

**REPORT OF THE
STATE CORPORATION COMMISSION
DIVISION OF SECURITIES AND RETAIL FRANCHISING ON**

**STATUTORY AND REGULATORY
REQUIREMENTS CONCERNING
BROKER-DEALER AGENT AND
INVESTMENT ADVISOR
REPRESENTATIVE EMPLOYMENT
TRANSITIONS**

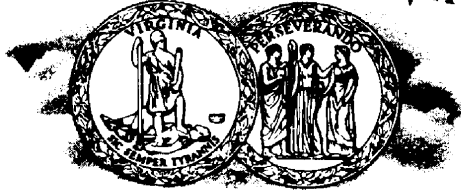
**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 15

**COMMONWEALTH OF VIRGINIA
RICHMOND
1999**

COMMONWEALTH OF VIRGINIA



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STATE CORPORATION COMMISSION DIVISION OF SECURITIES AND RETAIL FRANCHISING

December 7, 1998

TO: The Honorable James Gilmore
Governor of Virginia
and
The General Assembly of Virginia

We are pleased to transmit this Report of the Division of Securities and Retail Franchising of the Virginia State Corporation Commission on the Statutory and Regulatory Requirements Concerning Broker-Dealer Agent and Investment Advisor Representative Employment Transitions.

The study was initiated and the report prepared pursuant to House Joint Resolution No. 150 of the 1998 Session of the General Assembly of Virginia.

Respectfully submitted,

A handwritten signature in black ink, reading 'Ronald W. Thomas', written over a horizontal line.

Ronald W. Thomas
Director
Division of Securities and
Retail Franchising

STATE CORPORATION COMMISSION
DIVISION OF SECURITIES AND RETAIL FRANCHISING
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TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
I. INTRODUCTION.....	3
II. AGENT AND ADVISOR REGISTRATION AND TESTING REQUIREMENTS.....	5
III. USE OF NON-COMPETE AGREEMENTS BY BROKER-DEALERS IN VIRGINIA..	8
IV. THE PUBLIC FORUM	10
V. FINDINGS AND RECOMMENDATIONS.....	11
APPENDICES	12
A. House Joint Resolution 150	
B. Virginia Statutory and Regulatory Registration Requirements	
C. NASD Registration Requirements	
D. SEC Statutory and Regulatory Registration Requirements	
E. NASD Examination Requirements	

EXECUTIVE SUMMARY

In House Joint Resolution 150, the General Assembly requested the Division of Securities and Retail Franchising of the State Corporation Commission to study the licensing requirements for broker-dealer agents (“agent”) and investment advisor representatives (“representative”) currently in place to determine whether the Virginia Securities Act should be amended to allow these persons to retain their registrations in the event that they change employers, are furloughed, or have their employment terminated where no unlawful conduct occurred. The Commission’s Division of Securities and Retail Franchising was asked to determine whether Virginia’s regulatory system adequately allows for the continuation of an agent’s or representative’s registration following termination of employment.

Summary of the Study

The Division studied this issue by reviewing the relevant Virginia and Securities and Exchange Commission (“SEC”) requirements as well as the rules of the relevant self-regulatory organizations, namely the National Association of Securities Dealers (“NASD”). The Division also contacted broker-dealers operating in Virginia to discuss and gather information on the use of restrictive covenants in broker-dealer agent and investment advisor representative employment contracts. This survey also investigated other related issues such as the tying of deferred benefits and bonuses to non-compete agreements. Finally, the Division held a public forum to hear public opinion on these matters.

The Division’s review of the relevant statutes, regulations, and rules revealed that agents and representatives register as members of the NASD before serving customers in securities markets. NASD registration requires the passage of an examination for each sector of the industry the agent or representative intends to serve. Virginia requires a parallel registration of these professionals, and the Commonwealth’s registration requirement includes a provision that the agent or representative pass a state law examination.

Subject to certain waivers, the NASD registration rules require an agent or representative to re-take relevant examinations if that person does not work in the industry for a period of two years or longer. The Commonwealth imposes a state law examination requirement, but the Virginia Securities Act has no re-examination requirement for individuals who have previously registered as agents or representatives.

The survey of brokerages revealed that, of the various types of restrictive covenants used by employers, non-solicitation and non-disclosure agreements are far more prevalent than non-compete agreements. The non-compete agreements that are being used are generally of shorter duration than two years and do not encourage agent or representative NASD registration lapses.

The Division’s public forum was unattended, suggesting that there are no parties affected by the subject of this study, that the affected parties were unwilling to come forward for some reason, or that the affected parties are unaware of these issues.

Summary of the Findings and Recommendations

The information gathered in this study suggests that the problems described in House Joint Resolution 150 may not exist to a great extent, in the Commonwealth, and that the cause of potential problems is beyond the reach of the Virginia Securities Act Statutes and Regulations.

The Division has no means to change the NASD/SEC re-registration requirement or the requirement that an agent or representative re-take the relevant examinations after a two-year period of inactivity. The Division has a system in place whereby change in employment re-registrations (parallel to the NASD/SEC) are automatic as long as applications are complete and no documented non-compliance history exists. Also state law examination requirements exclude re-testing requirements for individuals under this system.

The issues surrounding the use of restrictive covenants by employers, and the tying of these restrictions to an employee's decision to relinquish a deferred benefit plan, involve matters of labor policy best evaluated by an agency with authority over employment issues rather than by the Division of Securities and Retail Franchising.

I. INTRODUCTION

In House Joint Resolution 150, the General Assembly requested the State Corporation Commission to study the licensing requirements for agents and representatives currently in place to determine whether the Virginia Securities Act should be amended to allow these persons to retain their registrations in the event that they change employers, are furloughed, or have their employment terminated where no unlawful conduct occurred. The Commission's Division of Securities and Retail Franchising was asked to determine if Virginia's regulatory system adequately allows for the continuation of a broker-dealer agent's or investment advisor representative's registration following termination of employment as described above.

