed a bankruptcy petition, was declared bankrupt, had a trustee appointed under the Securities Investors Protection Act, or had a direct payment procedure initiated; or
- (x) Has been discharged or permitted to resign based on allegations of:
 - (A) Violations of investment-related statutes, regulations, rules, or investment industry standards of conduct;
 - (B) Fraud or the wrongful taking of property; or
 - (C) Failure to supervise in connection with investment-related statutes, regulations, rules, or investment industry standards of conduct.

Stat. Auth.: ORS 59.175 & ORS 59.285

Stats. Implemented: ORS 59.175 & ORS 59.205

Hist.: CC 5-1986(Temp), f. & ef. 1-16-86; CC 1-1987, f. & ef. 2-4-87; Renumbered from 815-030-0072; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 7-2000; f. & cert. ef. 6-2-00

441-175-0150

Termination or Cancellation of Salesperson or Investment Adviser Representative License

- (1) A salesperson's or investment adviser representative's license with a broker-dealer, state or federal covered investment adviser, issuer or owner, ("employer"), may be terminated at any time by either the salesperson or investment adviser representative, or the employer.
- (2) The employer shall provide the director and the terminated person with written notice of the termination on a Form U-5 within 30 days of the termination, accurately describing the reason for the termination under ORS 59.370(2). The notice shall be filed as follows:
 - (a) If the employer is a FINRA broker-dealer, the notice shall be filed with the CRD;
 - (b) If the employer is a state or federal covered investment adviser and the investment adviser representative's application was filed through IARD, the notice shall be filed with IARD;

(c) All other employers shall file the notice with the director.

(3) The salesperson or investment adviser representative may provide the director and the former employer with written notice of the termination in any form at any time.

(4) The status of the license of a salesperson or investment adviser representative licensed under OAR chapter 441, division 175 is dependent upon the status of the employer. Therefore, without further action by the director:

(a) The suspension of the license or notice of the employer suspends the license of the salesperson or investment adviser representative, however, the end of suspension of the license or notice of the employer automatically reinstates the license of the salesperson or investment adviser representative;

(b) The revocation, cancellation, withdrawal or expiration of the license or notice of the employer cancels the license of the salesperson or investment adviser representative;

(c) The suspension of the registration of securities suspends the license of the salesperson licensed to the issuer or owner of the securities; and

(d) The revocation, cancellation, withdrawal or expiration of the registration of securities cancels the license of the salesperson licensed to the issuer or owner of the securities.

(5) Under OAR 441-014-0060, the director may immediately suspend or refuse to renew a salesperson or investment adviser representative license, without prior opportunity for a hearing, upon a showing of a danger to the public health or safety; however, the affected party shall be entitled to a post-action hearing.

Stat. Auth.: ORS 59.175, 59.185 & 59.285

Stats. Implemented: ORS 59.175, 59.185 & 59.225

Hist.: CC 6-1986(Temp), f. & ef. 1-16-86; CC 1-1987, f. & ef. 2-4-87; Renumbered from 815-030-0073; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 7-2000; f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 12-2001, f. 12-27-01, cert. ef. 1-1-02; FCS 1-2012, f. & cert. ef. 7-9-12

441-175-0160

Renewal of FINRA Broker-Dealer and Salesperson Licenses

(1) The licenses of a FINRA broker-dealer and all affiliated salespersons expire on December 31, unless otherwise renewed according to this rule.

(2) To renew a license, a FINRA broker-dealer must submit the following items to the FINRA/CRD:

(a) A broker-dealer renewal fee as set in OAR 441-175-0002; and

(b) A salesperson renewal fee as set in OAR 441-175-0002 for each salesperson to be renewed.

(3) Failure to file a complete renewal application prior to December 31 shall result in termination of the broker-dealer license and all affiliated salesperson licenses as of December 31.

(4) If a FINRA broker-dealer satisfies the director that failure to file a complete renewal application prior to December 31 was due to inadvertent oversight and, the FINRA broker-dealer does complete the renewal application by January 31, the director shall reinstate the effected licenses.

Stat. Auth.: ORS 59.185 & 59.285

Stats. Implemented: ORS 59.185

Hist.: CC 7-1986(Temp), f. & ef. 1-16-86; CC 1-1987, f. & ef. 2-4-87; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0074; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; Administrative Correction 12-4-97; FCS 7-2000; f. & cert. ef. 6-2-00; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 1-2012, f. & cert. ef. 7-9-12

441-175-0165

Renewal of the Licenses of Non-FINRA Broker-Dealers or State Investment Advisers, and Their Salespersons or Investment Adviser Representatives

(1)(a) The licenses of a non-FINRA broker-dealer or state investment adviser (employer), and the licenses of their salespersons or investment adviser representatives, expire 12 months following the date of original licensing or last renewal of the license of the employer unless otherwise renewed according to this rule.

(b) Notwithstanding subsection (a), if a state investment adviser or investment adviser representative applies through the CRD/IARD that license expires on December 31 of each year unless renewed through the CRD/IARD.

(2) Incomplete applications will not be processed.

