CHAPTERS 47 to 49
Reserved

SECURITIES

CHAPTER 50
REGULATION OF SECURITIES OFFERINGS AND THOSE WHO ENGAGE IN THE SECURITIES BUSINESS

[Appeared as Ch 17, 1973 IDR]
[Prior to 10/22/86, Insurance Department[510]]

191—50.1(502) Broker-dealer applications, updates, and renewals.

50.1(1) *Broker-dealer applications.* Every applicant for an original license to conduct business as a broker-dealer shall file with the administrator:

a. A complete, current Form BD, manually signed and notarized, only if the applicant is not a member of the National Association of Securities Dealers (NASD).

b. The most recent audited financial statement, unless waived by the administrator for good cause. The financial statement shall include a balance sheet, income statement and net capital calculation. The audit shall be performed by an independent certified public accountant according to generally accepted accounting principles. If a waiver is granted, the applicant shall file a financial statement, attested to by the president or financial officer of the broker-dealer, as to its completeness and accuracy.

c. A filing fee of $200. If the applicant is a member of the National Association of Securities Dealers (NASD), the fee shall be filed with the Central Registration Depository (CRD). If the applicant is not a member of the NASD, the filing fee shall be filed with the administrator.

d. A form known as the Iowa Broker-Dealer Affidavit which may be obtained from the administrator, at the Iowa Securities Bureau, Lucas State Office Building, Second Floor, Des Moines, Iowa 50319. The form requires a manually signed and notarized statement:

(1) That the applicant engaged in no securities transactions with persons in Iowa prior to licensing or identifying past and current Iowa accounts; and

(2) A consent to appointment of the administrator as the applicant's attorney to receive service of any lawful process in a noncriminal proceeding against the applicant, a successor, or personal representative, which grows out of conduct prohibited or made actionable by Iowa Code chapter 502 or any rule or order of the administrator, with the same force and validity as if served personally.

50.1(2) *Broker-dealer renewals.* Every applicant for renewal of a broker-dealer's license shall submit all of the following by November 30 each year:

a. The applicant's most recent audited financial statements, if not previously submitted to the administrator pursuant to rule 50.6(502).

b. A filing fee of $200. If the applicant is a member of the National Association of Securities Dealers (NASD), the fee shall be filed with the Central Registration Depository (CRD). If the applicant is not a member of the NASD, the applicant shall file the renewal fee with the administrator. Failure to pay the renewal fee shall be deemed a request for withdrawal of the broker-dealer license and the broker-dealer shall be automatically terminated for failure to renew.

c. If the applicant is not a member of the NASD, an update to the Form BD with the administrator.

50.1(3) *Updated filings.*

a. If the information contained in an application for original license or renewal becomes inaccurate or incomplete in any material respect, including a change in the name or form of organization of the applicant, a correcting amendment shall be filed within 30 days of the change. Failure to file within 30 days may result in sanctions as authorized by Iowa Code section 502.304.

(1) Members of the National Association of Securities Dealers shall file:

1. In the case of a structural change, i.e., state of incorporation or partnership to corporation, an Iowa Broker-Dealer Affidavit with the administrator. Broker-dealer license fee and fees for all Iowa-licensed agents shall be paid directly to the administrator.

2. In the case of a name change, a new Iowa Broker-Dealer Affidavit with the administrator. No fees are required.

3. Any amendment to Form BD with the Central Registration Depository.

4. Withdrawal requests (Form BDW) with the Central Registration Depository.

(2) Nonmembers of the National Association of Securities Dealers shall file:

1. In the case of a structural change, a new application as set forth in 50.1(1) including the licensing fees for the broker-dealer and all Iowa-licensed agents, with the administrator.

2. In the case of a name change, all amendments to Form BD (specifically including a manually signed page one), an Iowa Broker-Dealer Affidavit, with the administrator.

3. Amendments to Form BD with the administrator.

4. Withdrawal requests with the administrator.

b. Audited financial statements shall be filed within 60 days of the broker-dealer's fiscal year end. The audit shall be performed by an independent certified public accountant according to generally accepted accounting principles. The financial statement shall include a balance sheet, income statement and net capital calculation. Failure to file these statements within 60 days may result in sanctions authorized by Iowa Code section 502.304.

Upon verbal or written request, the most recent unaudited financial statement shall be provided within two business days of the request. Telefaxing or express mail shall be required if necessary to meet the two-business-day limit.

191—50.2(502) Principals. Every broker-dealer registered pursuant to the Iowa Uniform Securities Act (the Act) shall have at least two officers or partners registered as principals, appropriate to the function(s) to be performed, with the National Association of Securities Dealers. The broker-dealer may seek a waiver of this requirement for good cause upon written request to the administrator.

This rule is intended to implement Iowa Code section 502.302.

191—50.3(502) Record-keeping requirements of broker-dealers.

50.3(1) Unless otherwise provided by order of the Securities and Exchange Commission, each broker-dealer registered or required to be registered under Iowa Code chapter 502 shall make, maintain and preserve books and records in compliance with Securities and Exchange Commission rules 17a-3 (17 CFR 240.17a-3(1996)), 17a-4 (17 CFR 240.17a-4 (1996)), 15c2-6 (17 CFR 240.15c2-6 (1996)) and 15c2-11 (17 CFR 240.15c2-11 (1996)), Securities Exchange Act of 1934.

50.3(2) To the extent that the Securities and Exchange Commission promulgates changes to the above-referenced rules, broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the administrator for violation of this rule to the extent that the violation results solely from the broker-dealer's compliance with the amended rule.

191—50.4(502) Minimum financial requirements and financial reporting requirements of broker-dealers.

50.4(1) Each broker-dealer registered or required to be registered under Iowa Code chapter 502 shall comply with Securities and Exchange Commission rule 15c3-1 (17 CFR 240.15c3-1(1996)), 15c3-2 (17 CFR 240.15c3-2(1996)), and 15c3-3 (17 CFR 240.15c-3(1996)), Securities Exchange Act of 1934.

50.4(2) Each broker-dealer registered or required to be registered under Iowa Code chapter 502 shall comply with Securities and Exchange Commission rule 17a-11 (17 CFR 240.17a-11 (1996)) and shall file with the administrator copies of annual audited financial statements and notices of financial deficiencies, as required under rules 17a-5(d) (17 CFR 240.17a-5(d) (1996)) and 17a-11 (17 CFR 240.17a-11(1996)), Securities Exchange Act of 1934.

50.4(3) To the extent that the Securities and Exchange Commission promulgates changes to the above-referenced rules, broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the administrator for violation of this rule to the extent that the violation results solely from the broker-dealer's compliance with the amended rule.

191—50.5(502) Net capital. Rescinded IAB 8/13/97, effective 9/17/97.

191—50.6(502) Filing of financial reports. Rescinded IAB 8/13/97, effective 9/17/97.

191—50.7(502) Cost of examination.

50.7(1) Whenever the administrator or the administrator's agent makes an examination as provided for in section 303(4) of the Act, the broker-dealer shall pay to the administrator the salaries and the travel, lodging and meal expenses pertaining to such examination as are permitted by the rules of the comptroller's office for state employees.

50.7(2) Within a reasonable time after completion of the examination, the administrator shall notify the subject of the examination of the expenses attributable thereto.

50.7(3) The expenses collected by the administrator pursuant to this rule shall be turned into the state treasury.

191—50.8(502) Registration of agents and issuers.

50.8(1) *NASD member.*

a. An applicant for registration as an Iowa-licensed agent of an NASD member broker-dealer shall:

(1) Pass one of the following National Association of Securities Dealers (NASD) examinations: Series 1, 2, 6, 7, 11, 17, 22, 24, 26, 39, 40, 52, 53, or 62; and

(2) Pass the NASD Series 63 or Series 66 examination; and

(3) File an accurate and complete Form U-4 with the Central Registration Depository (CRD) and pay the required filing fee of $30 to the NASD.

b. An applicant may file a written request for waiver for good cause of the examination requirement contained in 50.8(1)*"a."* A waiver will be considered for an applicant with ten years of continuous experience in the securities industry. A waiver of the Series 63 examination will not be granted.

c. An applicant for an agent license under this subrule who has not been continuously licensed with the NASD for the two-year period immediately preceding the filing of the application shall be subject to the examination requirements of this rule.

d. Updates to Form U-4, withdrawal requests, renewals and renewal fees shall be filed with the Central Registration Depository (CRD).

50.8(2) *Non-NASD member.*

a. An applicant for registration as an Iowa-licensed agent of an issuer or other non-NASD member must file with the administrator:

(1) Proof of attaining a passing grade on one of the following NASD examinations: Series 1, 2, 6, 7, 11, 17, 22, 24, 26, 39, 40, 52, 53, or 62; and

(2) Proof of attaining a passing grade on the NASD Series 63 or Series 66 examination; and

(3) An accurate and complete Form U-4 and $30 filing fee.

b. An applicant may file a written request for waiver of the examination requirements. The examination requirements may be waived upon written application to the administrator for good cause shown.

c. Updates to Form U-4, withdrawal requests and renewal documents and fees shall be filed directly with the administrator.

50.8(3) *Incomplete applications.* No application for a license to act as an agent shall be considered for approval until it is complete.

a. No application for an agent license with an NASD member broker-dealer shall be considered complete until all requirements of 50.8(1)*"a"* are satisfied.

b. No application for an agent license with an issuer or other non-NASD member shall be considered complete until all requirements of 50.8(2)*"a"* are satisfied.

c. In the discretion of the administrator, an applicant may be required to provide additional information regarding any aspect of the application. The application shall be incomplete until such requests are satisfied.

50.8(4) *Employment of agents of an issuer.* An issuer who desires to employ persons as agents of issuers within the meaning of section 502.102(3) of the Act must apply to the administrator for such authority. The application shall be made by letter and shall include:

a. A statement of the issuer's intent to employ agents for the sale of its securities,

b. Name, address, social security number and proof of satisfaction of 50.8(2)*"a"* for each agent, and

c. A complete description of the subject securities.

This rule is intended to implement Iowa Code section 502.302.

191—50.9(502) Dishonest or unethical practices in the securities business.

50.9(1) These acts and practices, including but not limited to the following, are deemed dishonest or unethical practices in the securities business by any person, other than an agent, under Iowa Code section 502.304(1)*"g."*

a. Engaging in any unreasonable and unjustifiable delay in the delivery of securities purchased by any of its customers or in the payment upon request of free credit balances reflecting completed transactions of any of its customers;

b. 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;

c. Recommending to a customer the purchase, sale or exchange of any securities 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;

d. Executing a transaction on behalf of a customer without authorization to do so;

e. 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 or price for the execution of orders;

f. Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement prior to the initial transaction in the account;

g. Failing to segregate customers' free securities or securities held in safekeeping;

h. 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;

i. 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;

j. Failing to furnish to a customer purchasing securities in an offering registered pursuant to Iowa Code section 502.206 or 502.207, 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; if the offering is not registered pursuant to section 502.206 or 502.207, the broker/dealer shall furnish disclosure documents customarily available;

k. Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of moneys 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;

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

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

n. 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:

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

(2) 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 subrule shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers;

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

o. Guaranteeing a customer against loss in any securities account of the customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for the customer;

p. 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 the broker-dealer believes that the 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 the broker-dealer believes that the quotation represents a bona fide bid for, or offer of, such security;

q. Using any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of this 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;

r. 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 the security, the existence of the control to the customer, and if the 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;

s. Failing to make a bona 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;

t. Failing or refusing to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written request or complaint;

u. Failing or refusing to provide, within 14 days or later time as prescribed by the securities bureau, information requested in writing by the bureau pursuant to its investigative authority;

v. Extending credit to a customer in violation of the Securities Exchange Act of 1934 or the regulations of the Federal Reserve Board;

w. Engaging in acts or practices enumerated in rule 191—50.43(502);

x. Failing to promptly provide the most current prospectus, the most recently filed periodic report filed under Section 13 of the Securities Exchange Act or other research reports when requested to do so by a customer in the solicitation of a sale or purchase of an OTC non-NASDAQ security;

y. Marking any order tickets or confirmations as unsolicited when in fact the transaction is solicited;

z. Failing to provide each customer with a statement of account which, with respect to all OTC non-NASDAQ equity securities in the account, contains a value for each security based on the closing market bid on a date certain for any month in which activity has occurred in a customer's account, but in no event less than every three months; provided that, this subrule shall apply only if the firm has been a market maker in the security at any time during the period for which the monthly or quarterly statement is issued;

aa. Failing to comply with any applicable provision of the Rules of Fair Practice of the National Association of Securities Dealers or any applicable fair practice or ethical standard promulgated by the Securities and Exchange Commission or by a self-regulatory organization approved by the Securities and Exchange Commission.

50.9(2) These acts and practices, including but not limited to the following, are deemed dishonest or unethical practices in the securities business by an agent, under Iowa Code section 502.304(1)*"g."*

a. 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 unless the customer is a member of the agent's family and the act or practice is approved in advance by supervisory personnel;

b. Effecting securities transactions 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;

c. Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited;

d. 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;

e. 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

f. Engaging in conduct specified in subrule 50.9(1), paragraph *"b," "c," "d," "e," "f," "i," "j," "n," "o," "p," "q," "u," "w," "x," "y," "z"* or *"aa"*.