Scope and Purpose

This report investigates the following issue:

Whether the current statutory and regulatory scheme governing Virginia's securities industry adequately provides for the continuation of registration of agents or representatives when they are in transition from one broker-dealer, investment advisor, or federal covered advisor to another.

Approach and Methodology

The first priority of this study consisted of developing a study work plan, making staff assignments, defining the study scope and purposes, and gathering general background information.

After developing a study work plan, the Division of Securities and Retail Franchising investigated this matter by reviewing the current statutes and regulations (federal, state and self regulatory organizations) in place which govern licensing of agents and representatives in the Commonwealth.

The Division also contacted numerous broker-dealers operating in Virginia and discussed the issues of restrictions placed on agents and representatives who terminate employment where no unlawful conduct occurred. Broker-dealers were contacted and requested to deliver information including samples of employment contracts and, specifically, information on non-compete agreements used by the employers. Special attention was given to the possible conditions imposed by employers on their employees (specifically terminated employees) through deferred benefit and bonus packages, and controlled by agreements regarding non-compete, non-disclosure, and non-solicitation. Special attention was also given to how the above agreements affect or might affect compliance with the different statutes and regulations which govern the licensing of agents and representatives, particularly regarding qualification examination requirements.

The Division also held a public forum to solicit opinions, ideas, and complaints from industry participants and affected parties. The forum was publicized by advertisement in regional newspapers across the state with the broadest distribution.

II. AGENT AND ADVISOR REGISTRATION AND TESTING REQUIREMENTS

The NASD was established in 1938 by amendment to the Securities Exchange Act of 1934. It is a self-regulatory organization operating subject to the oversight of the Securities and Exchange Commission. The NASD and its subsidiary organizations develop rules and regulations to govern the Nasdaq Stock Market, the over-the-counter securities markets, the securities traded in these markets, and the NASD members who participate in these markets. The NASD is headed by a governing Board with a majority of outside governors.

In 1956, the NASD began requiring qualification examinations for certain securities professionals entering the securities industry. Likewise, other securities exchanges also required their own qualification examinations through the same time period. The Securities and Exchange Commission gained authority to mandate these qualification examinations in 1964. In 1975 the SEC's authority was expanded to allow requiring standardized qualification examinations. By 1977 the NASD had assumed the examination responsibilities for five other exchanges, and, by 1980, 70% of all testing was conducted through the NASD's automated testing centers. Today the NASD is virtually the sole source provider of securities industry qualification examinations.

Presently NASD Rule 1031 states,

All persons engaged or to be engaged in the investment banking or securities business of a member who are functioning as representatives shall be registered as such with the association in the category of registration appropriate to the function to be performed as specified in Rule 1032. Before their registration can become effective, they shall pass a Qualification Examination for Representatives appropriate to the category of registration.

These examinations are designed to test the agents' and representatives' knowledge of the relevant federal securities laws, NASD ethical policies, basic finance and accounting practices, and product knowledge. Copies of these rules are included in appendix C. Rule 1031 also states,

Any person whose registration has been revoked . . . or whose registration as a registered representative or principal has been terminated for a period of two (2) or more years immediately preceding the date of receipt by the Association of a new application shall be required to pass a Qualification Examination for Representatives appropriate to the category of registration.

This means that an agent or principal must be competent enough to pass a NASD category Qualification Examination in order to work in that particular category of the securities industry. It also means that if a person's registration has been revoked for any length of time, or a person is terminated for two or more years, that person must re-take and pass each particular category Qualification Examination in order to work in each particular category of the securities industry. Given the fact that industry agents have no real option but to be members of the NASD, this NASD rule effectively is the law of the land.

The NASD provision is backed by the SEC's requirements for all but intrastate brokers or dealers under section 15(b)(7) of the 1934 Securities Exchange Act, which states, "No registered broker or dealer . . . shall effect any transaction in, or induce the purchase or sale of, any security unless . . . all natural persons associated with such broker or dealer meet such standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest." The relevant statutes and rules are included in appendix D. Considering the additional fact that SEC Regulation §240.15b7-1 requires that any registered broker or dealer must comply with the "standards of training, experience, competence, and other qualification standards (including . . . passing any required examinations) established by the rules of any national securities exchange or . . . association of which such broker or dealer is a member," the NASD requirements are undoubtedly the law of the land.

The NASD has also developed a mandatory Continuing Education Program which periodically tests and updates agents' and representatives' knowledge of applicable regulations and product knowledge. This program, like the above noted NASD and SEC requirements is intended to insure that only qualified and competent individuals work as agents, representatives and principals in the securities industry.

The NASD also presently administers Virginia's state law examinations (series 63, 65, and 66). Virginia's examination requirements, like the NASD's, date back to 1956. Prior to 1981, Virginia's requirements were broadly covered in the Securities Act and were largely a matter of informal policy interpretation. In 1981, a formal rule was adopted requiring broker-dealer agent passage of a state law examination as a condition of state registration. In 1989 a similar provision was added regarding investment advisor representatives. In 1997 a dual purpose examination was made available to qualify a person in both fields through one test. Virginia, through informal policy, has approved of the industry standard professional competency examinations for broker-dealer agents as these examinations developed and improved over the years. To date, no such examination exists for investment advisor representatives in Virginia, other states or under SEC requirements. Currently a test of this type is being developed by the North American Securities Administrators Association, Inc.¹

Virginia's registration requirement mirrors the NASD/SEC requirement that "All Representatives Must Be Registered . . . A member shall not maintain a representative registration with the association for any person . . . (2) who is no longer functioning as a representative." Virginia's registration requirements augment the NASD rules in that the Commission requires agents to comply with the relevant state law examination requirements in order to maintain a registration in the Commonwealth. Agents and representatives must pass the appropriate state law examination, or a comparable examination designated by the Commission. Unlike the NASD, the Division has no re-testing requirements. Therefore, a person whose NASD registration has lapsed due to a two-year period of inactivity will be required to retake the

¹ North American Securities Administrators Association, Inc. ("NASAA"): non-profit trade group representing 65 state, provincial, and territorial securities administrators in the 50 states, the District of Columbia, Puerto Rico, Canada, and Mexico. In the United States, NASAA is the voice of the 50 state securities agencies responsible for efficient capital formation and grass-roots investor protection.

qualification examination by the NASD, but will not have to re-test for the Commonwealth's state law examination.

