CHAPTER 113

Secretary of State

(Statutory Authority: 1976 Code §§ 35–1–50, 35–1–60, 35–1–70, 35–1–150, 35–1–170, 35–1–310, 35–1–330, 35–1–410, 35–1–510, 35–1–520, 35–1–530, 35–1–590, 35–1–600 to 35–1–620, 35–1–950, 35–1–970, 35–1–990, 35–1–1010, and 35–1–1240)

ARTICLE 1
SECURITIES DIVISION

113–1. Agents Registered with Only One Broker–Dealer or Issuer at One Time.

No person will be registered as an Agent of more than one Broker-Dealer or Issuer at one time, except that where management and officers of two or more Broker-Dealers or Issuers are essentially identical, the Agent may be registered with such Broker-Dealers or Issuers upon their written request.

113–2. Sales Permits and Examinations for Principals, Partners, Officers and Directors of Broker–Dealer and Issuers.

(1) No Principal, Partner, Officer or Director of a registered Broker-Dealer, or of an Issuer offering its securities under a South Carolina registration, shall engage in the sale of securities in South Carolina without a Sales Permit or registration as a Securities Agent. Such Sales Permits will be issued by the Securities Commissioner without charge upon written request, except that a Principal, Partner, Officer or Director of a Broker-Dealer shall be required to have passed a Principal's exam, as administered by the National Association of Securities Dealers. Such Principal's exam shall be appropriate for the type of business being conducted. Additionally every Principal, Partner, Officer or Director of a Broker-Dealer shall have passed the Uniform Securities Agent State Law Examination, as administered by the National Association of Securities Dealers, with a grade of 85% or better, unless exempt under (3) following. The term "Officer" shall for these purposes be limited to include Chairman of the Board, President, Vice-President, Secretary and Treasurer.

(2) Any Securities Agent who becomes a Principal, Partner, Officer or Director (as in 1 above) of a Broker-Dealer, must take and pass a Principal's exam in order to be eligible for a Sales Permit.

(3) No person listed with the Securities Commissioner on May 1, 1963, as a Principal, Partner, Officer or Director of a Broker-Dealer shall be required to pass an examination to renew or maintain his Sales Permit, provided he shall have been listed continuously from that date to a date not more than 60 days prior to application. The Securities Commissioner may allow for lapses occasioned by transfer from one Broker-Dealer to another.

113–3. Examinations for Securities Agents.

(1) As a condition of registration, every applicant for registration as a Securities Agent employed by a Broker-Dealer or an Issuer shall be required to have passed an examination, administered by the National Association of Securities Dealers, appropriate as to the type of securities being sold by his employer, and to have passed the Uniform Securities Agent State Law Examination.

(2) No Securities Agent registered as such in South Carolina on May 1, 1963, shall be required to pass an examination (as in 1 above) to renew or maintain his registration, provided he shall have been so registered continuously from that date to a date not more than 60 days prior to application.

113–4. Provisions Applicable in General to Securities Examinations.

A passing grade on the examination for Security Agent or Principal, and the Uniform Securities Agent State Law Examination, as administered by the National Association of Securities Dealers, must

be furnished, as proof, in any application for Sales Permit as Principal of a Broker-Dealer or Registration as a Securities Agent. No person who has passed these examinations shall again be required to pass another examination (except in 113-2(2)) unless for a period of 36 or more consecutive months he shall not have been registered as a Securities Agent or as a Principal, Officer or Director of a Broker-Dealer. An upgrading in the type of business being conducted by the Agent or Broker-Dealer may require the passing of a new examination at the discretion of the Securities Commissioner.

113–5. Examinations for Investment Advisers.

(1) As a condition of initial or renewal registration as an Investment Adviser, or as a Broker-Dealer acting or proposing to act as an Investment Adviser, the Securities Commissioner may in his discretion require the applicant or any one or all officers, directors, partners or employees of the applicant who may represent said applicant in any of the acts which make him an Investment Adviser in this State, to take an oral examination, to be given at such time and place as specified by the Securities Commissioner.

(2) The decision of the Securities Commissioner as to the eligibility of the applicant shall be deemed final and conclusive.

(3) Failure to pass such an oral examination shall require a waiting period of at least 30 days before again taking an examination. A fourth failure shall render an examinee ineligible for consideration as an Investment Adviser.

(4) The examination fee shall be $10.00 for each applicant for each examination.

113–6. Deposits in Lieu of Bond.

A deposit of cash or securities in lieu of surety bond required under § 35-1-510, S.C. Code 1976, shall be considered appropriate within the intent and meaning of such section and shall be accepted by the Securities Commissioner under the following terms and conditions:

(1) With respect to a deposit of securities, that the securities be general obligations of, and be guaranteed both as to principal and interest by, the United States, any state or any political subdivision of a state, provided that such obligation be rated A or better by Standard & Poor's Corporation Records or Moody's Investment Service, and provided further that the securities on the day of deposit have a net realizable market value of at least 125% of the penal sum of the bond required of the depositor.

(2) With respect to a deposit of cash, that the amount of the cash be at least equal to the penal sum of the bond required of the depositor.

(3) That as a condition of any renewal of registration by means of an in lieu deposit, cash so deposited be at least equal to the penal sum of the bond required of the depositor upon the renewal date and the net realizable market value of securities so deposited be at least 125% of such sum on said renewal date.

(4) That the cash or securities shall be deposited in a bank located in South Carolina and organized under the laws of the United States or of the State of South Carolina.

(5) That the cash or securities so deposited shall be under the control of the Securities Commissioner and shall be for the use and benefit of any person damaged by any violation of the provisions of the South Carolina Uniform Securities Act by the depositor or his agent.

(6) That the cash or securities so deposited shall remain on deposit and under the control of the Securities Commissioner for a period of three years following termination of registration of the depositor. Any cash or securities then remaining, including any accumulated interest, shall be released to the depositor upon written order of the Securities Commissioner.

113–7. Records to Be Kept and Financial Statements to Be Filed by Broker–Dealers.

(1) Every Broker-Dealer shall at all times maintain up-to-date financial records which shall completely and accurately disclose all facts concerning each security transaction and the Broker-Dealer's detailed financial condition in the manner and form of generally accepted accounting principles. Such records shall include, but not be limited to, a daily record of all purchases and sales of securities, all receipts and deliveries of securities, all receipts and disbursements of cash and all other debits and

credits, ledgers, including ledger accounts for each customer; and copies of confirmations of all purchases and sales of securities. Such records shall be kept at his principal place of business.

(2) A confirmation of each transaction for or with a customer shall be sent to the customer within a full business day after the transaction is made. Such confirmation shall clearly set forth the date and if possible the time of execution, the price and any and all charges, and shall clearly show in what capacity the Broker-Dealer acted. If the Broker-Dealer acted as agent for both buyer and seller, this shall be clearly shown. The name of the authorized person handling the transaction shall also be shown. If handled by an Agent, the copy retained by the Broker-Dealer shall be initialed by a responsible officer, director, partner or principal or other person occupying a similar status or performing similar functions.

(3) For any transaction made in reliance upon the exemption provided by § 35-1-320(3), (unsolicited order), the confirmation shall show on all copies that the transaction was made pursuant to an unsolicited order or offer to buy by the customer.