191—50.10(502) Unsolicited order exemption.

50.10(1) Any registered broker-dealer effecting a transaction pursuant to an unsolicited order or offer to buy, and claiming an exemption from registration based solely upon the availability of subsection 3 of section 203 of the Act, shall require the customer to acknowledge that in fact the transaction is unsolicited.

50.10(2) The acknowledgment required by this rule shall be obtained by the broker-dealer on or before the settlement date for the transaction.

50.10(3) For the purposes of this rule the acknowledgment shall take the following form:

a. The confirmation required to be given pursuant to 50.10(1) shall have stamped on it, or otherwise boldly displayed, the words "Unsolicited Order, Notify Immediately if Otherwise"; or

b. A signed statement from the customer which indicates that the order was unsolicited and contains the name of the customer, the name of the securities involved, the number of securities involved, the price at which the securities were purchased, the date of transaction and the total dollar amount of the transaction including commissions paid.

50.10(4) For the purposes of this rule the customer will be presumed to have acknowledged that the transaction was unsolicited if the customer does not indicate otherwise on or before the settlement date.

50.10(5) A broker-dealer shall notify the administrator, in writing, that it is executing unsolicited orders in a security whenever the following conditions are met:

a. More than six unsolicited orders or offers to buy such security are received during any three consecutive business days;

b. The only exemption from registration being relied upon for the transaction is that provided by subsection 3 of section 203 of the Act.

191—50.11(252J) Denial, suspension or revocation of license for failure to pay child support.

50.11(1) Upon receipt of a certificate of noncompliance from the child support recovery unit (CSRU), the administrator shall issue a notice to the agent that the agent's pending application for licensure or current license will be denied, suspended or revoked 30 days after the date of the notice. Notice shall be sent to the agent's last-known address by certified mail.

50.11(2) The notice shall contain the following items:

a. A statement that the administrator intends to deny, suspend or revoke the agent's securities license in 30 days;

b. A statement that the agent must contact the CSRU to request a withdrawal of the certificate of noncompliance;

c. A statement that the agent's application, request for licensure or current license will be denied, suspended or revoked if the certificate of noncompliance is not withdrawn;

d. A statement that the agent does not have a right to a hearing before the division, but the agent may file an application for a hearing in district court pursuant to Iowa Code Supplement section 252J.9 within 30 days of the provision of the notice;

e. A statement that the filing of an application with the district court will stay the proceedings of the division;

f. A copy of the certificate of noncompliance.

50.11(3) The filing of an application for hearing with the district court will stay all proceedings until the administrator is notified of the resolution of the application.

50.11(4) If the administrator does not receive a withdrawal of the certificate of noncompliance from the CSRU or a notice that an application for hearing has been filed, the administrator shall deny, suspend or revoke the agent's license 30 days after the notice is issued.

50.11(5) Upon receipt of a withdrawal of the certificate of noncompliance from the CSRU, pending proceedings shall halt and the named agent shall be notified that the proceedings have been halted. If the agent's license has already been suspended or revoked, the agent shall reapply for licensure and the application shall be granted if the agent is otherwise in compliance with the division's rules.

50.11(6) All application fees must be paid by the applicant before a license will be issued after the administrator has denied, suspended or revoked a license pursuant to Iowa Code chapter 252J.

This rule is intended to implement Iowa Code section 252J.8.

191—50.12(502) Rules of conduct.

50.12(1) Each broker-dealer, after execution of and before completion of each transaction with its customer, shall give or send to the customer a written confirmation setting forth:

a. A description of the security purchased or sold, the date of the transaction, the price at which the security was purchased or sold and any commission charged;

b. Whether the broker-dealer was acting for its own account, as agent for the customer, as agent for some other person, or as agent both for the customer and some other person;

c. When the broker-dealer is acting as agent for the customer, either the name of the person from whom the security was purchased or to whom it was sold or the fact that such information will be furnished upon the request of the customer.

50.12(2) Each broker-dealer shall establish written supervisory procedures and a system for applying such procedures which may reasonably be expected to prevent and detect any violations of Iowa Code chapter 502 and the rules and orders thereunder. Such procedures shall include the designation and qualification of a number of supervisory employees reasonable in relation to the number of its licensed agents, offices, and transactions in this state.

50.12(3) Every broker-dealer whose principal office is located in this state shall have at least one partner, officer or licensed agent employed on a full-time basis at its principal office.

191—50.13(502) Offers on the Internet. Offers of securities made by, or on behalf of, issuers on or through the Internet shall be exempt from Iowa Code sections 502.201 and 502.602 if the following conditions are observed:

1. The Internet offer indicates, directly or indirectly, that the securities are not being offered to residents of Iowa;
2. The Internet offer is not specifically directed to any person in Iowa by, or on behalf of, the issuer of the securities; and
3. No sales of the issuer's securities are made in Iowa as a result of the Internet offering until such time as the securities being offered have been registered under Iowa Code sections 502.201 and 502.602, and a final prospectus or Form U-7 is delivered to Iowa investors prior to such sales.

191—50.14(502) Notice filing procedures for rule 506 offerings.

50.14(1) An issuer offering a security that is a covered security under Section 18(b)(4)(D) of the Securities Act of 1933 shall file a notice on SEC Form D, a consent to service of process on a form prescribed by rule 50.24(502), and pay a fee of $100 no later than 15 days after the first sale of such federal covered security in this state.

50.14(2) For purposes of this rule, the Securities and Exchange Commission "Form D" is defined as the document, as adopted by the Securities and Exchange Commission and in effect on September 1, 1996, as may be amended by the Securities and Exchange Commission from time to time, entitled "FORM D: Notice of Sale of Securities pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption," including Part E and the Appendix.

191—50.15(502) Investment contract defined. "Investment contract" as used in Iowa Code section 502.102(14) includes:

1. Any investment in a common enterprise with the expectation of profit to be derived through the essential managerial efforts of someone other than the investor. In this rule, a "common enterprise" means an enterprise in which the fortunes of the investor are tied to the efficacy of the efforts and successes of those seeking the investment or of a third party; and
2. Any investment by which an offeree furnishes initial value to an offerer, and a portion of this initial value is subjected to the risks of the enterprise, and the furnishing of the initial value is induced by the offerer's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind over and above the initial value will accrue to the offeree as a result of the operation of the enterprise, and the offeree does not receive the right to exercise practical and actual control over the managerial decisions of the enterprise.

191—50.16(502) Uniform limited offering exemption.

50.16(1) *Preliminary notes.*

a. This rule is the North American Securities Administrators Association Uniform Limited Offering Exemption as adopted in September 1983, with amendments adopted through April 29, 1989, without any of the footnotes and may be cited as the "Uniform Limited Offering Exemption."

b. Nothing in this exemption is intended to or should be in any way construed as relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of this state's securities law.

c. In view of the objective of this rule and the purposes and policies underlying this Act, the exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this rule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this rule.

d. Nothing in this rule is intended to relieve registered broker-dealers or agents from the due diligence, suitability, or "know your customer" standards, or any other requirements of law otherwise applicable to such registered persons.

50.16(2) *Exemption.* By authority delegated to the administrator to promulgate rules in Iowa Code sections 502.607(1) and 502.203(16), the following transaction is determined to be exempt from the registration provisions of the Iowa Uniform Securities Act:

a. Any offer or sale of securities offered or sold in compliance with Securities Act of 1933, Regulation D, Rule 230.505, including any offer or sale made exempt by application of Rule 508(a), as made effective in Release No. 33-6389 and as amended by Release Nos. 33-6437, 33-6663, 33-6758, and 33-6825, and which satisfies the following further conditions and limitations:

(1) No commission, fee or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in this state unless the person is registered under Iowa Code section 502.302 or exempt from registration as a broker-dealer by Iowa Code section 502.301(1)*"b."*

(2) It is a defense to a violation of this subrule if the issuer sustains the burden of proof to establish that the issuer did not know and in the exercise of reasonable care could not have known that the person who received a commission, fee, or other remuneration was not appropriately registered in this state.

b. No exemption under this rule shall be available for the securities of any issuer if any of the parties described in Securities Act of 1933, Regulation A, Rule 230.252, Section (c), (d), (e), or (f):

(1) Has filed a registration statement which is subject to a currently effective registration stop order entered pursuant to any state's securities law within five years prior to the filing of the notice required under this exemption;

(2) Has been convicted, within five years prior to the filing of the notice required under this exemption, of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(3) Is currently subject to any state administrative enforcement order or judgment entered by that state's securities administrator within five years prior to the filing of the notice required under this exemption or is subject to any state's administrative enforcement order or judgment in which fraud or deceit, including but not limited to making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five years prior to filing of the notice required under this exemption;

(4) Is subject to any state's administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities; or

(5) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, permanently restraining or enjoining the party from engaging in or continuing any conduct of practice in connection with the purchase or sale of any security, or involving the making of any false filing with the state entered within five years prior to the filing of the notice required under this exemption.

(6) The disqualification of a person pursuant to 50.16(2), paragraph *"b,"* may be waived by the Iowa securities administrator if the order, conviction, judgment or decree relating to the person's disqualification has been disclosed in writing to the Iowa securities administrator and the Iowa securities administrator has determined, upon a showing of good cause, that the public interest no longer requires the person to be disqualified.

(7) It is a defense to a violation of this subrule if the issuer sustains the burden of proof to establish that the issuer did not know and in the exercise of reasonable care could not have known that a disqualification under this subrule existed.

c. The issuer shall file with the state administrator a notice on Form D (17 CFR 239.500):

(1) Not later than 15 days following the date of the first sale in this state. This notice shall be accompanied by one copy of any written information furnished to investors, a consent to service of process on Form U-2 and a filing fee of $100.

(2) Filing occurs on the earlier of the date received by the administrator or the date the documents are mailed with the United States postal service by registered or certified mail addressed to the administrator's office in Des Moines, Iowa.

d. In all sales to nonaccredited investors in this state, one of the following conditions must be satisfied or the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that one of the following conditions is satisfied:

(1) The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to the purchaser's other security holdings, financial situation and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed 10 percent of the investor's net worth, it is suitable;

(2) The purchaser, either alone or with a purchaser's representative, has such knowledge and experience in financial and business matters that the purchaser is or they are capable of evaluating the merits and risks of the prospective investment.

50.16(3) A failure to comply with a term, condition or requirement of 50.16(2)*"a"*(1), 50.16(2)*"c"* or 50.16(2)*"d"* will not result in loss of the exemption from the requirements of Iowa Code section 502.201 for any offer or sale to a particular individual or entity if the person relying on the exemption shows:

a. The failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity;

b. The failure to comply was insignificant with respect to the offering as a whole; and

c. A good faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of 50.16(2)*"a"*(1), 50.16(2)*"c"* and 50.16(2)*"d."*

50.16(4) Where an exemption is established only through reliance on 50.16(3), the failure to comply shall nonetheless be actionable under Iowa Code section 502.604.

50.16(5) Integration. Transactions which are exempt under this rule may not be combined with offers and sales exempt under any other rule or provision of Iowa Code chapter 502, however, nothing in this limitation shall act as an election. Should for any reason the offer and sale fail to comply with all of the conditions for this exemption, the issuer may claim the availability of any other applicable exemption.

50.16(6) Orders. The administrator may, by rule or order, increase the number of purchasers or waive any other conditions of this exemption.

191—50.17(502) Commissions on limited offerings. In addition to those commissions or remuneration which may be permitted by order, the administrator hereby grants permission for the payment of commission under section 203(9) of the Act when the following conditions have been complied with:

1. Commissions given on account of the sale of the securities are paid only to broker-dealers registered with the administrator pursuant to the Act;
2. Commissions and all other expenses of the offering do not exceed 20 percent of the aggregate sales price of the securities proposed to be sold;
3. An offering document is made available to all offerees and purchasers at the time the first written offer is made, the confirmation of the sale, payment is made pursuant to the sale, or delivery of the security pursuant to the sale, whichever first occurs;
4. The offering document proposed to be used is supplied to the administrator at least 15 days prior to its being given to the first offeree.

191—50.18(502) Withdrawal of exemptions. The administrator will view the following as reasons for entering an order withdrawing the exemption provided by section 203(9) of the Act:

1. A public advertisement is used to promote the sale of securities for which such exemption is claimed;
2. The offering is considered to be part of a registered offering under the Securities Act of 1933.

191—50.19(502)* Annual report to shareholders. So long as a registration statement is effective, within 120 days following the close of each fiscal year the registrant shall distribute an annual report to all holders of securities which were purchased pursuant to the registration. Said annual report shall contain a comparative balance sheet, income statement and statement of changes in financial position, all of which must be audited by an independent certified public accountant with an opinion expressed thereon. Upon application to the administrator with good cause shown the audit by an independent certified public accountant and opinion pertaining thereto may be waived.