The study focused on problem requirements which exist and which could develop as a result of the above state, NASD, and SEC regulations and statutes. The study also examined the possibility of alleviating re-registration and re-testing burdens on Virginia agents and representatives through Virginia amendments to its statutes and regulations governing qualification examinations and the related registration process.

No real-life documented complaints or problem situations were noted during the study research. But the following potential problems and conflicts were noted:

- * There is no provision under the NASD/SEC system (continuing education, etc.) which would allow an unregistered agent to maintain his licensable status beyond two years.
- * There is nothing in the current securities regulatory scheme to prevent a firm from structuring employment agreements which require securities industry agent employees, upon their separation, for whatever reason, to choose between being unfairly subjected to either NASD re-testing requirements or losing their livelihood and/or accrued employment-based benefits. If such a problem develops or already exists, the Virginia Securities Act is apparently powerless to address the issue.
- * The potential NASD/SEC qualification examination problems seem to unfairly effect only broker-dealer agents. As previously noted, the NASD/SEC have no competence requirements for investment advisor representatives, and thus no re-testing dilemma exists, yet broker-dealers and investment advisor representatives do very similar business.
- * Currently, the NASD computer system, which handles Virginia registration filings, erroneously indicates that agents inactive for two or more years must re-test for the relevant state law examinations. This error exists because some states do require re-testing after two years and the NASD system was designed to accommodate those states. The NASD computer system is currently being redesigned, hopefully to be complete in eighteen months. The new system will correct this error. Until the new system is in place, Virginia will, as it has in the past, override the NASD system manually upon agent request.

III. USE OF NON-COMPETE AGREEMENTS BY BROKER-DEALERS IN VIRGINIA

The Division surveyed broker-dealers in order to determine whether employers were causing terminated agents' and representatives' NASD registrations to lapse by enforcing non-compete agreements for two years or longer as a means of discouraging agent re-employment. The staff was concerned that if this type of agreement-driven de-registration was occurring, then the effected individuals might be unfairly subjected to either NASD re-testing requirements or losing their accrued employment-based benefits. While it was predicted that the employers were using non-compete agreements and deferred bonus plans to prevent former employees from maintaining their NASD registrations, this was not supported by the study findings. Even without documented problems, the study noted that the present NASD regulations do facilitate the possibility of this type of problem.

The firms interviewed stated that they used several methods to protect their assets from actions of former employees. Some of the methods noted were: restrictive covenants, training cost repayment clauses, and deferred bonus plans.

Among the various types of restrictive covenants available to protect an employer from former employees, the most prevalent are non-compete agreements, non-disclosure agreements, and non-solicitation agreements. The majority of firms surveyed admitted to using non-solicitation or non-disclosure agreements in order to prevent former employees from taking the firm's clients. It is widely held that an employee may not be allowed to re-solicit clients gained while in the employment of a prior firm. The assets, advertisements, and reputation of the employer are considered significant factors in the attraction and maintenance of clients, so the client lists and other information are routinely protected as trade secrets. Some firms vigorously defend their interest in these type of assets, while others are less likely to litigate these issues. As noted above, the agreements the study considered posed no conflicts with the NASD, SEC, or Virginia qualification examination requirements.

Several firms stated that they used non-compete agreements in addition to non-disclosure and non-solicitation agreements. Under a non-compete agreement, the employee's contract contains a provision that the employee who leaves the firm will not seek employment in the industry for a specified time or in a specified geographic area. Of the firms interviewed who use these clauses, all of the firms stated that their restrictions were for shorter periods than two years and therefore pose no conflicts with the NASD, SEC, or Virginia qualification examination requirements.

Several firms noted that they employed policies designed to recoup costs spent training new employees who left the firm before a specified time or income level had been met. In order to prevent new hires from gaining the benefit of an extensive training, then leaving to work for a competitor, many firms' training programs include a clause requiring the trainee to repay the costs incurred by the firm if the trainee leaves the firm. These clauses are typically subject to earn-out or declining-balance provisions whereby the trainee's liability is reduced as the trainee generates revenues for the firm or completes a preset term of employment with the firm.

Many firms use deferred bonus plans to retain valuable employees. Under these so-called “golden handcuffs” provisions, a portion of the employee’s compensation is placed in an account which is not immediately accessible by the employee. The funds in the deferred plan vest over time, generally three years. After vesting, the funds become the property of the employee and are not subject to further conditions of the employer. Thus, under these programs, an employee may risk up to three years of deferred benefits if he leaves on terms that are unfavorable to the employer. However, these deferred benefits were not tied to non-compete agreements and the agreements did not encourage agent de-registration at the NASD, SEC or state levels which would result in unfair re-testing requirements. The terminating employee simply loses any unvested benefits whether he chooses to work for a competitor or not.

IV. THE PUBLIC FORUM

The Division held a public forum at the Commission headquarters on October 1, 1998, from 1-4 p.m. and 6-8 p.m. The purpose of the forum was to gather information on the effects of the state and NASD qualification examination requirements for agents and representatives. The forum was advertised as an investigation into the effects of the NASD and Virginia qualification examination requirements for agents, principals, and representatives who have been unregistered for at least two years. Accordingly, it focused on the possibility and use of non-compete agreements as means of forcing terminated employees to choose between allowing their NASD registration to lapse or collecting deferred benefits. The forum was publicized by advertisements in the Sunday, September 13, 1998, editions of Fairfax's *Journal Newspaper*, Tidewater's *Virginian-Pilot*, the *Roanoke Times* in Western Virginia, and the *Richmond Times-Dispatch*.