(4) Every registered Broker-Dealer must file with the Securities Commissioner an annual audit certified without qualification by an Independent Public Accountant regularly engaged in business as such. Unless permission is granted in writing by the Securities Commissioner for each report, said audit must be filed not later than 60 days after the close of the fiscal year. A surprise audit by a national stock exchange, or a financial statement filed with the National Association of Securities Dealers or the Securities and Exchange Commission in accordance with their reporting requirements will be accepted in lieu of an annual financial statement if filed within 60 days of completion.

113–8. Securities Issued After Release of Impounded Funds.

In connection with funds impounded under the provisions of § 35-1-950(b), no securities shall be issued therefor until such funds have been released to the Issuer in accordance with terms of an applicable Escrow Agreement, or by order of the Securities Commissioner.

113–9. Release of Portion of Commission Where Proceeds Impounded.

Where, as a condition of registration, the Securities Commissioner has required that funds from the sale of a registered security in this State be impounded until the Issuer receives a specified amount from the sale of the security either in this State or elsewhere, the gross amount of the proceeds shall be so impounded provided that the Agreement between the Escrow Agent and the Broker-Dealer or Issuer engaged in the sale of said security may provide for release to the latter during the time the funds are impounded of a portion of the commission not greater than five percent (5%) of the net offering price of the security after deduction of the entire proposed commission.

113–10. Financial Statements Used in a Prospectus.

(1) All financial statements submitted with an application to register securities or for inclusion in a Prospectus used in this State shall be certified by an Independent Public Accountant regularly engaged in business as such; provided, however (a) that interim statements prepared since the close of the last fiscal year shall not be required to be certified if prepared on a basis comparable to those certified, and (b) that financial statements approved by the South Carolina Insurance Department or the Securities and Exchange Commission may be accepted by the Securities Commissioner in his discretion.

(2) Where a company has been in business for less than one year and submits one statement only which covers a period of less than one year, such statements shall be certified.

(3) A report signed by the Independent Public Accountant should accompany the statements.

(4) Financial statements filed with an application for registration of securities shall be up-dated when necessary so that the Prospectus as finally approved and in definitive form shall contain statements as of a date not more than 6 months prior to the date of the Prospectus.

(5) A Prospectus relating to securities in registration should be amended or supplemented whenever necessary to reflect any material changes, but in any event at least once in any period of twelve consecutive months, in order to bring financial data up to date. Failure of the registrant to do so shall be considered cause for suspension of registration. It shall be discretionary with the Securities Commissioner whether to require the reprinting of the entire Prospectus.

(6) An investment company registered under the Investment Act of 1940 whose prospectus is in compliance with the Securities and Exchange Commission's Rules shall be deemed in compliance with (5).

113–11. Options or Warrants.

Stock purchase options or warrants issued to persons other than purchasers of securities in a public offering will be regarded with disfavor and will be considered as a basis for denial of an application except in unusual instances. The burden shall always rest upon the applicant to justify their issuance. The number of warrants sought to be issued, the exercise price, the term in which they are exercisable and the absence or adequacy of a step-up in the exercise price will all be taken into consideration. The following will be included among standards in determining justification and whether such options or warrants are unreasonable within the intent and meaning of § 35-1-1010(b)(vi) of the South Carolina Uniform Securities Act:

(1) Options to management in the nature of restricted stock options for incentive purposes, if reasonable in number and method of exercise, will generally be looked upon favorably.

(2) Options to employees, or their nominees, pursuant to stock purchase plans or profit-sharing plans, if reasonable in number and method of exercise, will generally be looked upon favorably.

(3) Options or warrants to underwriters by issuers in connection with a public offering will not be considered unreasonable if all of the following requirements are met:

(a) They are issued to the managing underwriter under a firm underwriting agreement and are not assignable except among the partnership where the managing underwriter is a partner, and among the principals (officers and directors) where the managing underwriter is a corporation.

(b) The number of shares covered by the options or warrants does not exceed ten percent of the securities proposed to be sold to the public in the offering under consideration.

(c) The initial exercise price of the options or warrants is at least equal to the public offering price with a step-up of the exercise price of 7% each year the options or warrants are outstanding or, in the alternative, a single step-up of 20%. The step-up shall commence 12 months after the grant of the options or warrants. The election as to the step-up rate must be made at the time the options or warrants are issued.

(d) The options or warrants do not exceed 5 years in duration and are nonexercisable for 11 months after issuance. They may be exercised at the offering price 11 months after issuance, for one month.

(e) The options or warrants are issued by a relatively small company in the promotional stage where it appears from all the facts and circumstances that the issuance of such options or warrants is necessary to obtain competent investment banking service.

(f) The securities covered by the options or warrants consist solely of securities of the same class and of the same issuer as those securities proposed to be sold to the public in the offering under consideration.

(4) Options or warrants issued to a finder by the issuer will not be regarded with disfavor if they are issued under the same terms as those issued to the managing underwriter, and if the number of shares reserved for options and warrants to be issued to the managing underwriter and the finder together total not more than ten percent of the securities proposed to be sold to the public in the offering under consideration.

(5) Options or warrants issued to financing institutions, other than underwriters, connection with financing arrangements made with the issuer shall be considered justified if all of the following conditions are met:

(a) The options or warrants are issued contemporaneously with the issuance of the evidence of indebtedness of the loan.

(b) The options or warrants expire not later than the final maturity date of the loan.

(c) The options or warrants are issued as a result of bona fide negotiations between the issuer and parties not affiliated with the issuer.

(d) The exercise price of such options or warrants is not less than the fair market value of the shares into which they are exercisable on the date the loan is approved.

(e) The number of shares issuable upon exercise of the options or warrants, multiplied by the exercise price thereof, does not exceed the face amount of the loan.

(6) The amount of options and warrants shall be considered reasonable if the number of shares reserved for such options and warrants, excluding those issued to financing institutions and in connection with acquisitions, does not exceed 10% of the number of shares to be outstanding upon completion of the offering. The number of shares reserved for issuance may be disregarded if the issuer files an undertaking or states in the prospectus that the amount of options and warrants outstanding shall not exceed 10% of shares outstanding during the period the registration is in effect, with a minimum period of one year from the date of commencement of the offering.

(7) The initial exercise price of all options and warrants issued to persons other than financing institutions shall be not less than the fair market value on the date of issuance.

(8) This Rule shall apply to applications for registration of equity securities or securities convertible into equity securities.

113–12. Underwriting Expenses and Commissions.

(1) Applications to register securities offered on behalf of an Issuer will be considered with disfavor and it shall be considered as grounds for denial of any application where proceeds to the Issuer after all expenses plus commissions and remuneration of all types to underwriters do not equal a minimum of 80% of the gross proceeds of all securities sold including securities sold to underwriters within 6 months of the date of application.

(2) With respect to securities sold to underwriters at prices below the public offering price, the difference between the price paid by the underwriters and the public offering price shall be considered as part of the compensation of the underwriters.

113–13. Pre–Incorporation Stock Subscriptions.

(1) Applications to register securities of a corporation by coordination or qualification shall be in general regarded with disfavor and subject to denial where preincorporation subscriptions to common stock of the issuer remain unpaid.

(2) Applications to register preincorporation subscriptions to common stock of a proposed corporation shall be in general regarded with disfavor and subject to denial unless subscriptions by promoters are equal in price and reasonable in method of payment as compared with subscriptions offered to the public.

113–14. Form and Minimum Provisions for Debt Securities.