*Objection, see filed rules published in 1/26/76, 3/8/76 IAC Supplement.

191—50.20(502) Annual reports filed with the administrator. So long as a registration statement is effective the issuer shall file with the administrator an annual report within 120 days following the close of the issuer's fiscal year. At a minimum the annual report shall contain the following:

50.20(1) Financial statements including a comparative balance sheet as of the end of its fiscal year, income statement, statement of changes in financial position, and statement of owner's equity. All of the foregoing must be audited by an independent certified public accountant with an opinion expressed thereon except when waiver of the same has been granted by the administrator upon application with good cause shown;

50.20(2) Any issuer filing reports under the Securities Exchange Act of 1934 or the Investment Company Act of 1940 must file, in lieu of the report required by 50.20(1), a duplicate copy of the annual report filed with the Securities and Exchange Commission.

191—50.21(502) Continuing education requirements. Failure to comply with any of the applicable continuing education requirements adopted by the NASD, NYSE or other self-regulatory agency will result in a determination by the administrator that the agent is not qualified under Iowa Code section 502.304(1)*"i."*

191—50.22(502) Registration for small corporate offerings.

50.22(1) Form U-7 (which may be obtained by contacting the Iowa Securities Bureau, Lucas State Office Building, Des Moines, Iowa 50319) has been developed pursuant to the Small Business Investment Incentive Act of 1980 which prescribes state and federal cooperation in furtherance of the policies of the Act to diminish the burden of raising investment capital and minimize interference with the business of capital formation.

50.22(2) To be eligible to use Form U-7, a company must comply with each of the following requirements:

a. The company must be a corporation organized under the laws of one of the states or possessions of the United States which engages in or proposes to engage in a business other than petroleum exploration, production or mining or other extractive industries. "Blind pool" offerings and other offerings for which the specific business or properties cannot now be described are ineligible to use Form U-7;

b. The securities may be offered and sold only on behalf of the company, and Form U-7 may not be used by any selling security holder (including purchasing underwriters in a firm commitment underwriting) to register the securities for resale;

c. The offering price for common stock (and the exercise price, if the securities are options, warrants or rights for, and the conversion price if the securities are convertible into common stock) must be equal to or greater than $5 per share. By execution of the application and filing of the Form U-7 in any state, the company thereby agrees with the administrator that the company will not split its common stock, or declare a stock dividend, for two years after effectiveness of the registration; provided, however, that in connection with a subsequent registered public offering, the company may upon application and consent of the administrator take such action;

d. The company may engage selling agents to sell the securities; but, commissions, fees, or other remuneration for soliciting any prospective purchaser in this state in connection with this offering may only be paid to persons who, if required to be registered, the company believes and has reason to believe, are appropriately registered in this state;

e. Form U-7 shall not be available for the securities of any company if it or any of its officers, directors, 10 percent stockholders, promoters, or any selling agents of the securities to be offered, or any officer, director or partner of the selling agent:

(1) Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any state's securities law within five years prior to the filing of the application for registration hereunder;

(2) Has been convicted within five years prior to the filing of the application for registration hereunder of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(3) Is currently subject to any state administrative enforcement order or judgment entered by that state's securities administrator within five years prior to the filing of the application for registration hereunder or is subject to any state's administrative enforcement order or judgment in which fraud or deceit, including but not limited to making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five years prior to the filing of the application for registration hereunder;

(4) Is subject to any state's administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with this offer, purchase or sale of securities;

(5) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or permanently restricting or enjoining such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security involving the making of any false filing with the state entered within five years prior to the filing of the application for registration hereunder;

f. The disqualification of a person pursuant to 50.22(2), paragraph *"e,"* may be waived by the Iowa securities administrator if the order, conviction, judgment, or decree relating to the person's disqualification has been disclosed on the Form U-4, the Form U-4 has been filed as an exhibit to the Form U-7, and the Iowa securities administrator determines, upon a showing of good cause, that the public interest no longer requires the person to be disqualified.

50.22(3) Use of the Form U-7 is available to any offering of securities by a company, the aggregate offering price of which, within or outside this state, shall not exceed $1 million, less the aggregate offering price for all securities sold within the 12 months before the start of, and during the offering of, the securities under SEC Rule 504 in reliance on any exemption under Section 3(b) of the Securities Act of 1933 or in violation of Section 5(a) of that Act. The Form U-7 is not available to a company that is an investment company (including mutual funds) or is subject to the reporting requirements of Section 13 or Section 15(d) of the Securities Exchange Act of 1934.

191—50.23(502) Form of financial statements.

50.23(1) Except as provided otherwise by this rule, the balance sheets, analysis of surplus, and statement of profit and loss required by paragraph (p) of paragraph (2) of section 207 of the Act shall be certified to by an independent accountant or certified public accountant. Upon application to the administrator with good cause shown the audit by an independent accountant or certified public accountant and opinion pertaining thereto may be waived.

50.23(2) The balance sheet, analysis of surplus, and statement of profit and loss used merely for the purpose of complying with the four-month requirement of paragraph (p) of paragraph (2) of section 207 of the Act need not have the certification required by 50.23(1) if such certification has been submitted for the last fiscal year prior to the application and the date to which the statements subject to the certification is not more than 12 months previous to the registration date.

191—50.24(502) Consent to service.

50.24(1) Every consent appointing the administrator or successor to be an attorney to receive service of any lawful process which is required by section 609 of the Act shall be on the form available from the administrator, shall be properly notarized, and shall contain at least the following information:

a. Name of the applicant;

b. Address of the applicant;

c. A statement as to whether the applicant is an issuer or broker-dealer;

d. A statement that the consent is irrevocable;

e. A statement that the consent is valid as to any noncriminal suit, action or proceeding against the applicant or the successor, executor or administrator of the applicant which arises out of the Act; and

f. A statement that the applicant stipulates and agrees that service upon the administrator shall have the same validity as if served personally upon the applicant.

50.24(2) The Form U-2 and any other form containing the information specified in 50.24(1) may be submitted in lieu of the form prescribed by the administrator.

50.24(3) Incorporation by reference consents to service of process previously filed. For purposes of consents to service of process required to be filed pursuant to 1997 Iowa Acts, House File 553, sections 7(1)*"a"* and 7(2), and Iowa Code sections 502.302(1) and 502.609, or the rules or regulations promulgated pursuant to any of the foregoing, a broker-dealer, agent, or issuer may incorporate by reference any consent to service of process previously filed with the administrator by such person or entity.

191—50.25(502) Advertising. For purposes of this rule, the term "advertisement" means any written or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, or similar communications media, including film strips or motion pictures, published in connection with the offer or sale of a security.

50.25(1) The following advertising used in connection with the offer, sale or purchase of any security in this state is exempted from filing under section 602 of the Act:

a. A prospectus published or circulated in connection with an offering of security for which a registration statement has been filed under section 206 or 207 of the Act that has not become effective; or an offering of a security for which a notice or application for exemption, including such prospectus, has been filed under section 202 or 203 of the Act;

b. Advertising which does no more than state from whom a prospectus may be obtained, identify the security offered for sale and state the price thereof and the names of broker-dealers having an interest in the sale thereof;

c. Advertising published by a licensed broker-dealer or investment adviser concerning the qualifications or business of the licensee, the general advisability of investing in securities or market quotations or other factual information relating to particular securities or issuers, provided such advertising contains no recommendation concerning the purchase or sale of particular securities; and

d. Any other advertising which the administrator may specify by order.

50.25(2) All advertising required to be filed by a licensee or registrant shall be filed with the administrator not later than the date of use. All advertising required to be filed by any other person shall be filed in duplicate not less than ten days prior to the date of use or such shorter period as the administrator may permit, and shall not be used in this state until a copy thereof, marked with allowance for use, has been received from the administrator.

50.25(3) Every filing with the administrator of sales literature of an investment company registered under the Investment Company Act of 1940 shall indicate the date of its filing with the National Association of Securities Dealers, Inc. or the Securities and Exchange Commission and the action taken thereon. Any such literature which is materially misleading within the meaning of the statement of policy of the Securities and Exchange Commission, as amended November 5, 1957, is deemed "false or misleading advertising" within the meaning of section 407 of the Act.

50.25(4) Specific prohibitions. The following advertisements are deemed false or misleading practices:

a. Comparison charts or graphs showing a distorted, unfair or unrealistic relationship between the issuer's past performance, progress, or success and that of another company, business, industry, or investment media.

b. Layout or format which omits information necessary to make the entire advertisement a fair and truthful representation.

c. Statements or representations without accreditation which predict future profit, success, appreciation, performance, or otherwise relate to the merit or potential of the securities.

d. Generalizations, generalized conclusions, opinions, representations, and general statements based on a particular set of facts and circumstances unless those facts and circumstances are stated and modified or explained by additional facts or circumstances as are necessary to make the entire advertisement a full, fair, and truthful representation.

e. Sales kits or film clips, displays, or exposures, which alone or by sequence and progressive compilation, tend to present a misleading impression of guaranteed or exaggerated potential, profit, safety, or return.

f. Distribution of any nonfactual or inaccurate data or material by words, pictures, charts, graphs, or otherwise based on conjectural, unfounded, extravagant, or flamboyant claims, assertions, predictions, or excessive optimism.

g. Any package or bonus deal, prize, gimmick, or similar inducement in connection with the offer or sale of a security combined with or dependent upon the sale of some other product, contract, or service, unless the combination has been fully disclosed and specifically described and identified in the advertisement.

50.25(5) If a sales agent is offering securities, it is the responsibility of the firm employing the agent to ensure that the name of the broker-dealer is displayed on the agent's business cards as prominently as the individual's name. The inclusion of other agency or firm names on the cards is discouraged to avoid ambiguity. Any business card or other advertisement containing the name of an agent, as defined in Iowa Code section 502.102(3), shall be further subject to the following:

a. The agent shall be clearly designated as a securities agent or registered representative of the broker-dealer, and the broker-dealer shall be clearly designated as a broker-dealer.

b. No advertising other than agent name, office address, broker-dealer name, and broker-dealer logo or trademark shall appear on the business cards. The inclusion of the name, logo and trademark of other entities shall be limited as set forth in paragraph 50.25(5)*"d"* below.

c. The office address and telephone number of the location where the agent conducts securities business shall appear on the card or advertisement.

d. If the name, logo or trademark of any business entity, other than that of the broker-dealer, appears on a business card or in an advertisement, the business of that entity and the relationship of the agent to that entity shall be clearly stated.

191—50.26(502) Trust indenture requirements.

50.26(1) Evidences of debt registered by coordination under section 206 of the Act shall be issued under a trust indenture meeting the requirements of the Trust Indenture Act of 1939 or, if exempt thereunder, meeting the requirements of 50.26(2) and 50.26(3).

50.26(2) Unless otherwise permitted by the administrator, evidences of debt registered by qualification under section 207 of the Act shall be issued under a trust indenture which at a minimum shall provide that:

a. There shall at all times be one or more trustees thereunder, at least one of which shall be a corporation organized and doing business under the laws of the United States or of any state which is authorized under such laws to exercise corporate trust powers and is subject to supervision or examination by federal or state authority; provided that where it appears that the requirements of a corporate trustee may not be necessary for the protection of investors the administrator may, upon such conditions as the administrator deems appropriate, waive such requirement and permit the trustee to be an individual or other person;

b. If the indenture requires or permits the appointment of one or more cotrustees in addition to the corporate trustee, then the rights, powers, duties and obligations conferred or imposed upon and exercised or performed by such corporate trustee or such corporate trustee and such cotrustee jointly, except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed such corporate trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations shall be exercised and performed by such cotrustees;

c. In the case of certificates of interest or participation the trustee shall have the legal power to exercise all of the rights, powers and privileges of a holder of a security or securities in which such certificates evidence an interest or participation; and

d. If any trustee has or shall acquire any conflicting interest such trustee shall, within 90 days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign, such resignation to become effective upon the appointment of a successor trustee and such successor's acceptance of such appointment, and the obligor upon the indenture securities shall take prompt steps to have a successor appointed in the manner provided in the indenture. As used in this rule, a "conflicting interest" shall exist in all situations where an indenture trustee would be deemed to have a conflicting interest under Section 310(b)(1) of the Trust Indenture Act of 1939 as amended.

50.26(3) When the administrator deems appropriate for the protection of purchasers, any or all of the provisions of the Trust Indenture Act of 1939, as amended, may be required by the administrator to be included as additional provisions to the minimum requirements established by subrule 50.26(2), relating to the issuance of evidences of debt registered by qualification under section 207 of the Act.

50.26(4) The provisions of 50.26(2) and 50.26(3) shall not apply to evidences of debt meeting either of the following criteria:

a. The debt matures on or before one year from date of issuance; or

b. The aggregate amount of the offering of the evidences of debt does not exceed $500,000.

191—50.27(502) Delivery of prospectus.