No interested parties submitted written statements or appeared to speak at the forum. The Division can only speculate as to the cause of the lack of public response. It is possible that agents and representatives may have been reluctant to speak out against their employers. Fear of repercussions may have kept affected parties from attending the forum. Alternatively, the lack of response could be the result of ignorance, a lack of public interest, or an indication that no problems exist.

V. FINDINGS AND RECOMMENDATIONS

Based on the information gathered in this study, the Division does not feel that an adequate basis exists to recommend changes to the Virginia Securities Act. No documented problems or complaints were noted with respect to the current NASD, SEC and Virginia re-registration and qualification examination requirements. Furthermore, the requirements in question are developed and maintained by the NASD and approved by the SEC, and are imposed upon a captive market of securities professionals. Even if Virginia were to repeal all re-registration and qualification examination requirements for its approximately 100,000 registered agents, only five registered agents, those employed by one intrastate broker-dealer, would be able to avail themselves of the de-regulation. All those remaining would continue to be subject to the NASD/SEC requirements due to their interstate focus and their inseparable relationship with the NASD. It does not appear that any Virginia Securities Act amendment could alleviate the possible problems contemplated in House Joint Resolution 150.

Because the Commission has no re-examination requirement for lapsed agent and representative registrations and a near automatic re-registration (NASD parallel) process, the problems contemplated in House Joint Resolution 150 are not caused by any law in place in the Commonwealth. The Commission has no power to direct the NASD or to alter its policies. Therefore, changing the non-state regulatory effects of the NASD/SEC is beyond the scope of the Commission's authority.

This study raises issues of employment law, namely those issues related to the use of restrictive covenants, the use of training repayment clauses, and the use of deferred benefits plans in employment contracts. Because the Division's role as regulator of the Commonwealth's securities markets has provided little expertise in labor and employment matters, the Division feels that any changes in this area should be initiated by an agency more attuned to employment matters and better equipped to determine whether changes in employment policy would benefit the Commonwealth.

Further study of the NASD registration requirements may be warranted at the Federal level, but this subject is beyond the authority of any agency of the Commonwealth. Accordingly, the Division makes no recommendations other than that further inquiries be made, if at all, by agencies with authority over these issues.

APPENDICES

Appendix A: House Joint Resolution 150

Appendix B: Virginia Statutory and Regulatory Registration Requirements

Appendix C: NASD Registration Requirements

Appendix D: SEC Statutory and Regulatory Registration Requirements

Appendix E: NASD Examination Descriptions

Appendix A

HOUSE JOINT RESOLUTION NO. 150

Requesting the Division of Securities and Retail Franchising of the Virginia State Corporation Commission to study licensing requirements in the Virginia securities industry.

Agreed to by the House of Delegates, March 12, 1998

Agreed to by the Senate, March 10, 1998

WHEREAS, persons who are registered as agents of broker-dealers and investment advisor representatives of investment advisors and federal covered advisors are required to pass examinations administered by the National Association of Securities Dealers, Inc., in order to be registered with broker-dealers, investment advisors, and federal covered advisors; and

WHEREAS, persons whose registrations are terminated for two years must take and pass these examinations again; and

WHEREAS, persons who retire, are furloughed, or who have their employment terminated without cause, whether by merger, acquisition or otherwise from broker-dealers, investment advisors, and federal covered advisors forfeit their registrations through termination by the broker-dealer, investment advisor or federal covered advisor; and

WHEREAS, these persons cannot be registered as agents of broker-dealers or investment advisor representatives of investment advisors or federal covered advisors if their registrations have been terminated for two years, until they pass the examinations again; and

WHEREAS, the requirement to pass the examinations again places an undue burden on these persons; and

WHEREAS, the Division of Securities and Retail Franchising of the Virginia State Corporation Commission should examine the current statutory and regulatory scheme governing Virginia's securities industry to ensure that it adequately provides for, under certain circumstances, the continuation of registrations of broker-dealer agents or investment advisor representatives when they are in transition from one broker-dealer, investment advisor or federal covered advisor to another; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Division of Securities and Retail Franchising of the Virginia State Corporation Commission be requested to study licensing requirements in the Virginia securities industry. In addition, the Division is requested to determine whether Virginia's securities laws should be amended to permit persons who are Virginia residents (i) over the age of 50 or who have otherwise reached a self-determined retirement age and (ii) who are currently registered within the securities industry as broker-dealer agents and/or investment advisor representatives to retain their registrations under the Virginia Securities Act, without impairment, restriction, or cancellation in the event they change employments, are furloughed, or have their employments terminated where no unlawful conduct occurred, whether by merger, acquisition or otherwise.

All agencies of the Commonwealth shall provide assistance to the Division of Securities and Retail Franchising for this study, upon request.

The Division of Securities and Retail Franchising shall complete its work in time to submit its findings and recommendations to the Governor and the 1999 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Appendix B: Virginia Statutory and Regulatory Registration Requirements

Virginia Securities Act

Sec. 13.1-505. Procedure for registration.

--A. A broker-dealer, investment advisor, investment advisor representative or agent may be registered after filing with the Commission, or any entity designated by order or rule of the Commission, an application containing such relevant information as the Commission may require. He shall be registered if the Commission finds that

1. He is a person (and, in the case of a corporation or partnership, the natural persons who are the officers, directors or partners or who otherwise control such corporation or partnership are persons) of good character and reputation;
2. He intends to maintain his business records in accordance with the rules of the Commission;
3. His business knowledge and conduct and his financial responsibility are such that he is a suitable person to engage in the business;
4. He has supplied all information required by the Commission; and
5. He is not subject to the revocation provisions of §13.1-506; and
6. He has paid the necessary fee.