(1) Provisions or terms of an issue of debt securities shall be considered inadequate for the protection of the security holders, and shall be considered grounds for denial of an application for registration under § 35-1-1010(b)(v), S. C. Code 1976, which do not as a minimum adequately define the following, either in the security itself or in a trust indenture:

(a) Maturity date, being the date upon which the principal shall become due and payable. Demand securities, with no maturity date, will not be accepted.

(b) Interest rate and interest payment dates. Interest may not be allowed to accumulate to draw additional interest.

(c) Assets securing the issue and the lien thereon, of if none, a statement to that effect.

(d) Conversion feature, if any, including protection of such feature from dilution.

(e) Position of the issue in the debt structure of the company, both present and future.

(f) Events of default, including provision that default in payment either of principal or interest on any one security of an issue shall constitute a default on the entire issue.

(g) Rights of the security holders in default, including right to a list of names and addresses of all holders of an issue of registered securities in default, if there is no trustee to act for all holders, and the right of the holders of 25% in principal amount of the issue outstanding to declare the entire issue due and payable.

(h) Duties of the trustee, if any.

(i) Call features, if any.

(j) Denominations in which issued.

(2) The security should be in such form, and bear such descriptive nomenclature, as is customary and recognized in the field of securities.

113–15. Expenses and Fees Payable by Investment Companies.

Expenses and fees payable by an investment company or mutual fund will be considered inequitable, as tending to work a fraud upon the purchasers as contemplated under § 35-1-1010(b)(v) of the South Carolina Uniform Securities Act and as constituting grounds for denial of registration unless the following conditions are met.

(1) Expenses payable by the fund of all types, including both the base fee and the incentive fee, if any, to the investment adviser or manager but excluding taxes, commissions and interest, shall be limited to 1½ of the average net assets of the fund per annum.

(2) If an incentive fee for favorable performance is paid to the investment adviser or manager in addition to a base fee, there shall also be a reduction in the base fee for unfavorable performance.

(3) The fee paid to the investment adviser or manager shall not be calculated in any manner as a share of realized capital gains.

113–16. Approved Securities Exchanges.

(1) The following securities exchanges are designated for inclusion in § 35-1-310 of the South Carolina Uniform Securities Act:

Pacific Coast Stock Exchange

Philadelphia-Baltimore-Washington Stock Exchange

Chicago Board Option Exchange, Incorporated.

113–17. Recognized Securities Manuals.

(1) The following securities manuals are recognized under the provisions of § 35-1-320(2)(a) of the South Carolina Uniform Securities Act and the inclusion in any one of these manuals of information specified in this Section concerning the issuer of a security, exempts such security from §§ 31-1-50 and 35-1-810 of said Act:

Standard & Poor's Corporation Records; Moody's Manuals.

113–18. Securities of Nonprofit Organizations.

The exemption from the registration requirements of § 35-1-810 provided by § 35-1-310(8) for nonprofit organizations shall not be considered to be available for debt securities issued and offered by such organizations unless the full disclosure provisions of § 35-1-1210(2) are met and the investing public is afforded the protection provided by the following as a minimum:

(1) The organization shall be incorporated as a nonprofit, nonstock corporation.

(2) Any organization assisting the issuer in any manner in the sale of the securities shall be required to be registered as a broker-dealer in this State.

(3) The trustee and/or paying agent shall be independent of the issuer, the broker-dealer or any affiliate of either, and shall possess the authority to administer a trust under state and/or federal laws.

(4) The debt securities shall meet the requirements of 113-14.

(5) A Prospectus, Offering Brochure, Offering Circular or similar instrument, dated and cleared by the Securities Commissioner, shall be delivered to each prospective purchaser and a copy of such instrument (signed by two officers of the issuer) shall be held in the files of the trustee and/or paying agent.

(6) Said Prospectus or similar instrument shall at a minimum contain the following information:

(a) Financial statement consisting of a statement of assets and liabilities, income and expense statement, and comparative figures showing the budget, number of pledging units, if available, and income and expenses for the past three years. If any of this information is not available, a statement

to that effect should be made with an explanation of why it is not available. Obligations, if any, on existing indebtedness should be clearly stated.

(b) A pay-back or maturity schedule and sinking fund requirements, if any. If refinancing will be needed when the bonds mature, this should be clearly brought out.

(c) The name, address and telephone number of the trustee and/or paying agent.

(d) Any past history of financial transactions between the issuer and broker-dealer or financing organization and any known or contemplated future transactions.

(e) The name, address and telephone number of the broker-dealer handling the issue and the name and address of the local representative of the broker-dealer.

(f) Total expenses of the issue (including remuneration to the broker-dealer) should be shown.

(g) A statement on whether the offering is being made on a best efforts or firm underwriting basis, and if the former, a clear statement of the responsibilities of the financing organization and the church membership.

(h) An itemized statement of the use to which the proceeds will be put. If additional funds will be needed to complete the stated purposes, this should be disclosed together with a statement showing how such funds will be obtained.

(i) If any statements are made concerning the risk or lack of risk in purchasing the securities, they should be made in the light of the financial condition of the issuer, and not in generalities. Likewise, any comparison of yields will be considered misleading unless other comparative aspects of these investments are included.

(j) A description of the terms of the debt security offered. For details reference may be made to an indenture and/or deed of trust if such exists.

(k) If guarantee of payment is made by an affiliated organization, information describing the ability of that organization to guarantee should be furnished, including financials. The word "guarantee" should be used only if there is a second obligation by another entity.

(*l*) Brief information concerning the city, town or other area in which the issuer is located with special reference to the immediate neighborhood.

(m) Any affiliation of the issuer or broker-dealer, or of any officers of either, with any building contractor or supplier who has an interest in or may receive any of the proceeds of the issue should be disclosed.

(n) If the securities have not been registered under the South Carolina Uniform Securities Act, the Securities Act of 1933 or the Securities Law of the state in which the issuer is located, this should be clearly indicated, and the exemptions relied upon cited.

(7) Before reliance is placed upon the exemption provided by § 35-1-310(8), written clearance by the Securities Commissioner must be obtained. A request for such should be accompanied by the following:

(a) A copy of the latest preliminary or definitive Prospectus, Offering Brochure or other. If preliminary, a copy of the definitive instrument should be filed when available.

(b) A draft or specimen of the security.

(c) A copy of the preliminary or definitive indenture and/or trust agreement, if any.

(d) A copy of the Agreement between the issuer and broker-dealer.

(e) An Opinion of Counsel as to the legality of the issue and obligation of the issuer.

(f) Fee in the amount of $25.00 as specified in 113-20(1).

113–19. Examination Fees to Accompany Filing of Prospectus or Offering Circular.

(1) An examination fee of $25.00 shall accompany any definitive Prospectus or Offering Circular filed with an application to register securities, or any such Prospectus or Offering Circular amended subsequent to effectiveness of registration or filed for the purpose of maintaining registration of the securities; provided however that the filing fee paid with an application to register securities shall be deemed to include the examination fee for the first definitive Prospectus or Offering Circular approved under such registration.

(2) An examination fee of $50.00 shall accompany a request for a review by the Securities Commissioner of any preliminary or definitive Prospectus or Offering Circular for the purpose of obtaining an opinion on the eligibility of the securities for registration. This fee will not apply to a Prospectus or Offering Circular in (1) above, or to one filed with a request for confirmation of the availability of an exemption or exception.