50.27(1) As a condition to registration by coordination, the final prospectus or offering circular required by subsection (2) of section 206 of the Act shall be delivered to each person to whom an offer is made before or concurrently with the first written offer made to an offeree otherwise than by means of a public advertisement by or for the account of the issuer or any other person on whose behalf the offering is made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken as a participant in the distribution; the confirmation of any sale made by or for the account of any such person; payment pursuant to any such sale; or delivery of the security pursuant to any such sale, whichever first occurs.

50.27(2) As a condition to registration by qualification, a prospectus meeting the provisions of 50.27(3) shall be delivered in the same manner as prescribed in 50.27(1).

50.27(3) Every prospectus required to be delivered by 50.27(2) shall be in a form acceptable to the administrator and shall contain the information specified in paragraphs (a) through (k) and paragraph (p) of subsection 2 of section 207 of the Act and any other information which the administrator may deem necessary and appropriate.

191—50.28(502) Amendments to registration. For the purposes of section 208(9)b(1) of the Act, in every registration statement which is registered by qualification the issuer shall be presumed not to have kept "reasonably current the information contained therein" unless:

1. The issuer notifies the administrator, in writing, of any change in a material fact contained in the information filed with the registration statement within seven days after the issuer learns of the change; and
2. The issuer notifies the administrator, in writing, of the results of an annual audit or semiannual report within 14 days after receipt by the issuer of such audit report or semiannual report unless such audit or report would constitute a change in a material fact under paragraph (1), in which case such audit or report must be filed within 7 days.

191—50.29(502) Filing in coordination. Every applicant for registration by coordination shall file, in addition to all other documents required by the Act or rules, the following documents:

1. In the case of a corporation, a copy of its articles of incorporation and bylaws;
2. In the case of a partnership, a copy of its partnership articles;
3. A copy of any agreements between the issuer and underwriters and among underwriters;
4. A copy of any indenture or other instrument governing the issuance of the security to be registered;
5. A specimen or copy of the security.

191—50.30(502) Reports for qualification. No registration by qualification shall be permitted to become effective if the administrator requests, and unless the issuer or applicant files, any and all of the following documents which are applicable to the registration:

1. The report of any appraiser or engineer when the value of certain property does or will, after its purchase, constitute a significant portion of the assets of the issuer or any other person whose financial condition is significant to the registration;
2. A signed opinion of counsel regarding the ownership of any property when such ownership is deemed significant to the registration.

191—50.31(502) Impound of proceeds. Rescinded IAB 2/11/98, effective 3/18/98.

191—50.32(502) Purchase to complete impound. Rescinded IAB 2/11/98, effective 3/18/98.

191—50.33(502) Limited registration of Canadian broker-dealers and agents.

50.33(1) A Canadian broker-dealer that is resident in Canada and has no office or other physical presence in Iowa may, provided the broker-dealer is registered in accordance with this rule, effect transactions in securities with or for, or induce or attempt to induce the purchase or sale of any security by:

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

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

50.33(2) An agent who will be representing a Canadian broker-dealer registered under this rule may, provided the agent is registered in accordance with this rule, effect transactions in securities in Iowa as permitted for the broker-dealer in 50.33(1).

50.33(3) A Canadian broker-dealer may register under this rule provided that the broker-dealer:

a. Files an application in the form required by the jurisdiction in which it has its head office;

b. Files a consent to service of process;

c. Is registered as a broker or dealer in good standing in the jurisdiction from which the broker-dealer is effecting transactions into this state and files evidence thereof; and

d. Is a member of a self-regulatory organization or stock exchange in Canada.

50.33(4) An agent who will be representing a Canadian broker-dealer registered under this rule in effecting transactions in securities in Iowa may register under this rule provided that the agent:

a. Files an application in the form required by the jurisdiction in which the broker-dealer has its head office;

b. Files a consent to service of process; and

c. Is registered in good standing in the jurisdiction from which the agent is effecting transactions into Iowa and files evidence thereof.

50.33(5) If no denial order is in effect and no proceeding is pending under Iowa Code section 502.304, registration becomes effective on the sixtieth day after an application is filed, unless earlier made effective.

50.33(6) A Canadian broker-dealer registered under this rule shall:

a. Maintain provincial or territorial registration and membership in a self-regulatory organization or stock exchange in good standing;

b. Provide the administrator upon request with the books and records relating to its business in Iowa as a broker-dealer;

c. Inform the administrator forthwith of any criminal action taken against the broker-dealer or of any finding or sanction imposed on the broker-dealer as a result of any self-regulatory or regulatory action involving fraud, theft, deceit, misrepresentation or similar conduct; and

d. Disclose to the broker-dealer's clients in Iowa that the broker-dealer and its agents are not subject to the full regulatory requirements of the Act.

50.33(7) An agent of a Canadian broker-dealer registered under this rule shall:

a. Maintain the agent's provincial or territorial registration in good standing;

b. Inform the administrator forthwith of any criminal action, taken against the agent, or of any finding or sanction imposed on the agent as a result of any self-regulatory action involving fraud, theft, deceit, misrepresentation or similar conduct.

50.33(8) Renewal applications for Canadian broker-dealers and agents under this rule must be filed before December 1 each year and may be made by filing the most recent renewal application, if any, filed in the jurisdiction in which the broker-dealer has its head office, or if no such renewal application is required, the most recent application filed pursuant to 50.33(3)*"a"* or 50.33(4)*"a,"* as the case may be.

50.33(9) Every applicant for registration or renewal registration under this rule shall pay the fee for broker-dealers and agents as required under the Act.

50.33(10) A Canadian broker-dealer or agent registered under this rule may only effect transactions in Iowa:

a. As permitted in 50.33(1) or 50.33(2);

b. With or through (1) the issuers of the securities involved in the transactions, (2) other broker-dealers, and (3) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; and

c. As otherwise permitted by this rule.

50.33(11) A Canadian broker-dealer or agent registered under this rule and acting in accordance with the limitations set out in 50.33(10) is exempt from all of the requirements of the Act, except the antifraud provisions and the requirements set out in this rule.

50.33(12) All transactions in securities effected between Canadian broker-dealers or agents registered under this rule and Canadian persons who meet the requirements in 50.33(1)*"a"* or *"b"* are exempt from Iowa Code sections 502.201 and 502.602.

191—50.34(502) Agent exclusion.

50.34(1) Individuals offering securities for issuers pursuant to dividend reinvestment or stock purchase plans whose securities are federal covered securities pursuant to Section 18(b)(1) of the Securities Act of 1933 as amended in Pub. L. No. 104-290, are excluded from the definition of agent, provided that the individuals do not directly or indirectly receive a commission for soliciting any person in this state.

50.34(2) The administrator may deny or revoke this exclusion by order for a specific issue of securities, or for a category of securities when necessary in the public interest and for the protection of investors.

191—50.35 Reserved.

191—50.36(502) Selling expenses. Rescinded IAB 2/11/98, effective 3/18/98.

191—50.37(502) Cheap stock. Rescinded IAB 2/11/98, effective 3/18/98.

191—50.38(502) Options and warrants. Rescinded IAB 2/11/98, effective 3/18/98.

191—50.39 to **50.41** Rescinded, effective October 30, 1985.

191—50.42(502) Real estate investment trusts. Rescinded IAB 2/11/98, effective 3/18/98.

191—50.43(502) Fraudulent practices.

50.43(1) An issuer of securities registered under the Act, or any person who is an officer, director or controlling person of such issuer, is presumed to employ a "device, scheme or artifice to defraud" the purchasers of such securities within the meaning of Iowa Code section 502.401(1) if such person applies or authorizes or causes to be applied any material part of the proceeds from the sale of such securities in any material way contrary to the purposes specified in the prospectus used in the offering of such securities and not reasonably related to the business of the issuer as described in the prospectus.

50.43(2) A broker-dealer or agent who engages in one or more of the following practices shall be deemed to have engaged in an "act, practice, or course of business which operates or would operate as a fraud" as used in Iowa Code section 502.401(3). This subrule is not intended to be all-inclusive. Engaging in other conduct such as forgery, embezzlement, conversion, nondisclosure, incomplete disclosure or misstatement of material facts may also be deemed fraudulent.

a. Entering into any security transaction with a customer at an unreasonable price or at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.

b. Contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead or using any advertising or sales presentation in a deceptive or misleading manner.

c. In connection with the offer, sale, or purchase of a security, falsely leading a customer to believe that the broker-dealer or agent is in possession of material, nonpublic information which would have an impact on the value of the security.

d. In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors of similar investment objectives for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstances of each investor.

e. Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution by, among other things, (1) transferring securities to a customer, another broker-dealer or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees or (2) parking or withholding securities.

f. Although nothing in this rule precludes application of the general antifraud provisions against anyone for practices similar in nature to the practices listed below, the following subparagraphs specifically apply only in connection with the solicitation of a purchase or sale of OTC non-NASDAQ equity securities excluding interests in direct participation programs and shares in open-end mutual funds:

(1) Failing to disclose the firm's present bid and ask price of a particular security at the time of solicitation.

(2) Failing to advise the customer, both at the time of solicitation and on the confirmation, of the total of all charges and fees related to a specific securities transaction.

(3) In connection with a principal transaction, failing to disclose, both at the time of solicitation and on the confirmation, a short inventory position in the firm's account of more than 5 percent of the issued and outstanding shares of that class of securities of the issuer; provided that this subparagraph shall apply only if the firm is a market maker at the time of the solicitation.

(4) Conducting sales contests in a particular security.

(5) After a solicited purchase by a customer, failing or refusing, in connection with a principal transaction, to promptly execute sell orders.

(6) Refusing to sell existing securities held by the customer unless the customer executes a purchase transaction.

(7) Soliciting a secondary market transaction when there has not been a bona fide distribution in the primary market.

(8) Engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same security.

g. Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance including, but not limited to, the use of boiler room tactics such as repeated or harassing unsolicited telephone calls or the use of fictitious or nominee accounts.

191—50.44(502) Rescission offers.

50.44(1) Requirements for rescission offers. Rescission offers made pursuant to Iowa Code sections 502.504(4) and 502.504(5) shall be typed or printed and shall be captioned **"RESCISSION OFFER"** in bold-faced print or type. They shall be delivered to the offerees personally or sent by certified mail to the offerees' last-known address and shall contain all of the following:

a. The name of the security which is the subject of the offer;

b. A statement setting forth in reasonable detail why liability under Iowa Code sections 502.501, 502.502, and 502.503 may have arisen and fairly advising the offeree of the offeree's rights;

c. An offer to repurchase the security for cash according to the terms specified in Iowa Code section 502.504(4)*"a"*(2) or return the security on the terms specified in Iowa Code section 502.504(5)*"a"*(2);

d. A statement that the offeree's right to bring an action under Iowa Code chapter 502 may be lost unless the offeree accepts the offer within a specified period of time which is not less than 30 days after receipt of the offer;

e. Information regarding the issuer and the security sufficient to permit the offeree to make an informed decision regarding acceptance of the rescission offer including, but not limited to, information as to the issuer's organization and management, its operations and plan of business and its financial condition as shown by a current financial statement prepared in accordance with generally accepted accounting principles;

f. A statement that the offeree may accept the offer by returning a form to the offeror which shall be separately included with the rescission offer;

g. The following statement shall appear in bold-faced type or print immediately before the signature of the offeror:

THIS IS A RESCISSION OFFER MADE PURSUANT TO SECTION 502.504(4)[(5)]* OF THE IOWA UNIFORM SECURITIES ACT AND A COPY IS ON FILE WITH THE IOWA SECURITIES BUREAU. THE BUREAU MAKES NO RECOMMENDATION AS TO WHETHER THE OFFER SHOULD BE ACCEPTED OR REJECTED NOR HAS THE BUREAU PASSED UPON THE ADEQUACY OR ACCURACY OF THIS OFFER.

50.44(2) The acceptance form referred to in subrule 50.25(1)"*f*" shall include the address of the offeror where the form is to be sent. An acceptance may be sent by ordinary mail and is effective on the date postmarked.

50.44(3) Information filed with the administrator. Prior to making any rescission offer pursuant to Iowa Code sections 502.504(4) and 502.504(5), the offeror shall file the following with the administrator:

a. A copy of the rescission offer;

b. The names and addresses of all holders or sellers who are to receive the rescission offer;

c. A showing that the assets of the offeror are sufficient to meet its obligations in the event that all offerees accept the rescission offer.

The filing requirement of this subrule shall apply only to rescission offers made in connection with securities which are registered or which should have been registered under Iowa Code sections 502.206 and 502.207 and rescission offers which are based on potential liability for violations of Iowa Code section 502.201.

50.44(4) Rescission offers made pursuant to Iowa Code sections 502.504(4) and 502.504(5) shall be tendered to all persons to whom liability may exist under sections 502.501, 502.502, and 502.503.

50.44(5) Rescission offers may be accepted at any time during the period stated in the offer even if an offeree had given a prior indication of rejecting the offer.

50.44(6) Rescission offers are subject to the provisions of Iowa Code sections 502.401, 502.404, 502.405, 502.406, and 502.407.

50.44(7) Prior to the filing of a rescission offer, the administrator may require proof that funds or other consideration are available to satisfy offers which are accepted.