B. The Commission may require as a condition of registration or renewal of registration the filing by a broker-dealer or investment advisor of a reasonable surety or other bond conditioned as the Commission may require for the protection of investors not in any case exceeding \$25,000 in penalty amount as evidence of financial responsibility except that no bond shall be required where the net worth of the broker-dealer or investment advisor exceeds \$25,000.

C. The Commission may require as a condition of registration the passing of a written examination as evidence of knowledge of the securities or investment advisory business.

D. All registrations and renewals thereof shall expire annually in accordance with rules and regulations promulgated by the Commission.

E. Each application for a renewal of a registration shall be filed with the Commission or any entity designated by order or rule of the Commission. Upon application for a renewal of a registration the Commission shall have jurisdiction to determine, as of such time, the propriety of the renewal registration.

F. Each application for a registration or renewal of a registration as a broker-dealer or investment advisor shall be accompanied by a nonrefundable fee of \$200, payable to the Treasurer of Virginia or any entity designated by order or rule of the Commission.

G. Each application for a registration or renewal of a registration as an agent or investment advisor representative shall be accompanied by a nonrefundable fee of not less than thirty and not more than fifty dollars, as established by order or rule of the Commission, payable to the Treasurer of Virginia or any entity designated by order or rule of the Commission.

H. For the purposes of registration as a broker-dealer or an investment advisor, a partnership shall be treated as the same partnership so long as two or more members of the partnership named in the application continue the business without change of location, if the partnership, within one month after a change in the partnership, files with the Commission a copy of a certificate filed in compliance with §50-74.

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

J. A renewal of registration shall be granted as of course upon receipt of the proper application and fee together with any surety bond that the Commission may pursuant to subsection B require unless the registration was, or the renewal would be, subject to revocation under §13.1-506.

[Sec. 13.1-505 amended by Laws 1992, Ch. 18, Laws 1997, Ch. 279, enacted March 12, 1997, effective July 1, 1997.]

Virginia Administrative Code

Rule 21 VAC 5-20-70. Examinations/qualifications.

A. Broker-dealers registered pursuant to §15 of the Securities Exchange Act of 1934 (15 USC §78o).

1. All principals of an applicant for registration as a broker-dealer must provide the commission with evidence of a minimum passing grade of 70% on the Uniform Securities Agent State Law Examination--Series 63 (USASLE-Series 63), the Uniform Combined State Law Examination--Series 66, or on a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.

2. In lieu of meeting the examination requirement described in subdivision 1 of this subsection A, at least two principals of an applicant may provide evidence of having passed the General Securities Principal Qualification Exam (Series 24) or on a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.

For the purposes of this subsection A, the term "principal" means any person associated with a broker-dealer who is engaged directly (i) in the management, direction or supervision on a regular or continuous basis on behalf of such broker-dealer of the following activities: sales, training, research, investment advice, underwriting, private placements, advertising, public relations, trading, maintenance of books or records, financial operations; or (ii) in the training of persons associated with such broker-dealer for the management, direction, or supervision on a regular or continuous basis of any such activities.

3. Subsection A of this section is applicable only to principals of broker-dealers that are, or intend to forthwith become, registered pursuant to §15 of the federal Securities Exchange Act of 1934.

B. Broker-dealers not registered pursuant to §15 of the federal Securities Exchange Act of 1934.

1. All principals of an applicant for registration as a broker-dealer must provide the commission with evidence of a minimum passing grade of 70% on:

a. The Uniform Securities Agent State Law Examination--Series 63 (USASLE-Series 63), the Uniform Combined State Law Examination--Series 66, or on a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.

b. Any additional securities-related examination(s) that the commission deems appropriate in light of the business in which the applicant proposes to engage.

2. Subsection B of this section is applicable only to principals of broker-dealers that are not, or do not intend to forthwith become, registered pursuant to §15 of the federal Securities Exchange Act of 1934.

[Amended eff. 7-21-83; 7-2-84; 7-1-89; 7-1-95; 9-1-97; 7-1-98.]

Virginia Administrative Code

Rule 21 VAC 5-20-90. Application for registration as a broker-dealer agent.

A. Application for registration as a NASD member broker-dealer agent shall be filed on and in compliance with all requirements of the NASAA/NASD Central Registration Depository system and in full compliance with the regulations prescribed by the commission. The application shall include all information required by such forms.

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

1. Form U-4 (see 21 VAC 5-85-10).
2. The statutory fee in the amount of \$30. The check must be made payable to the NASD.
3. Provide evidence in the form of a NASD exam report of obtaining a minimum passing grade of 70% on the Uniform Securities Agent State Law Exam, "USASLE," Series 63 exam, the Uniform Combined State Law Exam, Series 66 exam, or on similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates. (21 VAC 5-20-150)
4. Any other information the commission may require.

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

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

1. Form U-4 (see 21 VAC 5-85-10).
2. The statutory fee in the amount of \$30. The check must be made payable to the Treasurer of Virginia.
3. Provide evidence in the form of a NASD exam report of obtaining a minimum passing grade of 70% on the Uniform Securities Agent State Law Exam, "USASLE," Series 63 exam, the Uniform State Law Exam, Series 66 exam, or on a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates. (21 VAC 5-20-150)
4. Any other information the commission may require.

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

[Amended eff. 7-2-84; 7-1-89; 7-1-90; 7-1-91; 7-1-95; 9-1-97.]

Virginia Administrative Code

Rule 21 VAC 5-20-150. Examination--qualification.

An individual applying for registration as a broker-dealer agent shall be required to show evidence of passing the Uniform Securities Agent State Law Examination (USASLE-Series 63), the Uniform Combined State Law Examination, Series 66 exam, or a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates with a minimum grade of 70%.

[Added eff. 7-1-89; Amended eff. 7-1-95; 9-1-97.]