113–20. Fees to Accompany a Request for Confirmation of the Availability of An Exemption or Exception.

(1) A fee of $25.00 shall accompany the filing of a request for confirmation of the availability of an exemption under § 35-1-310(8) or 35-1-320(9) of the South Carolina Uniform Securities Act, as amended.

(2) A fee of $5.00 shall accompany the filing of a request for confirmation of the availability of an exemption under § 35-1-310 or 35-1-320 (other than § 35-1-310(8) or 35-1-320(9)) or an exception under § 35-1-20 of the South Carolina Uniform Securities Act, as amended.

113–21. Exemption Pursuant to Regulation D and Section 35–1–320(9).

Transactions in compliance with the following conditions shall be deemed to be limited offerings within the meaning of Section 35-1-320(9) of the South Carolina Uniform Securities Act (the Act) and exempt from Sections 35-1-50 and 35-1-810 of the Act.

Any offer or sale of securities offered or sold in compliance with the Securities Act of 1933, Regulation D, Rules 501, 502, 503 and 505 or 506 as made effective with SEC Release 33-6389 and which satisfies the following conditions and limitations (terms used herein are as defined in Regulation D):

(A) No commissions, finders fees or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser unless such person is registered as a Broker-Dealer or Agent as required by Section 35-1-410 of the Act.

(B) No exemption under this Rule shall be available for the securities of any issuer, if the issuer or any of its affiliates:

(1) is subject to any order, judgement, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining or is subject to an order, judgement or decree of any court of competent jurisdiction, entered within five years prior to commencement of the offering in reliance upon this exemption, permanently restraining or enjoining such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with any state; or

(2) has been convicted within five years prior to the commencement of the offering in reliance upon this exemption of any felony or misdemeanor in connection with the 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, theft by conversion, theft by deception, larceny or conspiracy to defraud; or

(3) is subject to any order, judgement or decree issued by any State Securities Administrator, the United States Securities and Exchange Commission, the United States Commodities Futures Trading Commission or the United States Postal Service in which fraud, deceit or registration violations were found after notice and opportunity for hearing, if the order was entered within five years prior to the commencement of the offering in reliance upon this exemption; or

(4) is subject to an order barring or suspending membership in any self-regulatory organization registered pursuant to the Securities Exchange Act of 1934, if the order was entered within five years prior to the commencement of the offering in reliance upon this exemption.

(C) The disqualification referred to in subparagraph (B) above shall not apply:

(1) if the issuer or its affiliate subject to the disqualification is currently registered or licensed to conduct securities-related business in the jurisdiction where the administrative order or judgement was entered against such issuer or affiliate; or

(2) if the jurisdiction 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; or

(3) if the Commissioner, in his discretion, waives the disqualification.

(D) Filing Requirements:

(1) The issuer shall file with the Securities Commissioner a notice of intention to sell using SEC Form D, 17 C.F.R. Section 239.500, or any successor form, at least 5 business days prior to the first offering to an investor in this state in reliance upon this exemption. Said notice of intention to sell shall be accompanied by the following:

(i) a non-refundable filing fee in the amount of $300;

(ii) a consent to service of process prescribed by code Section 35-1-1410 of the Act, on Form U-2, which has been executed by the issuer;

(iii) a copy of any prospectus or disclosure documents to be used in connection with the offer and sale of the securities.

(2) A completed SEC Form D shall be filed with the Securities Commissioner no later than thirty days after the termination of the offering and shall include the names and addresses of the purchasers.

(3) Any notice on or amendment to SEC Form D required by this section shall be manually signed by a person authorized by the issuer.

(4) Any filing pursuant to this exemption shall be amended by filing with the Securities Commissioner such information and changes as may be necessary to correct any material misstatement or omission in the filing. Any prospectus or disclosure documents required to be filed by this Rule that were not prepared at the time of the initial filing, or which materially differs from the prospectus or disclosure documents included in any filing, shall be filed with the Securities Commissioner at least two business days prior to its use in this state. There shall be no fees charged for amendments of filings pursuant to this Rule.

(5) For purposes of this exemption, a document shall be deemed to have been filed with the Securities Commissioner only when the document has been delivered to the Office of the Securities Commissioner.

(E) Any prospectus or disclosure document utilized in this state in connection with offers or sales of securities in reliance on this exemption must carry substantially the following information shown boldly:

"THESE SECURITIES ARE OFFERED PURSUANT TO A CLAIM OF EXEMPTION UNDER THE SOUTH CAROLINA UNIFORM SECURITIES ACT. A REGISTRATION STATEMENT RELATING TO THESE SECURITIES HAS NOT BEEN FILED WITH THE SOUTH CAROLINA SECURITIES COMMISSIONER. THE COMMISSIONER DOES NOT RECOMMEND OR ENDORSE THE PURCHASE OF ANY SECURITIES, NOR DOES IT PASS UPON THE ACCURACY OR COMPLETENESS OF THIS PRIVATE PLACEMENT MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE".

(F) The Securities Commissioner in the exercise of his sole and exclusive discretion, shall be entitled to deny the availability of this exemption by mailing the issuer a notice of denial of availability prior to the end of the fifth business day after filing of the initial SEC Form D referred to in Paragraph (D) 1 above.

(G) The issuer shall be deemed to have complied with Regulation D as used above if it demonstrates to the Securities Commissioner that the issuer has made a good faith effort to comply in all material respects with Regulation D, and the issuer otherwise qualifies for an exemption from registration under the Securities Act of 1933.

(H) This exemption shall not apply to those transactions offered and sold in reliance under Rule 504 of SEC Regulation D, 17 C.F.R. Section 230.504.

(I) Nothing in this exemption is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from the anti-fraud provisions of the Act.

(J) The Securities Commissioner may stop order, deny, revoke or suspend the availability of this exemption pending a further investigation and determination as to whether the issuer and all other parties acting on behalf of the issuer have effected full compliance with the terms and conditions hereof, and of the Act. Neither compliance nor attempted compliance with this exemption, nor the

absence of any objection or order from the Securities Commissioner with respect to any offering of securities undertaken pursuant to this exemption, shall be deemed an approval of any securities offered pursuant to this exemption.

(K) The aggregate number of unaccredited investors sold under this exemption shall not exceed 35 purchasers in this state during any 12 month period, exclusive of purchasers acquiring securities registered pursuant to Section 35-1-870 of the Act.

113–22. Limited Offering Exemption to Ten or Less Persons.

Transactions in compliance with the following conditions shall be deemed to be limited offerings within the meaning of Section 35-1-320(9) of the South Carolina Uniform Securities Act and exempt from Sections 35-1-50 and 35-1-810 of the Act.

(1) The issuer qualifies as a person resident and doing business within this state as specified in paragraph (c) of Rule 147, 17 C.F.R. Section 230.147.

(2) There are in the aggregate ten (10) or fewer purchasers calculated in accordance with Rule 501(e) of Regulation D, 17 C.F.R. Section 230.501 of securities of the issuer during any period of twelve (12) consecutive months.

(3) Neither the issuer nor any other person acting on his behalf shall offer or sell securities of the issuer by any form of general solicitation or general advertising, including but not limited to, the following:

(a) Any advertisement, article, notice or other communication published in any newspaper, magazine or

(b) Any seminar or meeting whose attendees have been invited by any general solicitation or general advertising.