50.44(8) The administrator may require the person(s) responsible for a rescission offer to verify that the provisions of this rule and the terms of the rescission offer have been complied with.

50.44(9) The fact that a rescission offer is proposed or made does not limit, in any way, the administrator's administrative or enforcement authority.

*Inserted by agency

191—50.45(502) Definition of offer.

50.45(1) For purposes of section 201, the term "offer" shall not include the circulation of a preliminary offering document provided there is compliance with the following provisions:

a. The document is circulated by a broker-dealer registered under the Act.

b. Prior to its circulation, the document is filed with the administrator as part of an application to register the securities covered by the document.

50.45(2) For purposes of this rule the preliminary offering document must be in the form of a prospectus which shall contain substantially the information required by the Act and the rules and regulations thereunder to be included in a prospectus meeting the requirements of section 207 of the Act for the securities being registered; and, the outside front page of the preliminary offering document shall bear in red ink the caption, "Preliminary Offering Document," the date of its issuance, and the following statement printed in type as large as that generally in the body of the prospectus:

"A registration statement relating to these securities has been filed with the Commissioner of Insurance of the State of Iowa, but has not yet become effective. Information contained herein is subject to completion or amendment. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This preliminary document shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in Iowa since such offer, solicitation, or sale would be unlawful prior to qualification under section 207 of the Iowa Uniform Securities Act."

191—50.46(502) Institutional buyer exemption. The term "institutional buyer," as used in Iowa Code section 502.203(8) shall include:

50.46(1) Any bank or any savings and loan association or other institution as defined in Section 3(a)(5)(A) of the Securities Act of 1933 whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934; any insurance company as defined in Section 2(13) of the Securities Act of 1933; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in Section 2(a)(48) of that Act; any Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of $5 million; any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of $5 million or, if a self-directed plan, with investment decisions made solely by persons who are institutional buyers;

50.46(2) Any private business development company as defined in Section 202(a)(22) of the Investment Advisors Act of 1940;

50.46(3) Any organization described in Section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of $5 million;

50.46(4) Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer;

50.46(5) Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of the purchase exceeds $1 million;

50.46(6) Any natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

50.46(7) Any trust, with total assets in excess of $5 million, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a person who has such knowledge and experience in financial and business matters that the person is capable of evaluating the merits and risks of the prospective investment;

50.46(8) Any entity in which all of the equity owners are institutional buyers;

50.46(9) Any venture or seed capital company. For purposes of this subrule, a venture or seed capital company is a corporation, partnership or association that has been in existence for five years or whose net assets exceed $250,000 and whose primary business is investing in developmental stage companies or "eligible small business companies" as that term is defined in the regulations of the Small Business Administration.

191—50.47(502) National Securities Exchange—exemption.

50.47(1) The Chicago Board Options Exchange is designated as a national securities exchange qualifying for registration exemption status under Iowa Code subsection 502.202(8), subject to the authority of the administrator to revoke by order the designation based upon a determination that the exchange's requirements for listing or maintenance as set forth in securities Act release No. 34-28556 (October 19, 1990) 55 Federal Register 43233 (October 26, 1990), contained in the Memorandum of Understanding dated May 30, 1991, entered into between the Chicago Board Options Exchange and the North American Securities Administrators Association, Inc. and published in the Commerce Clearing House NASAA Reports, have been so changed or insufficiently applied that the protection of investors contemplated by the exemption no longer exists. The administrator may also deny or revoke by order, per Iowa Code section 502.204, the registration exemption status accorded by this paragraph with respect to a specific issue of securities or category of securities on the exchange. The issuance of any order by the administrator under this paragraph shall be in accordance with the provisions of the release relating to notice of and opportunity for hearing, written findings of fact, conclusions of law and judicial review.

50.47(2) The Pacific Stock Exchange is designated as a national securities exchange and all Tier I securities listed on the exchange qualify for registration exemption status under Iowa Code subsection 502.202(8), subject to the authority of the administrator to revoke by order the designation based upon a determination that the exchange's requirements for listing or maintenance as set forth in securities Act release No. 34-34429 (July 22, 1994) 59 Federal Register 38998 (August 1, 1994), contained in the Memorandum of Understanding dated October 12, 1994, entered into between the Pacific Stock Exchange and the North American Securities Administrators Association, Inc. and published in the Commerce Clearing House NASAA Reports, have been so changed or insufficiently applied that the protection of investors contemplated by the exemption no longer exists. The administrator may also deny or revoke by order, per Iowa Code section 502.204, the registration exemption status accorded by this paragraph with respect to a specific issue of securities or category of securities on the exchange. The issuance of any order by the administrator under this paragraph shall be in accordance with the provisions of the release relating to notice of and opportunity for hearing, written findings of fact, conclusions of law and judicial review.

50.47(3) The Philadelphia Stock Exchange is designated as a national securities exchange and all Tier I securities listed on the exchange qualify for registration exemption status under Iowa Code subsection 502.202(8), subject to the authority of the administrator to revoke by order the designation based upon a determination that the exchange's requirements for listing or maintenance as set forth in securities Act release No. 34-34235 (June 17, 1994) 59 Federal Register 32736 (June 24, 1994), contained in the Memorandum of Understanding dated October 12, 1994, entered into between the Philadelphia Stock Exchange and the North American Securities Administrators Association, Inc. and published in the Commerce Clearing House NASAA Reports, have been so changed or insufficiently applied that the protection of investors contemplated by the exemption no longer exists. The administrator may also deny or revoke by order, per Iowa Code section 502.204, the registration exemption status accorded by this paragraph with respect to a specific issue of securities or category of securities on the exchange. The issuance of any order by the administrator under this paragraph shall be in accordance with the provisions of the release relating to notice of and opportunity for hearing, written findings of fact, conclusions of law and judicial review.

50.47(4) The Chicago Stock Exchange is designated as a national securities exchange qualifying for registration exemption status under Iowa Code subsection 502.202(8), subject to the authority of the administrator to revoke by order the designation based upon a determination that the exchange's requirements for listing or maintenance as contained in the Memorandum of Understanding dated April 28, 1996, entered into between the Chicago Stock Exchange and the North American Securities Administrators Association, Inc. and published in the Commerce Clearing House NASAA Reports, have been so changed or insufficiently applied that the protection of investors contemplated by the exemption no longer exists. The administrator may also deny or revoke by order, per Iowa Code section 502.204, the registration exemption status accorded by this subrule with respect to a specific issue of securities or category of securities on the exchange. The issuance of any order by the administrator under this subrule shall be in accordance with the provisions of the release relating to notice of and opportunity for hearing, written findings of fact, conclusions of law and judicial review.

This rule is intended to implement Iowa Code section 502.202(8).

191—50.48(502) Multijurisdictional disclosure system.

50.48(1) This rule accommodates offerings eligible to utilize the multijurisdictional disclosure system as set forth in United States Securities and Exchange Commission Release No. 33-6902 (1991). For the purposes of this rule, a "multijurisdictional offering" means a class of offering for which a registration statement designated as Form F-7, F-8, F-9, or F-10 by the Securities and Exchange Commission has been filed with the administrator.

50.48(2) Time for taking effect of multijurisdictional registration statement. The period of time that a multijurisdictional registration statement must be on file before it becomes automatically effective under Iowa Code section 502.206(3)*"b"* shall be reduced from 20 days to 7 full business days.

50.48(3) Multijurisdictional offering financial statements. A multijurisdictional offering registration statement may include financial statements and financial information that have been prepared in accordance with Canadian generally accepted accounting principles consistently applied.

50.48(4) Multijurisdictional offering notice of claim of exemption under Iowa Code section 502.203(11). An issuer or underwriter conducting a multijurisdictional offering to existing security holders of the issuer pursuant to the exemption of Iowa Code section 502.203(11) may give notice to the administrator by filing the registration statement Form F-7 with a cover letter claiming that exemption.

This rule is intended to implement Iowa Code section 502.206.

191—50.49 Reserved.

191—50.50(502) Registration and renewals of open-end management investment companies, unit investment trusts and face amount certificate companies.

50.50(1) Effective July 1, 1991, open-end management investment company, unit investment trust and face amount certificate company registration statements will be effective in Iowa for one year from the date on which the administrator orders the registration statement effective. Registration statements must be renewed on an annual basis to remain effective in Iowa.

50.50(2) The effectiveness of an open-end management investment company, unit investment trust or a face amount certificate company registration statement that was originally ordered effective in Iowa prior to July 1, 1991, shall expire unless the registration statement is renewed from July 1, 1991, through June 30, 1992, on or before the anniversary date that the administrator originally ordered the registration statement effective.

50.50(3) The effectiveness of an open-end management investment company, unit investment trust or a face amount certificate company registration statement that was originally ordered effective and which was subsequently amended (increased the amount registered) in Iowa prior to July 1, 1991, shall expire unless the registration statement is renewed between July 1, 1991, and June 30, 1992, on or before the anniversary date that the administrator ordered the latest amendment effective.

50.50(4) An open-end management investment company, unit investment trust or a face amount certificate company registration statement may be renewed by filing a renewal application with the administrator at least 10 days but no sooner than 30 days prior to the renewal date of the registration statement (see subrules 50.50(1), 50.50(2) and 50.50(3)).

50.50(5) Open-end investment companies, unit investment trusts and face amount certificate companies must separately register each portfolio and each class of securities.

50.50(6) An open-end investment company, unit investment trust or a face amount certificate company renewing an effective registration statement that contains multiple portfolios or classes of securities must terminate that registration statement by filing Form USR-1, covering the period of its securities sales from its latest fiscal year-end through the last day before its anniversary renewal date, and file separate registration statement applications for each portfolio and class of securities. Upon effectiveness, the administrator will assign a new registration statement file number to each portfolio and each class of securities.

50.50(7) Every application for registration of an open-end management investment company, unit investment trust or face amount certificate company, including applications for registration of separate portfolios, or classes of securities, must be accompanied by:

a. Filing fees of $250 or $1,000;

b. A complete, executed, uniform application to register securities (Form U-1);

c. A consent to service of process (Form U-2);

d. A corporate resolution (Form U-2A); and

e. The latest prospectus and Statement of Additional Information (SAI).

50.50(8) Open-end management investment companies, unit investment trusts and face amount certificate companies shall pay one of the following filing fees with each original registration statement application and renewal thereof:

a. $1,000, which registers an indefinite amount of securities with an indefinite aggregate offering price for one year.

b. $250, which registers an indefinite amount of securities with a $250,000 aggregate offering price for one year.

50.50(9) If the issuer or registrant paid a filing fee of $250 and if it sold:

a. An amount of $1,500,000 or more during the registration period, it must pay an additional filing fee of $1,250 within 90 days after the registration statement expires; or

b. Less than $1,500,000 and more than $250,000 during the registration period, it must pay an additional one-tenth of 1 percent on the amount of securities sold in excess of $250,000 within 90 days after the registration expires.

50.50(10) Open-end management investment companies, unit investment trusts and face amount certificate companies that pay filing fees of $1,000 as per 50.50(8)*"a,"* or $250 and an additional $1,250 as per 50.50(8)*"b"* and 50.50(9)*"a,"* need not file a sales report after the registration statement expires.

50.50(11) Open-end management investment companies, unit investment trusts and face amount certificate companies that pay filing fees of $250 and sell less than $1,500,000 must file a sales report (USR-1) within 90 days after the registration statement expires.

50.50(12) Open-end management investment companies, unit investment trusts and face amount certificate companies that initially register or renew their registration statements after July 1, 1991, and which sell securities in excess of the aggregate amount registered for sale in Iowa need not pay triple fees as required by Iowa Code section 502.208(13).

This rule is intended to implement Iowa Code section 502.208.

191—50.51(502) Notice filings for offerings of investment company securities.

50.51(1) Except as provided in subrule 50.51(5), no investment company that is registered under the Investment Company Act of 1940 or that has currently filed a registration statement under the Securities Act of 1933 is required to file with the administrator, either prior to the initial offer or after the initial offer in this state of a security which is a covered security under Section 18(b)(2) of the Securities Act of 1933, a copy of any document which is part of a federal registration statement filed with the Securities and Exchange Commission or is part of an amendment to such federal registration statement.

50.51(2) Prior to the initial offer of a federal covered security in this state, an investment company that is registered under the Investment Company Act of 1940 or that has filed a registration statement under the Securities Act of 1933 shall file with the administrator a notice filing on Form NF, together with a filing fee and consent to service of process.

50.51(3) A notice filing for which the term is about to expire may be renewed prior to expiration by filing with the administrator another notice on Form NF and payment of the applicable fee in accordance with Iowa Code section 502.208(2)*"c"* as amended by 1997 Iowa Acts, House File 553.

50.51(4) Amendments to notice filings may be made on Form NF and are effective upon receipt by the administrator. Withdrawal or termination of a notice filing may be made by filing Form NF or providing the administrator with other notice of the withdrawal or termination and shall be effective upon receipt by the administrator of such notice and all fees required by Iowa Code section 502.208 as amended by 1997 Iowa Acts, House File 553.