(3) To renew a license, a state or federal covered investment adviser which has previously licensed through IARD must submit the following items to the IARD, to the extent the IARD is capable of accepting those items, and otherwise to the director:

(a) An employer renewal fee as set in OAR 441-175-0002;

(b) A renewal fee as set in OAR 441-175-0002 for each licensed investment adviser representative;

(c) Any amendments to Form ADV or Form U-4, under OAR 441-175-0105, which have not previously been submitted.

(4) To renew a license, a non-FINRA broker-dealer must submit the following items to the director:

(a) A non-FINRA broker-dealer renewal form;

(b) An amended Form BD or ADV, under OAR 441-175-0105, if there have been material changes since the most recent filing of the appropriate form;

(c) The name of the person who is the supervisor of the employer's operations. When a new supervisor is appointed, the employer must file the change with the director;

(d) A salesperson renewal form for each salesperson to be renewed, signed by both the salesperson and the employer;

(e) An employer renewal fee as set in OAR 441-175-0002, except as provided in section (6) of this rule;

(f) A salesperson renewal fee as set in OAR 441-175-0002 for each salesperson to be renewed, except as provided in section (6) of this rule; and

(5) If the applicant for renewal is an Oregon based state investment adviser, the renewal applicant must submit the following financial information:

(a) If the investment adviser has or will have custody of client funds or securities, or will require payment of advisory fees six months or more in advance and in excess of \$500 per client, the latest annual balance sheet which must be audited by an "independent accountant," as defined by OAR 441-175-0010(13);

(b) For all other investment advisers, the latest annual balance sheet which may be audited, reviewed or compiled, prepared by an "independent accountant," as defined by OAR 441-175-0010(13); and

(c) If the latest annual balance sheet and statement of income or operations is not current within 90 days of renewal, an interim balance sheet must be submitted.

(6) Any federal or state investment adviser transitioning onto IARD shall pay a prorated renewal fee for the employer and any previously licensed investment adviser representative in the year of the transition calculated from the month the existing notice filing or license expires, as shown in the following table:

[Table not included. See ED. NOTE.]

[ED. NOTE: Table referenced are available from the agency.]

Stat. Auth.: ORS 59.175& 59.285

Stats. Implemented: ORS 59.175 & 59.185

Hist.: FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 8-1994, f. & cert. ef. 6-1-94; FCS 7-2000; f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 2-2003(Temp), f. & cert.

ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 8-2010, f. 6-22-10, cert. ef. 7-1-10; FCS 1-2012, f. & cert. ef. 7-9-12

441-175-0171

Use of Trade Name or Assumed Business Name

(1) Each person holding a license or applying for a license issued under ORS 59.005 to 59.370, who desires to operate under a trade name or an assumed business name must submit the following to the director for each name to be used:

(a) A completed application, with an original signature, on a form approved by the director; and

(b) A non-refundable filing fee as set in OAR 441-175-0002.

(2) An order issued by the director authorizing the licensee to operate under the trade name or assumed business name shall remain in effect until the order is:

(a) Suspended or revoked under ORS 59.205; or

(b) Cancelled under ORS 59.225.

(3)(a) Any person using a trade name or assumed business name pursuant to an order issued by the director must, within 30 days after any change of information, notify the director in writing of any change in address, contact name, phone number or fax number.

(b) Any person making a change in the trade name or assumed business name must submit a new notice and filing fee as provided in Section (1) of this rule.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS & 59.175

Hist.: FCS 2-1999, f. & cert. ef. 11-8-99; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

441-175-0175

Internet Communications

(1) Scope of rule. This rule applies to dissemination by firms or individuals of information about securities-related services or products on the Internet, except for any firms or individuals located in Oregon. As used in this section, the term "Internet" is to be construed liberally to include all proprietary or common carrier electronic systems or similar media.

(2) Solely disseminating information on the Internet concerning securities-related services or products offered by a firm or individual shall not be deemed to be "transacting business" in this state for purposes of ORS 59.165(1), provided the Internet communication:

(a) Is limited to general information on products or services;

(b) Prominently and conspicuously states that the firm or individual may only transact business in this state if first licensed or excluded from licensing requirements;

(c) Clearly states that follow-up, individualized responses to persons in this state using any contact method by such firm or individual that involve either the effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, will not be made absent compliance with Oregon licensing requirements or a valid exclusion from licensing; and

(d) Contains mechanisms, including and without limitation, technical firewalls or other implemented policies and procedures, designed reasonably to ensure that prior to any subsequent, direct

communication with prospective customers or clients in this state, said firm or individual has completed any applicable licensing or notice filing process in this state, or qualifies for an exclusion from such requirement.

(3) In the case of an individual who is a broker-dealer salesperson or an investment adviser representative, the Internet communication must further:

- (a) Be authorized by the firm with which the individual is affiliated;
- (b) Clearly disclose the affiliation with the broker-dealer or investment adviser firm;
- (c) Be within the scope of authority granted to the individual by his or her firm; and
- (d) Be reviewed and approved for content by a principal of the broker-dealer or investment adviser firm.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.165 & 59.175

Hist.: FCS 7-2000, f. & cert. ef. 6-2-00