(4) No commission, finders fee, or other remuneration has been, or shall be, paid or given, directly or indirectly to any person for soliciting any prospective purchaser unless such person is registered as a Broker-Dealer or Agent as required by Section 35-1-410 of the Act.

113–23. Dishonest or Unethical Practices by Investment Advisers and Investment Adviser Representatives.

As used in South Carolina Code Section 35-1-520, "dishonest or unethical practices" shall include, but not be limited to the following:

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

(2) Placing an order to purchase or sell a security for the account of a client without authority to do so.

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

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

(5) Inducing trading in a client's account that is excessive in size and frequency in view of the financial resources, investment objectives and character of the account.

(6) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the adviser, or a financial institution engaged in the business of loaning funds or securities.

(7) Loaning money to a client unless the adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the adviser.

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

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

(10) Charging a client an advisory fee that is unreasonable.

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

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

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

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

(13) Publishing, circulating or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940.

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

(15) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the adviser has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the safekeeping requirements of Rule 206(4)-2 under the Investment Advisers Act of 1940 or the adviser is exempt from these requirements by virtue of Rule 113-24 (NASAA Model Rule 102(e) (1)-1(b).)

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

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

HISTORY: Added by State Register Volume 17, Issue No. 5, Part 3, eff May 28, 1993.

113–24. Custody of Client Funds or Securities by Investment Advisers.

(A) It shall be unlawful for any investment adviser to take or have custody of any securities or funds of any client unless:

(1) The investment adviser notifies the Securities Commissioner in writing that the investment adviser has or may have custody. Such notification may be given on Form ADV;

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

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

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

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

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

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

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

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

HISTORY: Added by State Register Volume 17, Issue No. 5, Part 3, eff May 28, 1993.

113–25. Dishonest or Unethical Practices by Broker–Dealers and Agents.

Each broker-dealer and agent shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. Acts and practices, including but not limited to the following, are considered contrary to such standards and may constitute grounds for denial, suspension or revocation of registration or such other action authorized by statute.

A. Broker-Dealers.

(1) Engaging in a pattern of unreasonable and justifiable delays in the delivery of securities purchased by any of its customers and/or in the payment upon request of free credit balances reflecting completed transactions of its customers;

(2) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

(3) Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer;

(4) Executing a transaction on behalf of a customer without authorization to do so;

(5) Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders;

(6) Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account;

(7) Failing to segregate customers' free securities or securities held in safekeeping;

(8) Hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by Rules of the Securities and Exchange Commission;

(9) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;

(10) Failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus;

(11) Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;

(12) Offering to buy from or sell to any person any security at a stated price unless such broker-dealer is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such to buy or sell;

(13) Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless such broker-dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created or controlled by such broker-dealer, or by any person for whom he is acting or with whom he is associated in such distribution, or any person controlled by, controlling or under common control with such broker-dealer;

(14) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:

(a) Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

(b) Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; provided, however, nothing in this subsection shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers;

(c) Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others;

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

(16) Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona fide bid for, or offer of, such security;

(17) Using any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure; or

(18) Failing to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of such security, the existence of such control to such customer,

and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

(19) Failing to make a bond fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member; or

(20) Failure or refusal to furnish a customer, upon reasonable request, information to which he is entitled, or to respond to a formal written request or complaint;

(21) Violating any rule of a national securities exchange or national securities association or self regulatory association of which it is a member;

(22) Knowingly paying or splitting fees or commissions with unlicensed persons, except as otherwise allowed by law.

(23) Failure to pay within 30 days any fine, cost or assessment by the Securities Division or any arbitration award which is not the subject of a motion to vacate or modify the award or when such a motion has been denied.

B. Agents.

(1) Engaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer;

(2) Effecting securities transaction not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction;

(3) Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited;

(4) Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents;

(5) Dividing or otherwise splitting the agent's commissions, profits or other compensation from the purchase or sale of securities with any person not also registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control; or

(6) Engaging in conduct specified in Subsection A.(2), (3), (4), (5), (6), (9), (10), (14), (15), (16), (17), (20), (21), (22) or (23).

C. Conduct Not Inclusive.

The conduct set forth above is not inclusive. Engaging in other conduct such as forgery, embezzlement, non-disclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices shall also be grounds for denial, suspension or revocation of registration.

HISTORY: Added by State Register Volume 17, Issue No. 5, Part 3, eff May 28, 1993.

113–26. Financial Reporting Requirements for Certain Investment Advisers.

A. Every registered investment adviser who has custody of client funds or securities or requires payment of advisory fees six months or more in advance and in excess of $500 per client shall file with the South Carolina Securities Division an audited balance sheet as of the end of the investment adviser's fiscal year.

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

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

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

(c) Accompanied by an opinion of the accountant as to the report of financial position, and by a note stating the principles used to prepare it, the basis of included securities, and any other explanations required for clarity.

B. Every registered investment adviser who has discretionary authority over client funds or securities, but not custody, shall file with the South Carolina Securities Division a balance sheet, which need not be audited, but which must be prepared in accordance with generally accepted accounting

principles and represented by the investment adviser or the person who prepared the statement as true and accurate, as of the end of the investment adviser's fiscal year.

C. The financial statements required by this Rule shall be filed with the South Carolina Securities Division within 90 days following the end of the investment adviser's fiscal year.

HISTORY: Added by State Register Volume 17, Issue No. 5, Part 3, eff May 28, 1993.

ARTICLE 2
MUNICIPAL CORPORATIONS

(Statutory Authority: 1976 Code §§ 5–1–10, 5–1–20, 5–1–30, 5–1–40, 5–1–50, 5–1–60, 5–1–70, 5–1–80, 5–1–90, 5–1–100, 5–1–110)

113–200. Municipal Incorporations

A. Certification of Population Density.

The incorporators of any proposed municipality must provide to the South Carolina Secretary of State a certification by the Research and Statistical Services Division of the South Carolina Budget and Control Board that the area in the proposed municipality has a population density of at least three hundred persons per square mile.

B. Certification of Boundaries.

The incorporators of any proposed municipality must provide to the South Carolina Secretary of State a certification by the Research and Statistical Services Division of the South Carolina Budget and Control Board or a County Planning or Zoning Office that no part of the area of the proposed municipality is within five miles of the boundary of any active incorporated, municipality. In addition, the incorporators must provide evidence that they served notice of their intent to incorporate by certified mail to the Mayor, Town Manager, or similar official of any active, incorporated, municipality within 10 miles of any point of the proposed municipality, as well as the South Carolina Municipal Association, at least 15 calendar days prior to the date of their application with the South Carolina Secretary of State. Such notice must include a copy of a map showing the proposed boundaries.

C. Certification of Total Land Area.

The incorporators of any proposed municipality must provide to the Secretary of State a certification by a County Planning or Zoning Office or the Research and Statistical Services Division of the South Carolina Budget and Control Board regarding the total land area in square miles within the proposed corporate limits.

D. Certification of the Current Assessed Value.

The incorporators of any proposed municipality must provide to the Secretary of State a certification by the Research and Statistical Services Division of the South Carolina Budget and Control Board or the County Assessor or Auditor of the current assessed value of the real and personal property within the proposed corporate limits, together with a calculation of the general obligation bonding capacity available without a referendum.

E. Requirements for Service Feasibility Study.

South Carolina Code Section 5-1-30 provides that the Secretary of State must approve a service feasibility study for any proposed municipality. Pursuant to this statutory requirement, the incorporators of the proposed municipality must provide the following minimum information to the Secretary of State's Office:

(1) A map showing the proposed corporate limits with the distance from the corporate limits to the boundary of any active incorporated municipality.