50.51(5) An investment company that is registered under the Investment Company Act of 1940 or that has filed a registration statement under the Securities Act of 1933 shall file, upon written request of the administrator and within the time period set forth in the request, a copy of any document, identified in the request, that is part of the federal registration statement filed with the Securities and Exchange Commission or part of an amendment to such federal registration statement.

50.51(6) An investment company that makes a notice filing under subrule 50.51(2) and pays an initial filing fee of $250 under 1997 Iowa Acts, House File 553, section 9(2)*"c,"* shall pay an additional filing fee of $1,250 within 90 days after the notice filing's annual renewal date, or shall file on Form NF an annual or periodic report of the value of the federal covered securities offered or sold in this state, together with a filing fee of one-tenth of 1 percent of the amount of securities sold in excess of $250,000.

191—50.52 and **50.53** Reserved.

191—50.54(502) Rankings or ratings of direct participation programs.

50.54(1) *Prospectus.* The use of third-party rankings or ratings of direct participation programs in a prospectus is prohibited.

50.54(2) *Offering of interest—direct participation.* The use of third-party rankings or ratings distributed or published in connection with an offering of interests in a direct participation program may be permitted if the following conditions are met:

a. The entire report containing any such rankings or ratings shall be delivered in its complete form and shall not be abbreviated or distributed in excerpted form in any such sales literature.

b. The symbols used for rankings or ratings shall not be similar to or ratings shall not be similar to or the same as the symbols used for existing ratings issued by nationally recognized statistical rating organizations on other types of offerings.

c. All statements in the report containing any such rankings or ratings that are not in conformity with information in the prospectus shall be prohibited. In particular, no references to capital safety or risk shall be allowed unless such references conform to information in the prospectus, such as statements in the prospectus that the investment is subject to a high degree of risk of loss.

d. The report containing the rating or ranking shall prominently disclose all relationships between the rating agency and the issuer as required by Section 17(b) of the Securities Act of 1933 (including, but not limited to, any compensation paid or to be paid directly or indirectly by the issuer for the rating or ranking).

e. The report containing the rating or ranking shall, in all instances, be filed with and completely reviewed by the NASD and the administrator. The report shall be reviewed in the same manner and be subject to the same standards as all other sales literature that is required to be filed. Accordingly, even if an exemption may be available, the report may only be used when it has been filed with, reviewed and approved for use by the NASD.

f. The report containing the ranking or rating shall be filed with the SEC and the administrator as an exhibit to the registration statement for the offering. Issuers using third-party rankings or ratings material as sales literature shall be subject to liability for violations of Section 11 of the 1933 Act and comparable provisions under applicable state laws for any material misrepresentations or material omissions in the report containing the ranking or rating.

This rule is intended to implement Iowa Code section 502.209(1)*"a."*

191—50.55 and **50.56** Reserved.

191—50.57(502) NASAA guidelines. In cooperation with the securities administrators of other states and with a view to effectuating a policy to achieve maximum uniformity of regulations regarding the registration of securities, registration and business practices of securities industry and investment advisory licensees and enforcement of antifraud laws and in the interest of streamlining the rules contained in Chapter 50, the administrator incorporates by reference the following guidelines and statements of policy promulgated by the North American Securities Administrators Association, Inc. (NASAA). This rule does not include any later amendments or editions of the incorporated matter. The official reporter for NASAA statements of policy is the NASAA REPORTS volume printed by Commerce Clearing House, Inc. A copy of the NASAA REPORTS volume is available to the public during regular business hours at the offices of the administrator in the Lucas State Office Building. Upon request, and for a reasonable fee not to exceed the cost of providing the service, the Iowa securities bureau shall furnish to any person photostatic or other copies of the following NASAA guidelines and statements of policy. The office of the administrator is located in Room 214, and requests may be mailed to Iowa Securities Bureau, Lucas State Office Building, Des Moines, Iowa 50319.

50.57(1) *Periodic payment plans.* All periodic payment plans shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Registration of Periodic Payment Plans as released for public comment by the NASAA board of directors on December 12, 1991, adopted by the NASAA membership on March 29, 1992, and published in CCH NASAA REPORTS at paragraph 2901.

50.57(2) *Master fund/feeder funds.* All investment companies utilizing the master fund/ feeder fund concept shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Registration of Master Fund/Feeder Funds adopted by the NASAA membership on September 15, 1992, effective November 14, 1992, and published in CCH NASAA REPORTS at paragraph 2251.

50.57(3) *Registration of oil and gas programs.* All oil and gas programs filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Registration of Oil and Gas Programs, which were initially adopted by the NASAA membership on September 22, 1976, as amended on October 12, 1977; October 31, 1979; April 23, 1983; July 1, 1984; September 3, 1987; September 14, 1989; and October 24, 1991; and published in CCH NASAA REPORTS at paragraph 2621.

50.57(4) *Uniform disclosure guidelines—legend.* All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Uniform Cover Page Legends as adopted by the NASAA membership on September 3, 1987, effective January 1, 1988, amended April 29, 1989, and published in CCH NASAA REPORTS at paragraph 1352.

50.57(5) *Omnibus guidelines.* Omnibus guidelines for the registration of programs (limited or general partnerships, joint ventures, unincorporated association, or similar organization other than a corporation formed and operated for the primary purpose of investment in and the operation of or gain from and interest in the assets to be acquired by such entity) for which statements of policy have not been adopted by the NASAA membership. All registrations of these securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Omnibus Guidelines as adopted by the NASAA membership on March 29, 1992, and published in CCH NASAA REPORTS at paragraph 2321.

50.57(6) *Registration of commodity pool programs.* All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Registration of Commodity Pool Programs as adopted by the NASAA membership on September 21, 1983, effective January 1, 1984, amended August 30, 1990, and published in CCH NASAA REPORTS at paragraph 1201.

50.57(7) *Registration of equipment programs.* All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Equipment Programs as adopted by the NASAA membership on November 20, 1986, effective January 1, 1987, amended April 22, 1988, and October 24, 1991, and published in CCH NASAA REPORTS at paragraph 1601.

50.57(8) *Registration of real estate programs.* All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Real Estate Programs as adopted by the NASAA membership October 24, 1991, and published in CCH NASAA REPORTS at paragraph 3601.

50.57(9) *Registration of mortgage programs.* All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Mortgage Programs as adopted by the NASAA membership on September 10, 1996, and published in CCH NASAA REPORTS, paragraph 701.

50.57(10) *Real estate investment trusts.* The registration of a real estate investment trust may be disallowed if it does not substantially comply, as determined by the administrator, with the NASAA Statement of Policy Regarding Real Estate Investment Trusts as amended by the NASAA membership on September 29, 1993, and published in CCH NASAA REPORTS at paragraph 3401.

50.57(11) *Corporate securities definitions.* For securities registration purposes, the administrator adopts the various definitions set out in the NASAA Statement of Policy Regarding Corporate Securities Definitions as adopted by the NASAA membership on April 27, 1997, and published in CCH NASAA REPORTS at paragraph 3812.

50.57(12) *Impoundment of proceeds.* When an impoundment of proceeds is necessary, it shall substantially comply, as determined by the administrator, with the NASAA Statement of Policy Regarding the Impoundment of Proceeds as amended by the NASAA membership on April 27, 1997, and published in CCH NASAA REPORTS at paragraph 2154.

50.57(13) *Loans and other material affiliated transactions.* When there have been or will be loans and other material affiliated transactions, they shall substantially comply, as determined by the administrator, with the NASAA Statement of Policy Regarding Loans and Other Material Affiliated Transactions as amended by the NASAA membership on April 27, 1997, and published in CCH NASAA REPORTS at paragraph 374.

50.57(14) *Options and warrants.* Options and warrants may be issued if they substantially comply, as determined by the administrator, with the NASAA Statement of Policy Regarding Options and Warrants as amended by the NASAA membership on April 27, 1997, and published in CCH NASAA REPORTS at paragraph 2806.

50.57(15) *Preferred stock.* A public offering of preferred stock may be allowed if it substantially complies, as determined by the administrator, with the NASAA Statement of Policy Regarding Preferred Stock as amended by the NASAA membership on April 27, 1997, and published in CCH NASAA REPORTS at paragraph 3006.

50.57(16) *Promotional shares.* The registration of a security may include promotional shares if it substantially complies, as determined by the administrator, with the NASAA Statement of Policy Regarding Promotional Shares as adopted by the NASAA membership on April 27, 1997, and published in CCH NASAA REPORTS at paragraph 3203.

50.57(17) *Underwriting expenses, underwriter's warrants, selling expenses and selling security holders.* The registration of a security may be disallowed if it does not substantially comply, as determined by the administrator, with the NASAA Statement of Policy Regarding Underwriting Expenses, Underwriter's Warrants, Selling Expenses and Selling Security Holders as adopted by the NASAA membership on April 27, 1997, and published in CCH NASAA REPORTS at paragraph 3671.

50.57(18) *Unsound financial condition.* An issuer may be deemed to be in an unsound financial condition if it substantially complies, as determined by the administrator, with the NASAA Statement of Policy Regarding Unsound Financial Condition as adopted by the NASAA membership on April 27, 1997, and published in CCH NASAA REPORTS at paragraph 3826.

50.57(19) *Use of proceeds.* The registration of a security may be disallowed if it does not substantially comply, as determined by the administrator, with the NASAA Statement of Policy Regarding Specificity in Use of Proceeds as adopted by the NASAA membership on April 27, 1997, and published in CCH NASAA REPORTS at paragraph 3835.

This rule is intended to implement Iowa Code chapter 502.

REAL ESTATE PROGRAMS

191—50.58 to **50.66** Reserved.

191—50.67(502) Miscellaneous provisions concerning real estate PROGRAMS. Rescinded IAB 1/19/94, effective 2/28/94.

191—50.68 to **50.78** Reserved.

191—50.79(502) Act defined. When used in the rules promulgated by the securities bureau (502), unless the context otherwise requires, "Act" means Iowa Code chapter 502.

191—50.80(502) Commodity pool programs. Rescinded IAB 1/19/94, effective 2/28/94.

191—50.81(502) Brokerage services by national and state banks.

50.81(1) A bank may effect transactions in the following securities without registering as a broker-dealer:

a. United States government securities.

b. Any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of the foregoing, provided that revenue obligations are not underwritten by the bank.

c. Transactions as part of a sweep account program for the investment or reinvestment of deposit funds into any no-load open-end investment company registered pursuant to the Investment Company Act of 1940 that attempts to maintain a constant net asset value per share or has an investment policy calling for investment of at least 80 percent of its assets in debt securities maturing in 13 months or less.

d. Transactions for the investment or reinvestment of deposit funds into repurchase agreements.

e. Certificates of deposit issued by a depository institution organized and supervised under the laws of the United States or under the laws of a state.

f. Unsolicited securities transactions solely for the account of and as agent for customers, not to exceed 200 transactions per year provided that:

(1) No investment advice or research services are provided in connection with these transactions; and

(2) The bank does not advertise or recommend transactions in specific securities.

g. Other transactions permitted by the administrator for good cause upon application and order.

50.81(2) A bank, pursuant to a contract with an Iowa registered broker-dealer, may provide the following ministerial securities services without registering as a broker-dealer:

a. Provide bank customers and the public with a telephone number of the broker-dealer and provide telephone facilities on bank premises for customers and members of the public to use in contacting the broker-dealer.

b. Distribute literature to bank customers and members of the public about particular services provided by the broker-dealer, subject to the requirements of subrule 50.81(4).

c. Provide broker-dealer account applications to bank customers and members of the public and assist them in completing such applications. The bank may mail account applications to a broker-dealer. Account applications or a signed attachment shall contain the disclosures set forth in subrule 50.81(4) substantially in the form prescribed in subrule 50.81(5).

d. Assist bank customers who wish to transfer funds into and out of their bank accounts in connection with securities transactions.

e. Provide bank customers and members of the public with mailers and assist them in transmitting securities and securities documents to the broker-dealer in connection with securities transactions.

50.81(3) A bank, pursuant to a contract with an Iowa registered broker-dealer, may attempt to effect and effect securities transactions without registering as a broker-dealer if the bank meets all of the following requirements:

a. Bank employees who attempt to effect and effect securities transactions shall become licensed agents of the broker-dealer and shall: (1) pass an acceptable subject matter examination including the National Association of Securities Dealers (NASD) Series 6 or 7 Examination, (2) pass the Uniform Securities Agent State Law Examination (NASD Series 63), (3) register with the NASD, and (4) register with the Iowa securities bureau as agents of the broker-dealer.

b. If a bank permits a broker-dealer to provide securities services on bank premises, the bank shall require the broker-dealer to clearly identify the office or office space so as to distinguish the broker-dealer area from the bank. If securities services are provided in the same location as bank activities, there shall be a sign identifying the broker-dealer providing the securities services. This requirement shall only apply to areas in which the public has access.

c. A bank shall receive only the following types of compensation from the broker-dealer: (1) transaction-related compensation, subject to subrule 50.81(7)"b," (2) an administrative fee, (3) a salary on behalf of the registered employees who are jointly employed by the bank and the broker-dealer, and (4) lease payments.