Appendix C. NASD Registration Requirements

From the NASD Manual, Membership and Registration Rules 1031. Registration Requirements

(a) All Representatives Must Be Registered

All persons engaged or to be engaged in the investment banking or securities business of a member who are to function as representatives shall be registered as such with the Association in the category of registration appropriate to the function to be performed as specified in Rule 1032. Before their registration can become effective, they shall pass a Qualification Examination for Representatives appropriate to the category of registration as specified by the Board of Governors. A member shall not maintain a representative registration with the Association for any person (1) who is no longer active in the member's investment banking or securities business, (2) who is no longer functioning as a representative, or (3) where the sole purpose is to avoid the examination requirement prescribed in paragraph (c). A member shall not make application for the registration of any person as representative where there is no intent to employ such person in the member's investment banking or securities business. A member may, however, maintain or make application for the registration as a representative of a person who performs legal, compliance, internal audit, or similar responsibilities for the member, or a person who performs administrative support functions for registered personnel, or a person engaged in the investment banking or securities business of a foreign securities affiliate or subsidiary of the member.

(b) Definition of Representative

Persons associated with a member, including assistant officers other than principals, who are engaged in the investment banking or securities business for the member including the functions of supervision, solicitation or conduct of business in securities or who are engaged in the training of persons associated with a member for any of these functions are designated as representatives.

(c) Requirement for Examination on Lapse of Registration

Any person whose registration has been revoked pursuant to Rule 8310 or whose most recent registration as a representative or principal has been terminated for a period of two (2) or more years immediately preceding the date of receipt by the Association of a new application shall be required to pass a Qualification Examination for Representatives appropriate to the category of registration as specified in Rule 1032.

[Amended by SR-NASD-80-01 eff. June 26, 1980; amended by SR-NASD-89-15 eff. June 8, 1989; amended by SR-NASD-89-53 eff. Aug. 28, 1990.]

Cross Reference - IM-8310-1, Effect of Suspension, Revocation, or Bar

1032. Categories of Representative Registration

(a) General Securities Representative

(1) Each person associated with a member who is included within the definition of a Representative in Rule 1031, shall be required to register with the Association as a General Securities Representative and shall pass an appropriate Qualification Examination before such registration may become effective unless his activities are so limited as to qualify him for one or more of the limited categories of representative registration specified hereafter. A person whose activities in the investment banking or securities business are so limited is not, however, precluded from attempting to become qualified for registration as a General Securities Representative, and if qualified, may become so registered.

(2) Except as provided in Rule 1031(c):

(A) Any person who was registered with the Association as a Representative prior to September 1, 1974, shall be qualified to be registered with the Association as a General Securities Representative.

(B) A person who applied for registration as a Representative prior to September 1, 1974, and who become registered as a Representative prior to April 1, 1975 by virtue of having passed the Qualification Examination for Representatives (Test Series 1) shall be qualified to be registered as a General Securities Representative.

(C) A person who applied for registration as a Representative on or after September 1, 1974, or who registered as a Representative on or after April 1, 1975 by virtue of having passed the Qualification Examination for Registered Representatives (Test Series 1) shall be qualified to be registered only as a Limited Representative-Investment Company and Variable Contracts Products and as a Limited Representative-Direct Participation Programs as defined in paragraph (b) and (c) hereof.

(D) A person who was registered as a Registered Representative after September 1, 1974 by virtue of having passed the General Securities Representative Examination (Test Series 7) shall be qualified to be registered as a General Securities Representative.

(E) A person who was registered as a Registered Representative

for Sale of Variable Contracts Only shall be qualified to be registered as a Limited Representative- Investment Company and Variable Contracts Products.

(F) A person registered and in good standing with The Securities and Futures Authority and having passed the Modified General Securities Representative Qualification Examination for United Kingdom Representatives shall be qualified to be registered as a General Securities Representative except that such person's activities in the investment banking or securities business may not involve the solicitation, purchase and/or sale of municipal securities as defined in Section 3(a)(29) of the Act.

(G) A person presently registered and in good standing as a representative with any Canada stock exchange, or with a securities regulator of any Canada Province or Territory, or with the Investment Dealers Association of Canada, and who has completed the training course of the Canadian Securities Institute, and who has passed the Canada Module of the General Securities Registered Representative Examination, shall be qualified to be registered as a General Securities Representative except that such person's activities may not involve the solicitation, purchase and/or sale of municipal securities as defined in Section 3(a)(29) of the Act.

(H) A person presently registered and in good standing as a representative with any Japan stock exchange, or with any Japan Securities Dealers Association, and who has passed the Japan Module of the General Securities Registered Representative Examination, shall be qualified to be registered as a General Securities Representative except that such person's activities may not involve the solicitation, purchase and/or sale of municipal securities as defined in Section 3(a)(29) of the Act.

(3) A person registered as a General Securities Representative shall not be qualified to function as a Registered Options Representative unless he is also qualified and registered as such pursuant to the provisions of paragraph (d) hereof

Appendix D, SEC Statutory and Regulatory Registration Requirements

SEC-LAW, FSLR ¶25,001, 1934 Securities Exchange Act Sec. 15, Registration and regulation of brokers and dealers, Subsec. (a), Registration requirements, Subsubsec. (1), Brokers and Dealers Required to Be Registered
Sec. 15, Registration and regulation of brokers and dealers, Subsec. (a), Registration requirements

[Brokers and Dealers Required to Be Registered]

Sec. 15(a)

(1) It shall be unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer which is a person other than a natural person (other than such a broker or dealer whose business is exclusively intrastate and who does not make use of any facility of a national securities exchange) to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker or dealer is registered in accordance with subsection (b) of this section.

.001 Historical comment.--

The Act of June 4, 1975, Sec. 11(2), effective December 1, 1975, 89 Stat. 121, amended Sec. 15(a)(1) which formerly read:

"No broker or dealer (other than one whose business is exclusively intrastate) shall make use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) otherwise than on a national securities exchange, unless such broker or dealer is registered in accordance with subsection (b) of this section."