(2) The total population within the proposed corporate limits based on the most recent U.S. Population Census.

(3) The total land area in square miles within the proposed corporate limits.

(4) A definite list of the proposed services to be provided by the proposed municipal.

(5) A detailed explanation of each service to be provided with the number, qualifications, and salary ranges of the personnel required to deliver each service.

(6) Any service to be obtained by contract must include a detailed description of the service and a realistic estimate of the cost of such service contract. The incorporators must attach consent letters, contracts or ordinances executed by the appropriate governmental officer for any services which will be provided by another governmental unit. For example, if a county was going to continue to provide planning and zoning functions after incorporation, the incorporator must attach a letter, contract or ordinance executed by either the County Manager/Supervisor, or the Chairman of County Council, indicating the county's willingness to continue providing such services, and indicating any terms or conditions.

(7) The current assessed value of the real and personal property within the proposed corporate limits, to include a calculation of the general obligation bonding capacity available without a referendum.

(8) A proposed operating budget for the first fiscal years detailing the sources and amounts of anticipated revenue to include the tax millage rate required to generate the required revenue and the anticipated revenue from property taxes. The expenditures will be detailed to include the normal line items of personnel, equipment, supplies and other operating costs for each department and/or service.

(9) A proposed capital budget itemizing the property, equipment, rolling stock, infrastructure and other items expected to be required within the first two years of operation and the proposed method of financing for each item.

(10) The applicants shall be required to use any forms promulgated by the Secretary of State's Office.

HISTORY: Added by State Register Volume 17, Issue No. 5, Part 3, eff May 28, 1993.

ARTICLE 3
UNIFORM REAL PROPERTY RECORDING ACT

(Statutory Authority: 1976 Code Sections 30–6–10 to 30–6–70)

113–300. Definitions.

A. "ACH" (automated clearing house) means a network processing and delivery system that provides for the distribution and settlement of electronic credits and debits among financial institutions.

B. "Authentication" means the act of tying an action or result to the person claiming to have performed the action. Authentication generally requires a password or encryption key to perform, and the process will fail if the password or key is incorrect.

C. "Authorized filer" means a party who has entered into a MOU with a register pursuant to the regulations herein.

D. "Digital electronic document" means an instrument containing information that is created, generated, sent, communicated, received, or stored by electronic means, but not created in original paper form.

E. "Digitized electronic document" means a scanned image of the original document.

F. "Document" means recorded information regardless of medium or characteristics that is:

(1) inscribed on a tangible medium or that is stored in an electronic or other medium and that is retrievable in perceivable form; and

(2) eligible to be recorded in the real property records maintained by a register.

G. "E-government" means government's use of information technology to conduct business or exchange information with citizens, businesses or other federal, state and local government offices.

H. "Electronic" as defined in the Uniform Real Property Electronic Recording Act means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

I. "Electronic document" means a document that is received by a register in an electronic form.

J. "Electronic recording delivery system" means an automated electronic recording system implemented by a register for recording instruments, and for returning to the party requesting the recording, digitized or digital electronic instruments.

K. "Electronic signature" means an electronic sound, symbol or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

L. "FTP" means file transport protocol.

M. "HTTPS" means hypertext transport protocol secure.

N. "Instrument" means any deed or other document in recordable form in accordance with S.C. Code Section 30–5–30.

O. "Memorandum of understanding" (MOU) means a legal document outlining the terms and details of an agreement between parties, including each parties requirements and responsibilities.

P. "Metadata" means "data about data"; it is information that describes another set of data. Metadata is descriptive information that facilitates the management of and access to other information. In the electronic recording context, metadata may be generated automatically or created manually and it may be internal or external to the digital object itself. Regardless of how it is created or stored, maintaining accurate and reliable metadata is essential to the long-term preservation of electronic recordings.

Q. "MISMO" means mortgage industry standards maintenance organization.

R. "PDF"(portable document format) means a file format created for document exchange. PDF is a fixed-layout document format used for representing two-dimensional documents in a manner independent of the application software, hardware, and operating system.

S. "PDF/A" means a subset of PDF that is an electronic document file format for long-term preservation of electronic documents that ensures the documents can be reproduced the exact same way in years to come. A key element is the requirement for PDF/A documents to be 100 percent self-contained. All of the information necessary for displaying the document in the same manner every time is embedded in the file. This includes, but is not limited to, all content (text, raster images and vector graphics), fonts, and color information.

T. "PRIA" means the Property Records Industry Association. PRIA is a not-for-profit association representing business and government members of the property records industry. The main goal of the association is to facilitate recordation and access to public real property records through research and the development and implementation of national standards and systems for the industry.

U. "PKI" (public key infrastructure) means a method of enabling a user of an unsecured public network such as the Internet to securely and privately exchange data and money through the use of a public and a private cryptographic key pair that is obtained and shared through a trusted authority. The public key infrastructure provides for a digital certificate that can identify an individual or an organization and directory services that can store and, when necessary, revoke the certificates.

V. "Register" means a Register of Deeds, Clerk of Court or Register of Mesne Conveyances.

W. "Schema" means a method for specifying the structure and content of specific types of electronic documents which use XML.

X. "SMART Doc™" means a technical framework for representing documents in an electronic format. This format links data, the visual representation of the form, and signature. The visual representation of the documents can utilize a variety of technologies such as XHTML, PDF, and TIFF. Previously SMART docs™ were called eMortgage documents. In order to better describe the actual capabilities of the technology, the word "eMortgage" was replaced by the acronym "SMART" which represents: securable, manageable, achievable, retrievable, and transferable.

Y. "UETA" (Uniform Electronic Transaction Act) means a body of recommended legislation drafted in 1999 by the National Conference of Commissioners on Uniform State Laws (NCCUSL) for adoption by state legislatures. UETA allows electronic documents and digital signatures to stand as equals with their paper counterparts. UETA was adopted in South Carolina in S.C. Code Section 26–6–10, et seq.

Z. "URPERA" (Uniform Real Property Electronic Recording Act) means a body of recommended legislation drafted in 2004 by the National Conference of Commissioners on Uniform State Laws

(NCCUSL) for adoption by state legislatures. URPERA authorizes recorders to accept electronic documents for recording in accordance with established standards. South Carolina adopted URPERA in 2008 Act. No. 210.

AA. "XHTML" means extensible hypertext mark-up language.

BB. "XML" (extensible markup language) means a computer language used to create markup languages. XML allows developers to specify a document type definition or schema in order to devise new markup languages for general or specific uses.

HISTORY: Added by State Register Volume 34, Issue No. 4, eff April 23, 2010.

113–305. General Provisions.

In accordance with the provisions of the Uniform Real Property Electronic Recording Act, the URPERA Committee adopted the electronic recording standards issued by PRIA as the foundation for the standards promulgated as rule under Regulations 113–300 to 113–400.

A. A register may accept instruments for filing and recording electronically in accordance with the requirements of the Uniform Real Property Electronic Recording Act pursuant to S.C. Code Sections 30–6–10 et seq.

B. Any real property record created by electronic recording means shall meet established records management standards for electronic records and record retention requirements identified in the local government records retention and disposition schedule for registers.

C. A participating register shall retain control and ownership of the electronic records created or received by the office of the register and shall be responsible for their maintenance as public records.