50.81(4) A bank, which attempts to effect and effects securities transactions pursuant to a contract with an Iowa registered broker-dealer, may distribute advertisements or promotional materials without registering as a broker-dealer, if the advertisements or promotional materials:

a. Clearly and prominently identify the broker-dealer.

b. Clearly and prominently disclose in bold print that securities transactions and earnings/profits are not insured by the Federal Deposit Insurance Corporation (FDIC).

c. Clearly and prominently disclose that securities offered by the broker-dealer are not guaranteed by, nor are they obligations of, the bank.

d. Clearly and prominently disclose that the bank and the broker-dealer are separate organizations.

50.81(5) The following or a similar statement in bold print and capital letters will satisfy the disclosure requirements of subrule 50.81(4): "[NAME OF BROKER-DEALER] IS NOT A BANK AND SECURITIES OFFERED BY IT ARE NOT BACKED OR GUARANTEED BY ANY BANK NOR ARE THEY INSURED BY THE FDIC."

50.81(6) The disclosure requirements of subrule 50.81(4) shall not apply to radio or television advertisements which do not exceed 30 seconds in length.

50.81(7) A bank may not engage in the following securities activities:

a. Distribute prospectuses to bank customers or to members of the public with respect to securities except: (1) in the exercise of trust functions permitted to banks, or (2) if registered as a broker-dealer, or (3) if performing securities activities as permitted by subrules 50.81(1), 50.81(2), and 50.81(3).

b. Allow licensed joint employees of the bank and broker-dealer to split with unlicensed bank employees commissions or other transaction-related remuneration derived from customers.

c. Transmit account statements, confirmations and other broker-dealer communications to bank customers or members of the public unless the communications contain a disclosure statement as set forth in subrules 50.81(4) and 50.81(5).

d. Permit employees of the bank who are not licensed securities agents of the broker-dealer to receive or transmit orders to the broker-dealer from customers or the public, except as permitted in subrule 50.81(1).

e. Permit employees of the bank who are not licensed agents of the broker-dealer to perform securities functions which directly involve customer contact, except as set forth in subrules 50.81(1) and 50.81(2).

This rule is intended to implement Iowa Code section 502.102(5)*"c."*

191—50.82(502) Broker-dealers having contracts with national and state banks.

50.82(1) A broker-dealer which engages in securities activities with banks as permitted in subrules 50.81(2) and 50.81(3) shall maintain for three years and make available upon request the following records:

a. Copies of all advertisements and promotional literature disseminated by the bank and broker-dealer with respect to securities services and products offered by the broker-dealer to bank customers and the public.

b. Copies of each contract executed between the bank and the broker-dealer which proposes to sell securities to bank customers and the public.

c. Copies of new account forms to be completed by bank customers and members of the public who open an account with the broker-dealer.

d. List of all employees who are licensed securities agents of the bank and broker-dealer and each employee's social security number and Central Registration Depository (CRD) number.

e. Copies of compliance and procedures manuals relating to the securities activities of the bank.

50.82(2) In addition to subrule 50.25(5), a broker-dealer which engages in securities transactions with banks as permitted in subrules 50.81(2) and 50.81(3) shall not allow the use of the broker-dealer name, logo or trademark on business cards or letterheads utilized by persons who are not Iowa licensed securities agents of the broker-dealer.

This rule is intended to implement Iowa Code section 502.102(5)*"c."*

191—50.83(502) Brokerage services by credit unions, savings banks and savings and loan institutions.

50.83(1) Credit unions, savings banks and savings and loan institutions may engage in securities activities as permitted to banks under subrule 50.81(1), 50.81(2) and 50.81(3) without registering as broker-dealers.

50.83(2) Credit unions, savings banks and savings and loan institutions which attempt to effect and effect securities transactions pursuant to contracts with Iowa registered broker-dealers may distribute advertisements or promotional materials without registering as broker-dealers if the advertisements or promotional materials:

a. Clearly and prominently identify the broker-dealer.

b. Clearly and prominently disclose in bold print that securities transactions and earnings/profits are not insured by the (1) Federal Deposit Insurance Corporation (FDIC) in the case of savings banks and savings and loan institutions, and (2) National Credit Union Association (NCUA) in the case of credit unions.

c. Clearly and prominently disclose that securities offered by the broker-dealer are not guaranteed by nor are they obligations of the credit union, savings bank or savings and loan institution.

d. Clearly and prominently disclose that the credit union, savings bank or savings and loan institution and the broker-dealer are separate organizations.

50.83(3) The following or a similar statement in bold print and capital letters will satisfy the disclosure requirements of subrule 50.83(2): "[NAME OF BROKER-DEALER] IS NOT A [SAVINGS BANK], [SAVINGS AND LOAN INSTITUTION], [CREDIT UNION] AND SECURITIES OFFERED BY IT ARE NOT BACKED OR GUARANTEED BY ANY BANK, SAVINGS BANK, SAVINGS AND LOAN INSTITUTION OR CREDIT UNION NOR ARE THEY INSURED BY THE [FDIC] [NCUA]."

50.83(4) The disclosure requirements of subrule 50.83(3) shall not apply to radio or television advertisements which do not exceed 30 seconds in length.

50.83(5) Credit unions, savings banks and savings and loan institutions may not:

a. Distribute prospectuses to customers or to members of the public with respect to securities except: (1) in the exercise of trust functions permitted to them, or (2) if registered as a broker-dealer or performing securities activities as permitted by subrule 50.83(1).

b. Engage in any of the activities proscribed under paragraphs 50.81(7)*"b"* through 50.81(7)*"e."*

This rule is intended to implement Iowa Code section 502.102(5)*"c."*

191—50.84(502) Broker-dealers having contracts with credit unions, savings banks and savings institutions. The requirements of rule 50.82(502) shall apply to broker-dealers having contracts with credit unions, savings banks and savings institutions.

This rule is intended to implement Iowa Code section 502.102(5)*"c."*

191—50.85(502) Filing requirements for agricultural cooperative associations.

50.85(1) An agricultural cooperative association which issues notes or other evidences of indebtedness shall notify the administrator, in writing, 30 days before the security is initially sold. Notification shall consist of the following information:

a. A description specifying the name of the issuer, the date of organization of the issuer and the name of a contact person in the event additional information is requested by the administrator.

b. A description specifying the class of persons to whom the offer of securities will be made. If the offering is being made to certain persons or within a specified area, a description of such offerees or area shall be included.

c. A description of the type of security to be offered which may include information on interest and interest payment schedules, information regarding default, redemption, reinvestment, and other facts regarding the rights of holders that the issuer deems material.

d. Financial statements of the agricultural cooperative association including (1) a balance sheet as of the end of its most recent fiscal year, prepared in accordance with generally accepted accounting principles and accompanied by an independent auditor's report, and (2) other audited financial statements of the association that are available; except that if the filing by the agricultural cooperative association is made within 90 days of the end of its most recent fiscal year and current audited financial statements are not yet available for such fiscal year, the filing may consist of an audited balance sheet and other available audited financial statements for the previous fiscal year, prepared in accordance with generally accepted accounting principles and accompanied by an independent auditor's report; provided further, that the agricultural cooperative association shall file an audited balance sheet and other available audited financial statements for its most recent fiscal year end as they become available and within 90 days of the end of its fiscal year.

50.85(2) If, after the anniversary date of its initial notice filing, an agricultural cooperative association continues to issue notes or other evidences of indebtedness in accordance with its initial notice filing, the agricultural cooperative association shall annually file with the administrator an audited balance sheet and other available audited financial statements within 30 days of the anniversary of its initial notice filing. The anniversary date of the initial filing for an agricultural cooperative association making its initial filing on the basis of a previous year's audited financial statements shall be the date on which such cooperative files the audited financial statements for its most recent fiscal year end. An agricultural cooperative association which does not issue notes or other evidences of indebtedness after an anniversary date of its initial filing shall not be required to make any further filing of financial information as a condition of qualifying for the exemption from registration.

50.85(3) Agricultural cooperative associations which issue notes or other evidences of indebtedness may use Form 1CP to file the information required in subrule 50.85(1). Form 1CP may be obtained by contacting the Iowa Securities Bureau, Lucas State Office Building, Second Floor, Des Moines, Iowa 50319.

50.85(4) Effectiveness of rules.

a. The filing requirements established by this rule become effective on July 1, 1992.

b. Sales of notes or other evidences of indebtedness prior to July 1, 1992, will not be deemed in violation of this rule.

This rule is intended to implement Iowa Code section 502.202(13)*"b."*

191—50.86 to **50.89** Reserved.

191—50.90 (502) World class foreign issuer exemption.

50.90(1) Securities meeting the following conditions are exempted from Iowa Code sections 502.201 and 502.602:

a. Equity securities except options, warrants, preferred stock, subscription rights, securities convertible into equity securities or any right to subscribe to or purchase such options, warrants, convertible securities or preferred stock;

b. Units consisting of equity securities permitted by 50.90(1)*"a"* and warrants to purchase the same equity security being offered in the unit;

c. Nonconvertible debt securities that are rated in one of the four highest categories of Standard & Poor's, Moody's, Dominion Bond Rating Services or Canadian Bond Rating Services. For purposes of this paragraph, nonconvertible debt securities means securities that cannot be converted for at least one year from the date of issuance and then only into equity shares of the issuer or its parent;

d. American Depository Receipts representing securities described in 50.90(1)*"a," "b,"* or *"c."*

50.90(2) The issuer is not organized under the laws of the United States, or any state, territory or possession of the United States, or of the District of Columbia or Puerto Rico.

50.90(3) The issuer, at the time an offer or sale is made under this rule, has been a going concern engaged in continuous business operations for the immediate past five years and, during that period, has not been the subject of a proceeding relating to insolvency, bankruptcy, involuntary administration, receivership or similar proceeding. For purposes of this subrule, the operating history of any predecessor that represented more than 50 percent of the value of the assets of the issuer that otherwise would have met the conditions of this section may be used toward the five-year requirement.

50.90(4) The issuer, at the time of the offer or sale under this rule, has a public float of U.S. $1 billion or more. For purposes of this subrule:

a. Public float means the market value of all outstanding equity shares owned by nonaffiliates.

b. Equity shares means common shares, nonvoting equity shares and subordinate or restricted voting equity shares, but does not include preferred shares.

c. An affiliate of a person is anyone who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of such person.

50.90(5) The market value of the issuer's shares, at the time an offer or sale is made under this rule, is U.S. $3 billion or more. For purposes of this subrule equity shares means common shares, nonvoting equity shares and subordinate or restricted voting equity shares, but does not include preferred shares.

50.90(6) The issuer, at the time an offer or sale is made under this rule, has a class of equity securities listed for trading on or through the facilities of a foreign securities exchange or recognized foreign securities market included in Rule 902(a)(1) or successor rule promulgated under the Securities Act of 1933 or designated by the U.S. Securities and Exchange Commission under Rule 902(a)(2) promulgated under the Securities Act of 1933.

This rule is intended to implement Iowa Code section 502.203(18).

191—50.91(502) Solicitations of interest prior to the filing of the registration statement.

50.91(1) An offer, but not a sale, of a security made by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving a prospectus (or its equivalent) for such security is exempt from Iowa Code section 502.201 if all of the following conditions are satisfied:

a. The issuer is or will be a business entity organized under the laws of one of the states or possessions of the United States or one of the provinces or territories of Canada, is engaged in or proposes to engage in a business other than petroleum exploration or production or mining or other extractive industries and is not a "blind pool" offering or other offering for which the specific business or properties cannot now be described.

b. The offerer intends to register the security in this state and conduct its offering pursuant to either Regulation A or Rule 504 of Regulation D, as promulgated by the Securities and Exchange Commission.

c. Ten business days prior to the initial solicitation of interest under this rule, the offerer files with the administrator a Solicitation of Interest Form along with any other materials to be used to conduct solicitations of interest, including, but not limited to, the script of any broadcast to be made and a copy of any notice to be published.

d. Amendments to the foregoing materials or additional materials to be used to conduct solicitations of interest, except for materials provided to a particular investor pursuant to a request by that investor, are filed with the administrator five business days prior to usage.

e. No Solicitation of Interest Form, script, advertisement or other material which the offerer has been notified by the administrator not to distribute is used to solicit indications of interest.

f. Except for scripted broadcasts and except to the extent necessary to obtain information needed to provide a Solicitation of Interest Form, the offerer does not orally communicate with any prospective investor about the contemplated offering unless the investor is provided with the most current Solicitation of Interest Form at or before the time of the communication or within five days from the communication.

g. During the solicitation of interest period, the offerer does not solicit or accept money or a commitment to purchase securities.

h. No sale is made until seven days after delivery to the purchaser of a final prospectus, or in those instances in which delivery of a preliminary prospectus is allowed under Iowa Code section 502.203(12), a preliminary prospectus.

i. The offerer does not know, and in the exercise of reasonable care, could not know that any of the issuer's officers, directors, 10 percent shareholders or promoters:

(1) Have filed a registration statement which is the subject of a current effective registration stop order entered pursuant to any federal or state securities law within five years prior to the filing of the Solicitation of Interest Form.