Act of August 20, 1964, Sec. 6(a), effective July 1, 1964 (¶60,451), 78 Stat. 570, redesignated former Sec. 15(a) as Sec. 15(a)(1).--CCH.

SEC-LAW, FSLR ¶25,065, 1934 Securities Exchange Act Sec. 15, Registration and regulation of brokers and dealers, Subsec. (b), Registration requirements, Subsubsec. (8), Unlawful Transactions
Sec. 15, Registration and regulation of brokers and dealers, Subsec. (b), Registration requirements

[Unlawful Transactions]

Sec. 15(b)

(8) It shall be unlawful for any registered broker or dealer to effect any transactions in, or induce or attempt to induce the purchase or sale of, any security (other than commercial paper, bankers' acceptances, or commercial bills), unless such broker or dealer is a member of a securities association registered pursuant to section 15A of this title or effects transactions in securities solely on a national securities exchange of which it is a member.

.001 Historical comment.--

The Act of October 28, 1986 (Government Securities Act of 1986), effective July 25, 1987, Sec. 102(e), Public Law 99-571, 100 Stat. 3218, amended Section 15(b)(8): (A) by striking out "any broker or dealer required to register pursuant to this title" and inserting in lieu thereof "any registered broker or dealer"; and (B) by striking out "an exempted security".

Act of June 6, 1983, Sec. 3, Pub. Law 98-38, 97 Stat. 206, effective December 6, 1983, amended Sec. 15(b)(8) which formerly read: "In addition to the fees and charges authorized by paragraph (7) of this subsection, each registered broker or dealer not a member of a registered securities association shall pay to the Commission such reasonable fees and charges as may be necessary to defray the costs of the additional regulatory duties required to be performed by the Commission because such broker or dealer effects transactions in securities otherwise than on a national securities exchange of which it is a member and is not a member of a registered securities association. The Commission, by rule, shall establish such fees and charges."

The Act of June 4, 1975, Sec. 11(2), 89 Stat. 125, amended and redesignated Sec. 15(b)(9) as Sec. 15(b)(8). Sec. 15(b)(9) formerly read:

"In addition to the fees and charges authorized by paragraph (8), each broker or dealer registered under section 15 of this title not a member of a securities association registered pursuant to section 15A of this title shall pay to the Commission such reasonable fees and charges as may be necessary to defray the costs of additional regulatory duties required to be performed by the Commission because such broker or dealer is not a member of such a securities association. The Commission shall establish such fees and charges by rules and regulations."

Act of August 20, 1964, Sec. 6(b), 78 Stat. 573, added paragraph (9) to Sec. 15(b).--CCH.

SEC-LAW, FSLR ¶25,062, 1934 Securities Exchange Act Sec. 15, Registration and regulation of brokers and dealers, Subsec. (b), Registration requirements, Subsubsec. (7), Standards of Training, Experience, Competence, and Other Qualifications--Testing

ec. 15, Registration and regulation of brokers and dealers, Subsec. (b), Registration requirements

[Standards of Training, Experience, Competence, and Other Qualifications--Testing]

Sec. 15(b)

(7) No registered broker or dealer or government securities broker or government securities dealer registered (or required to register) under section 15C(a)(1)(A) shall effect any transaction in, or induce the purchase or sale of, any security unless such broker or dealer meets such standards of operational capability and such broker or dealer and all natural persons associated with such broker or dealer meet such standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors. The Commission shall establish such standards by rules and regulations, which may--

(A) specify that all or any portion of such standards shall be applicable to any class of brokers and dealers and persons associated with brokers and dealers;

(B) require persons in any such class to pass tests prescribed in accordance with such rules and regulations, which tests shall, with respect to any class of partners, officers, or supervisory employees (which latter term may be defined by the Commission's rules and regulations and as so defined shall include branch managers of brokers or dealers) engaged in the management of the broker or dealer, include questions relating to bookkeeping, accounting, internal control over cash and securities, supervision of employees, maintenance of records, and other appropriate matters; and

(C) provide that persons in any such class other than brokers and dealers and partners, officers, and supervisory employees of brokers or dealers, may be qualified solely on the basis of compliance with such standards of training and such other qualifications as the Commission finds appropriate.

The Commission, by rule, may prescribe reasonable fees and charges to defray its costs in carrying out this paragraph, including, but not limited to, fees for any test administered by it or under its direction. The Commission may cooperate with registered securities associations and national securities exchanges in devising and administering tests and may require registered brokers and dealers and persons associated with such brokers and dealers to pass tests administered by or on behalf of any such association or exchange and to pay such association or exchange reasonable fees or charges to defray the costs incurred by such association or exchange in administering such tests.

.001 Historical comment.--

Act of December 17, 1993 (Government Securities Act Amendments of 1993), Sec. 106(b)(2)(B), Pub. Law 103-202, 107 Stat. 2344, inserted "or government securities broker or government securities dealer registered (or required to register) under section 15C(a)(1)(A)" after "No registered broker or dealer".

The Act of June 4, 1975, Sec. 11(2), 89 Stat. 124, amended and redesignated Sec. 15(b)(8) as Sec. 15(b)(7). Sec. 15(b)(8) formerly read:

"No broker or dealer registered under section 15 of this title shall, during any period when it is not a member of a securities association registered with the Commission under section 15A of this title, effect any transaction in, or induce the purchase or sale of, any security (otherwise than on a national securities exchange) unless such broker or dealer and all natural persons associated with such broker or dealer meet such specified and appropriate standards with respect to training, experience, and such other qualifications as the Commission finds necessary or desirable. The Commission shall establish such standards by rules and regulations, which may--

(A) appropriately classify brokers and dealers and persons associated with brokers and dealers (taking into account relevant matters, including types of business done and nature of securities sold).

(B) specify that all or any portion of such standards shall be applicable to any such class.

(C) require persons in any such class to pass examinations prescribed in accordance with such rules and regulations.