HISTORY: Added by State Register Volume 34, Issue No. 4, eff April 23, 2010.

113–310. Electronic Recording Models

For registers that elect to offer electronic recording, authorized filers shall submit real property records for electronic filing and recordation utilizing one of three methods described below as allowed by the individual recorder. The methods are based on levels of automation and transaction structures identified in the PRIA *URPERA Enactment and E-recording Standards Implementation Guide*© utilized nationally to implement electronic recording.

A. Method One. An authorized filer transmits to the register a digitized (scanned) document of an original document created in paper, signed in ink and notarized. The register completes the recording process in the same way as paper using the imaged copy as the source document and determines the recording fees. Fees are usually paid from an escrow or ACH account the authorized filer establishes with the register. Documents may be submitted in batches. Once the register accepts the documents for recording the scanned image is "burned" with the recording information, including recording date and time as well as the unique recording reference number, such as book and page number or instrument number. Indexing is performed by the indexing staff of the register's office. The recorded image is returned to the authorized filer. Usually a recording receipt, together with the recording endorsement data, the authorized filer uses the data to create and print a label with the recording endorsement information. The label is affixed to the paper document, which is then processed as usual by the authorized filer.

B. Method Two. An authorized filer transmits to the register a digitized (scanned) document of an original document created in paper, signed in ink and notarized wrapped in an XML wrapper containing the data necessary for processing, indexing and returning the document. In the case of a scanned paper document, method 2 further extends method 1 by adding data that improves the process, specifically the indexing process in the register's office. The recordable documents are generally delivered to the register's website by whatever means the parties agree, including HTTPS, web services, and FTP. Documents may be submitted in batches. Authentication of the submitter is required based on an account and personal identification number. Digital signatures and certificates may be used. The documents are stored in a secure area on the register's web site until the register's system retrieves them. Once imported into the register's system, the register's system handles the recording functions. The system imports the data from an XML wrapper, including index data. The indexing process is partially automated, but the image must be visually inspected to determine that it meets recording requirements as well as possibly to validate against the data in the XML wrapper. If a

document meets the requirements, it is recorded. The recording information is "burned" onto the image and returned to the authorized filer by means agreed upon by the parties in a MOU. Fees are paid based on the method agreed upon through the MOU, usually fees are paid from an escrow or ACH account the authorized filer maintains with the register.

C. Method Three. An authorized filer transmits to the register digital electronic documents that have been created, signed and notarized electronically along with the electronic indexing information. Real property documents are typically generated on a vendor's document preparation system usually in XHTML format. [Currently the XHTML format (XML data - HTML formatting) is used or other similar formats, such as MISMO's SMART Doc format or PDF's intelligent document that incorporate the XML data and link it to the content displayed.] The submitter logs on to the system and enters the information necessary to generate the document. Once the document has been generated, the person signs it if he or she has the authority, or notifies the person with signing authority to sign. Secure access is required for all parties that must sign the document because signing is done by digital signature. Once the documents are electronically signed and notarized, they are released for recording. The document preparation system compares each document against recording rules to ensure its recordability and then calculates recording fees. Documents may be submitted in batches. Documents received at the register's system are re-checked against the requirements to determine whether or not they may be recorded. If not, they are rejected and returned to the authorized filer. Otherwise they are accepted for recording and the data for recording is extracted from the documents and passed to the register's recording system. The endorsement data is received from the register's system and entered onto the respective documents usually in XML format. Fees are paid based on the method agreed upon through the MOU.

HISTORY: Added by State Register Volume 34, Issue No. 4, eff April 23, 2010.

113–315. Memorandum of Understanding.

A filer shall apply to a participating register to be enrolled in the participating register's electronic filing and recording program.

A. The authorized filer and a participating register shall enter into a memorandum of understanding (MOU) relating to the terms and conditions of participation in the register's electronic filing and recording program. The provisions of the MOU shall be consistent with the regulations herein and the Uniform Real Property Electronic Recording Act. At a minimum the MOU shall address the items described immediately below.

(1) Instruments permitted to be filed electronically. The agreement shall identify the types of real property records permitted to be filed electronically, which may be amended from time to time by the register.

(2) Payment of filing fees. The MOU shall require the payment of recordation taxes, recording fees or register's fees assessed by statute, and establish the manner and method of such payment.

(3) Notarization. The MOU shall provide that electronic real property recordings shall comply with requirements for notarization pursuant to South Carolina statutes and rules adopted by the Secretary of State.

(4) Notification of submission for recordation. The MOU shall provide that the register shall issue to the authorized filer an electronic or other written notification that the electronic document has been received by the register. The notification shall include the date and time of the receipt of the electronic instrument.

(5) Notification of rejection. The MOU will provide that the electronic instruments submitted for recordation shall be rejected if they fail to meet regulation image or file-format specifications and security requirements; comply with South Carolina statute requirements; or comply with the requirements established by the register for electronic recording of real property records.

(6) Transmittal sheet requirements. The MOU shall provide that authorized filers shall comply with transmittal sheet requirements as determined by the individual county recorders.

(7) The MOU shall establish an effective date and duration of the MOU or conditions for termination.

(8) Authorized filer contact information. The MOU shall require authorized filers to provide complete information on persons to contact, including an administrative contact person and an information technology contact person.

(9) Liabilities and responsibilities of the authorized filer. The MOU shall require authorized filers to be responsible for keeping their encryption keys secure pursuant to the regulations herein and for establishing internal controls to ensure the security of the private key is not compromised and shall charge them with the responsibility to notify the register's office of a compromise to address any breach of internal controls.

(10) Breach of agreement by authorized filer. If an authorized filer fails to take immediate corrective and remedial action for any security compromise, the register may revoke the authorized filer's privileges to file electronically.

B. A participating register may include in the MOU other procedures and requirements consistent with S.C. Code Section 30–6–10 et seq. in order to implement fully an electronic filing and recording program.

HISTORY: Added by State Register Volume 34, Issue No. 4, eff April 23, 2010.

113–320. Document and System Security Requirements.

Security procedures shall be implemented to ensure the authenticity and integrity of the electronically filed instrument, including the ability to verify the identity of the filer, as well as the ability to verify that an instrument has not been altered since it was transmitted or filed. In order to protect the integrity of instruments to be recorded electronically, a participating register and authorized filers shall meet the security procedure requirements set forth below.

A. An electronic recording delivery system implemented by a register shall provide a secure method for accepting and recording digital or digitized electronic instruments. The system shall not permit an authorized filer or its employees and agents, or any third party, to modify, manipulate, insert or delete information in the public record maintained by the register, or information in electronic records submitted pursuant to Regulation 113–300 to 113–400. Security standards implemented by registers shall accommodate electronic signatures and notarization of documents in a manner that complies with S.C. Code Section 30–6–10 et seq. and that address the following encryption requirements. The electronic recording delivery system shall:

(1) support, at a minimum, 128-bit file and image encryption over a secure network;

(2) provide for periodic updates to encryption by the electronic recording delivery system vendor;

(3) advise the authorized filer of its liabilities and responsibilities for keeping its keys secure;

(4) provide a secure key management system for the administration and distribution of cryptographic keys; and

(5) require all encryption keys to be generated through an approved encryption package and securely stored.

B. The electronic recording delivery system shall control interactive access to the system through authentication processes that:

(1) utilize a process of requesting, granting, administering and terminating accounts;

(2) address the purpose, scope, responsibilities and requirements for managing accounts;

(3) designate one or more individuals to manage accounts; and

(4) provide for secure delivery of the authorized filer(s) initial password(s) and prohibit the transmission of identification and authentication information (password) without the use of industry accepted encryption standards.

C. Registers shall have a key management system in place for the secure administration and distribution of cryptographic keys.

(1) The electronic recording delivery system shall authenticate the authorized filer's private key.

(2) Authorized filers shall establish internal controls to ensure the security of the private key is not compromised and certify compliance with the register as part of the MOU.

(3) Security of private keys compromised within the electronic recording delivery system shall be promptly addressed by the register.

D. A risk analysis to identify potential threats to the electronic recording delivery system and the environment in which it operates shall be conducted at least once every three years by the register. The purpose of the risk analysis is to prevent the filing and recording of fraudulent instruments or alteration of instruments that were previously filed and recorded electronically. A risk analysis shall identify and evaluate system and environmental vulnerabilities and determine the loss impact if one or more vulnerabilities are exploited by a potential threat. The risk analysis shall include:

(1) a risk mitigation plan that defines the process for evaluating the system;

(2) documentation of management decisions regarding actions to be taken to mitigate vulnerabilities;

(3) identification and documentation of implementation of security controls as approved by management; and

(4) a reassessment of the electronic recording delivery system security after recommended controls have been implemented or in response to newly discovered threats and vulnerabilities.

E. Authorized filers who are enrolled in a participating register's electronic filing and recording program shall implement security procedures for all electronic filing transmissions and shall be responsible for maintaining the security of the systems within their respective offices.

F. Electronic recording delivery systems shall protect against system and security failures and, in addition, shall provide normal backup and disaster recovery mechanisms.

HISTORY: Added by State Register Volume 34, Issue No. 4, eff April 23, 2010.

113–325. Electronic Transmissions.

A. Instruments shall be transmitted through either a secured website or an electronic recording delivery system. The method of transmission shall be identified in the MOU signed by the authorized filer and the register.

B. An authorized filer shall visually inspect each instrument prior to transmitting to ensure compliance with existing statutory recording requirements and the regulations herein.

C. Instruments submitted for filing shall contain, at a minimum, a transmittal sheet with the following information. Individual county recorders may request additional information to supplement the following requirements:

(1) document type: title of the document type shall be stated at the top of the page below the top margin;

(2) return to all cover transmittal sheets: each shall have a return to name, address, phone and fax numbers and email address;

(3) party names: all party names to be indexed shall be listed with the grantor's last name, then first, and middle names, followed by the grantee's last name, first and middle names and full name of business entities bolded, underlined or capitalized in a way to stand out for indexing;

(4) subsequent references: references to the original document on subsequent documents shall appear conspicuously on the first page of all subsequent documents.

D. The register may post guidelines to assist customers submitting documents electronically.

HISTORY: Added by State Register Volume 34, Issue No. 4, eff April 23, 2010.

113–330. Electronic Recording Process Requirements.

A. An MOU between a participating register and an authorized filer shall include information required by the participating register in order to provide electronic notice of confirmation or rejection of an electronic filing and subsequent recording, or if such electronic notice is not possible, by telephone or facsimile. The MOU shall address the requirements outlined in the regulations herein.

B. When a participating register provides acknowledgment of receipt of an instrument filed electronically, the instrument shall be considered to have been filed in compliance with the applicable regulations and laws relating to filing of an instrument with the register.

C. A notice of confirmation of recording or a notice of rejection for recording shall be provided by a participating register to an authorized filer no later than the first business day after the instrument is filed electronically.

(1) A notice of confirmation shall include recording information for the instrument accepted for recording and shall identify the instrument accepted for recording, as provided in the agreement.

(2) A notice of rejection shall include a brief explanation of the reason or reasons for rejection and shall identify the instrument rejected for recording, as provided in the agreement.

(3) If a participating register complies with the notice provisions of the agreement, the failure of an authorized filer to receive notice of confirmation or rejection of filing and subsequent recording shall not affect the validity of the confirmation or rejection.

D. The authorized filer shall be responsible for returning the original instrument to the party or parties entitled to it after notice of confirmation of recording is received by the authorized filer and for providing to such party or parties the recording information set forth in the notice of confirmation from the participating register.

HISTORY: Added by State Register Volume 34, Issue No. 4, eff April 23, 2010.

113–335. Document Formats

A. Authorized filers may elect to transmit either a digitized (scanned) electronic document of an original ink signed instrument or an electronic document electronically signed and notarized along with electronic indexing information to the register.

B. Digitized (scanned) electronic documents shall meet the following specifications:

(1) provide fidelity to the original appearance of any instrument at the time such instrument was first created, whether by electronic or other means;

(2) retain the original content;

(3) be scanned at a minimum of 300 dpi;

(4) e scanned in TIFF or PDF/A formats;

(5) e scanned in portrait mode;

(6) shall capture document images in any multi-page storage format as specified by the register; and

(7) shall be legible to enable reproduction onto microfilm or microfiche to meet regulation requirements.

C. Digital electronic documents transmitted to the register for recording shall meet PRIA formatting and document data field standards in accordance with state and local recording laws as applicable.

D. Electronic recordings shall be converted to (if necessary) and preserved as TIFF or PDF files along with their associated metadata. Method 3 submissions shall be converted to TIFF or PDF.

HISTORY: Added by State Register Volume 34, Issue No. 4, eff April 23, 2010.

113–340. Document and Indexing Requirements.

Electronic recording delivery systems implemented by registers shall have the capacity at a minimum to process documents that are compatible with indexing requirements established by PRIA for file formatting and indexing.

A. The *PRIA eRecording XML Standard v2.4.1* is adopted by reference. The most current version of the PRIA indexing and document format standards may be found at the PRIA website at http://pria.us/

B. Indexing fields for each document code shall require the minimum index fields listed below:

(1) grantor(s) or equivalent grantee(s) or equivalent;

(2) document type recording fee related (original document number, in the case of releases, assignment, amendments, etc.);

(3) legal description fields as specified by county;

(4) standard PRIA tags defined for these fields must be used. http://pria.us/

HISTORY: Added by State Register Volume 34, Issue No. 4, eff April 23, 2010.

113–345. Payment of Filing Fees.

Payment of recording fees shall be collected by a register as prescribed by statute. The register shall provide an electronic or other written receipt to the authorized filer indicating that the payment for the recordation of the electronic instrument has been received and processed by the register. The electronic recording delivery system may generate an automated electronic report which complies with this requirement. The register shall provide authorized filers with a list of payment methods which may be used for the recordation of electronic real property records.

HISTORY: Added by State Register Volume 34, Issue No. 4, eff April 23, 2010.

113–350. Preservation.

Real property records in the custody of the register are permanent records and must be preserved. The preservation of electronic real property records requires consistent and complex management in order to maintain authenticity and integrity. Electronic records are subject to the same threats of destruction as other mediums such as natural or human-made disasters. There are the added challenges of hardware and software obsolescence, media longevity and migration, infrastructure failures and accidental damage from improper handling. The durability of electronic records has not been proven to be as enduring as microfilm. In order to secure and preserve information created and stored electronically, permanent digital real property records shall be converted to microfilm.

HISTORY: Added by State Register Volume 34, Issue No. 4, eff April 23, 2010.