(D) provide that persons in any such class other than a broker or a dealer and partners, officers, and supervisory employees (which latter term may be defined by the Commission's rules and regulations and as so defined shall include branch managers of brokers or dealers) or brokers or dealers, may be qualified solely on the basis of compliance with such specified standards of training and such other qualifications as the Commission finds appropriate.

The Commission may prescribe by rules and regulations reasonable fees and charges to defray its costs in carrying out this paragraph, including, but not limited to, fees for any examination administered by it, or under its direction. The Commission may cooperate with securities associations registered under section 15A of this title and with national securities exchanges in administering examinations and may require brokers and dealers subject to this paragraph and persons associated with such brokers and dealers to pass examinations administered by or on behalf of any such associations or exchange and to pay to such association or exchange reasonable fees or charges to defray the costs incurred by such association or exchange in administering such examinations."

Act of August 20, 1964, Sec. 6(b), 78 Stat. 572-573, added paragraph (8) to Sec. 15(b).--CCH.

SEC-REG, FSLR ¶25,062A, Reg. §240.15b7-1, [**Compliance with Qualification Requirements of Self-Regulatory Organizations**]
Compliance with Qualification Requirements of Self-Regulatory Organizations]

Reg. §240.15b7-1. No registered broker or dealer shall effect any transaction in, or induce the purchase or sale of, any security unless any natural person associated with such broker or dealer who effects or is involved in effecting such transaction is registered or approved in accordance with the standards of training, experience, competence, and other qualification standards (including but not limited to submitting and maintaining all required forms, paying all required fees, and passing any required examinations) established by the rules of any national securities exchange or national securities association of which such broker or dealer is a member or under the rules of the Municipal Securities Rulemaking Board (if it is subject to the rules of that organization).

[Adopted in Release No. 34-32261 (¶85,136), effective June 10, 1993, 58 FR 27656.]

Appendix E, NASD Examination Descriptions

EXAMS

Series 2 - NASD Non-member General Securities	SECO exam most commonly used to register investment advisors - it is administered to individuals who are required by certain states to take a general securities examination in order to register either as intrastate broker/dealers and/or investment advisors.
Series 3 - National Commodities Futures	CFTC exam for trading in all commodities and options on futures
Series 4 - Registered Options Principal	required of all individuals who will function as a principal, compliance registered options principal or senior registered options principal - tests knowledge of options trading, exchange rules and regulations applicable to the trading of options contracts, as well as the rules of the Options Clearing Corporation
Series 5 - Interest Rate Options	
Series 6 - Investment Company / Variable Contracts Limited Representative	for the solicitation, purchase and/or sale of mutual funds, variable annuities and variable life insurance contracts issued by an insurance company
Series 7 - General Securities Representative	to sell every kind of security except commodities - includes the solicitation, purchase and/or sale of corporate securities, municipal securities, options, direct participation programs, investment company products and variable contracts
Series 8 - General Securities Sales Supervisor	for individuals required to register as principals to supervise sales activities in corporate, municipal and options securities, investment company products, variable contracts and direct participation programs
Series 9 - General Securities Sales Supervisor Options Module Re-examination	
Series 10 - General Securities Sales Supervisor General Module Re-examination	
Series 11 - Assistant Representative - Order Processing	NASD exam for assistants and order takers - persons passing this exam can only give quotes and receive unsolicited orders for submission to and execution by a member
Series 15 - Foreign Currency Options	
Series 22 - Direct Participation Programs Limited Representative	for the solicitation, purchase and/or sale of programs which provide for flow-through tax consequences such as oil and gas programs, real estate programs, S corporation offerings

Series 24 - General Securities Principal	for individuals required to register as a general securities principal in order to manage or supervise the member's investment banking or securities business (including sales supervision) for corporate securities, direct participation programs and investment company products/variable contract
Series 26 - Investment Company Products Variable Contracts Limited Principal	for individuals who will function as a principal for the solicitation, purchase and/or sale of mutual funds, variable annuities or variable life contracts and insurance premium funding programs and other contracts issued by an insurance company
Series 27 - Financial and Operations Principal	for self-clearing general securities firms and is designed to test a candidate's knowledge and understanding of financial responsibility rules and record-keeping requirements
Series 28 - Introducing Broker/Dealer Financial and Operations Principal	for the individual responsible for the record-keeping requirements of introducing broker/dealers which do not carry customer accounts or hold customer funds
Series 31 - Futures Managed Funds Examination	NFA exam for registered reps of securities broker/dealers whose only involvement in the futures industry will be to market interests in commodity pools - this license qualifies the registered reps to receive trailing commissions relating to their sales of commodity pool interest in lieu of Series 3 and registration as an Associated Person
Series 39 - Direct Participation Programs Limited Principal	for an individual who will function as a principal for the solicitation, purchase and/or sale of programs which provide for flow-through tax consequences such as oil and gas programs, real estate programs, and S corporation offerings
Series 42 - Registered Options Representative	
Series 52 - Municipal Securities Representative	for persons selling municipal bonds who do not have a Series 7 - also includes U.S. government, federal agency and other financial instruments, economic activity, government policy, the behavior of interest rates, and applicable federal securities laws and regulations
Series 53 - Municipal Securities Principal	MSRB Municipal Securities Principal exam designed to test a candidates knowledge of the rules and statutory provisions applicable to a municipal securities broker or dealer and to the supervision of the activities of municipal securities representative.

Series 54 - Municipal Securities Financial and Operations Principal	
Series 62 - Corporate Securities Limited Representative	for the sale of corporate stocks, corporate bonds, rights, warrants, real estate, investment trusts, collateralized mortgage obligations and securities of closed-end companies pursuant to the Investment Company Act of 1940
Series 63 - Uniform Securities Agent State Law Exam	USASLE (Uniform Securities Agent State Licensing Exam) which is accepted by almost all states for Blue Sky testing
Series 64 - Uniform Real Estate Securities Exam	
Series 65 - Uniform Investment Advisor Exam	required by many states for investment advisers and financial planners