(2) Have been convicted within five years prior to the filing of the Solicitation of Interest Form of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.

(3) Are currently subject to any federal or state administrative enforcement order or judgment entered by any state securities administrator or the Securities and Exchange Commission within five years prior to the filing of the Solicitation of Interest Form in which fraud or deceit, including, but not limited to, the making of untrue statements of material facts and omitting to state material facts, was found.

(4) Are subject to any federal or state administrative order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities.

(5) Are currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or are the subject of any order, judgment or decree of any court of competent jurisdiction, permanently restraining or enjoining such party from engaging or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state, entered within five years prior to the filing of the Solicitation of Interest Form.

The prohibitions listed above shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities-related business in the state in which the administrative order or judgment was entered against such person or if the broker-dealer employing such party is licensed or registered in this state and the Form B-D filed with this state discloses the order, conviction, judgment, or decree relating to such person. No person disqualified under this subparagraph may act in a capacity other than that for which the person is licensed or registered. Any disqualification caused by paragraph *"i"* is automatically waived if the agency which created the disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

50.91(2) A failure to comply with a term, condition or requirement of subrule 50.91(1) of this rule will not result in the loss of the exemption from the requirements of Iowa Code section 502.210 for any offer to a particular individual or entity if the offerer shows:

a. The failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity; and

b. The failure to comply was insignificant with respect to the offering as a whole; and

c. A good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of subrule 50.91(1).

Where an exemption is established only through reliance upon subrule 50.91(2), the failure to comply shall nonetheless be actionable as a violation of the Act by the administrator under Iowa Code section 502.604.

50.91(3) The offerer shall comply with the requirements set forth below. Failure to comply will not result in the loss of the exemption from the requirements of Iowa Code section 502.201, but shall be a violation of Iowa Code chapter 502, be actionable by the administrator under Iowa Code section 502.604, and constitute grounds for denying or revoking the exemption as to specific transactions.

a. Any published notice or script for broadcast and any printed material delivered apart from the Solicitation of Interest Form must contain at least the identity of the chief executive officer of the issuer, a brief and general description of its business and products, and the following legends:

(1) NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED;

(2) NO SALES OF THE SECURITIES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED UNTIL DELIVERY OF AN OFFERING CIRCULAR THAT INCLUDES COMPLETE INFORMATION ABOUT THE ISSUER AND THE OFFERING;

(3) AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND; and

(4) THIS OFFER IS BEING MADE PURSUANT TO AN EXEMPTION UNDER FEDERAL AND STATE SECURITIES LAWS. NO SALE MAY BE MADE UNTIL THE OFFERING STATEMENT IS QUALIFIED BY THE SECURITIES AND EXCHANGE COMMISSION AND IS REGISTERED IN THIS STATE.

This requirement shall not apply to the delivery of printed material to a person who has already received a Solicitation of Interest Form with the legends correctly included.

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

c. A preliminary prospectus may only be used in connection with an offering for which indications of interest have been solicited under this rule if the offering is conducted by a registered broker-dealer.

50.91(4) The administrator may waive any condition of this exemption in writing, upon application by the offerer and good cause having been shown. Neither compliance nor attempted compliance with this rule, nor the absence of any objection or order by the administrator with respect to any offer of securities undertaken pursuant to this rule, shall be deemed to be a waiver of any condition of the rule or deemed to be a confirmation by the administrator of the availability of this rule.

50.91(5) Offers made in reliance on this rule will not be integrated with subsequent offers or sales of securities that are registered in this state. Issuers on whose behalf indications of interest are solicited under this rule may not make offers or sales in reliance on Iowa Code section 502.203(9) or rule 191—50.16 (502) until 12 months after the last communication with a prospective investor made pursuant to this rule.

50.91(6) Conditions.

a. Nothing in this rule shall be interpreted to limit the application of Iowa Code sections 502.401 and 502.501 et seq., to offers made in reliance on this rule.

b. The administrator may or may not review the materials filed pursuant to this rule. Materials filed, if reviewed, will be judged under antifraud principles. Any discussion in the offering documents of the potential rewards of the investment must be balanced by a discussion of possible risks.

c. Any offer effected in violation of this rule may constitute an unlawful offer of an unregistered security for which civil liability attaches under Iowa Code section 502.501 et seq. Likewise any misrepresentation or omission may give rise to civil liability under Iowa Code chapter 502. A subsequent registration of the security does not "cure" the previous unlawful offer. Only a rescission offer made in accordance with the provisions of the Act can accomplish such a "cure."

This rule is intended to implement Iowa Code section 502.203(18).

191—50.92 (502) Streamlined registration for certain equity securities.

50.92(1) An equity security meeting the conditions set forth in this rule may be registered under Iowa Code section 502.206.

50.92(2) In order to register under this rule, all of the following conditions, unless otherwise waived by the administrator, must be satisfied:

a. The issuer must be a corporation organized under the laws of one of the states or possessions of the United States.

b. The offering price for common stock, the exercise price if the securities are options, warrants, or rights for common stock, or the conversion price if the securities are convertible into common stock must be equal or greater than $5 per share.

c. The issuer of the security has (or will have upon completion of the offering) total assets exceeding $10 million.

d. The security will be offered pursuant to a firm underwriting.

e. The security is the subject of a registration statement filed on Form S-1 or Form SB-2 with the Securities and Exchange Commission.

f. The registration statement the issuer files with the administrator contains audited financial statements for each of the two most recent fiscal years of its operations ending before the filing of the registration statement, and the audited financial statements do not contain an auditor's report for the issuer's most recent fiscal year expressing substantial doubt about the issuer's ability to continue as a going concern.

50.92(3) This rule is not applicable to a security if:

a. The issuer is a blind pool or other offering for which the specific business or properties cannot now be described.

b. The issuer, or a principal officer or principal shareholder thereof, or a broker-dealer offering or selling the securities.

(1) Is subject to statutory disqualification, as defined in subparagraph (A), (B), (C), or (D) of Section 3(a)(39) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(39)); or

(2) Has been convicted within ten years prior to the offering of any felony under federal or state law in connection with the offer, purchase, or sale of any security, or any felony under federal or state law involving fraud or deceit; or

(3) Is currently named in and subject to any order, judgment, or decree of any court of competent jurisdiction acting pursuant to federal or state law temporarily or permanently restraining or enjoining the person from engaging in or continuing any conduct or practice in connection with a security; or

(4) Has filed a registration statement which is the subject of a currently effective stop order entered pursuant to any state's securities law within five years prior to the offering; or

(5) Is currently subject to any state administrative enforcement order or judgment entered by that state's securities administrator within five years prior to the offering, or is currently subject to any state's administrative enforcement order or judgment in which fraud or deceit was found within five years prior to the offering; or

(6) Is subject to any state's administrative order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, sale, or purchase of any security, or involves the making of a false filing with the state within five years of the offering.

c. The disqualification of a person pursuant to 50.92(3)*"b"* may be waived by the administrator if the order, conviction, judgment, or decree relating to the person's disqualification has been disclosed in writing to the administrator and the administrator has determined, upon a showing of good cause, that the public interest no longer requires the person to be disqualified.

50.92(4) A filing made pursuant to this rule will be reviewed for compliance with the rule within ten business days of receipt, and it will either be made effective upon review, or earlier if the administrator permits a shorter time frame, or comments explaining the noncompliance with the rule will be promptly sent to the applicant.

50.92(5) The administrator will not deny effectiveness under this rule on the basis of rules 191—50.36(502), 50.37(502), or 50.38(502), or on the basis of the financial condition of the issuer under Iowa Code section 502.209(1)*"h,"* provided:

a. In the case of

(1) A security issued to a promoter within three years immediately preceding the offering or to be issued to a promoter for a consideration substantially less than the offering price; or

(2) A security issued to a promoter for a consideration other than cash, unless the registrant demonstrates that the value of the noncash consideration received in exchange for the security is substantially equal to the offering price for the security.

The securities shall be the subject of a lockup with the managing underwriter for a period of no less than 180 days, or a longer period if requested by the managing underwriters of the offering.

b. For purposes of this rule, "promoter" includes:

(1) A person who, acting alone or in concert with one or more other persons, founds or organizes the business or enterprise of an issuer;

(2) An officer or director owning securities of an issuer or a person who owns, beneficially or of record, 10 percent or more of a class of securities of the issuer if the officer, director, or person acquires any of those securities in a transaction within three years before the filing by the issuer of a registration statement under this rule and the transaction does not possess the indicia of arm's-length bargaining; and

(3) A member of the immediate family of a person within subparagraph (1) or (2) if the family member receives securities of the issuer from that person in a transaction within three years before the filing by the issuer of the registration statement under this rule and the transaction does not possess the indicia of arm's-length bargaining.

c. A copy of the lockup agreement should be filed with the administrator.

This rule is intended to implement Iowa Code section 502.203(18).

191—50.93(502) Manual or electronically available information exemption. The following transaction is exempted from Iowa Code sections 502.201 and 502.602. Any nonissuer transaction by a registered agent of a registered broker-dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least 90 days, provided, at the time of the transaction:

50.93(1) The issuer of the security is actually engaged in business and not in the organizational stage or in bankruptcy or receivership and is not a blank check, blind pool or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons;

50.93(2) The security is sold at a price reasonably related to the current market price of the security;

50.93(3) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security;

50.94(4) The nationally recognized manuals of Moody's or Standard & Poor's, or a document filed with the U.S. Securities and Exchange Commission (SEC) which is publicly available through the SEC's Electronic Data Gathering or Retrieval System (EDGAR) contains:

a. A description of the business and operations of the issuer,

b. The names of the issuer's officers and the names of the issuer's directors, if any, or, in the case of a non-U.S. issuer, the corporate equivalents of such persons in the issuer's country of domicile,

c. An audited balance sheet of the issuer as of a date within 18 months or, in the case of a reorganization or merger where the parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet, and

d. An audited income statement for each of the issuer's immediately preceding two fiscal years, or for the period of existence of the issuer, if in existence for less than two years or, in the case of a reorganization or merger where the parties to the reorganization or merger had such audited income statement, a pro forma income statement; and

50.93(5) The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934, or designated for trading on the National Association of Securities Dealers Automated Quotation System (NASDAQ), unless:

a. The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940, or

b. The issuer of the security has been engaged in continuous business (including predecessors) for at least three years, or

c. The issuer of the security has total assets of at least $2 million based on an audited balance sheet as of a date within 18 months or, in the case of a reorganization or merger where the parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet.

This rule is intended to implement Iowa Code section 502.203(18).

[Filed 8/1/63; amended 5/18/71, 7/3/75]
[Filed 1/13/76, Notice 11/17/75—published 1/26/76, effective 3/1/76*]
[Filed 8/30/76, Notice 7/26/76—published 9/8/76, effective 10/13/76]
[Filed 12/30/82, Notice 10/27/82—published 1/19/83, effective 2/24/83]
[Filed emergency 7/15/83—published 8/3/83, effective 7/15/83]
[Filed 8/27/85, Notice 7/17/85—published 9/25/85, effective 10/30/85]
[Editorially transferred from [510] to [191], IAC Supp. 10/22/86; see IAB 7/30/86]
[Filed 10/17/86, Notice 9/10/86—published 11/5/86, effective 12/10/86]◊
[Filed 9/18/87, Notice 8/12/87—published 10/7/87, effective 11/11/87]
[Filed 12/28/87, Notice 10/7/87—published 1/13/88, effective 2/17/88]
[Filed emergency 6/24/88—published 7/13/88, effective 7/1/88]
[Filed emergency 9/30/88—published 10/19/88, effective 11/1/88]
[Filed 12/22/88, Notice 11/16/88—published 1/11/89, effective 2/15/89]
[Filed 9/29/89, Notice 7/12/89—published 10/18/89, effective 11/22/89]
[Filed 12/21/90, Notice 6/27/90—published 1/9/91, effective 2/13/91]
[Filed emergency 6/21/91—published 7/10/91, effective 6/21/91]◊
[Filed 2/14/92, Notice 12/25/91—published 3/4/92, effective 4/8/92]
[Filed 2/28/92, Notice 12/11/91—published 3/18/92, effective 4/22/92]
[Filed 2/28/92, Notice 12/25/91—published 3/18/92, effective 4/22/92]
[Filed 10/23/92, Notice 9/16/92—published 11/11/92, effective 12/16/92]◊
[Filed 4/30/93, Notice 3/17/93—published 5/26/93, effective 6/30/93]
[Filed 7/2/93, Notice 4/14/93—published 7/21/93, effective 8/25/93]
[Filed 12/30/93, Notice 7/21/93—published 1/19/94, effective 2/28/94]
[Filed 9/16/94, Notice 8/3/94—published 10/12/94, effective 11/16/94]
[Filed without Notice 10/20/94—published 11/9/94, effective 12/14/94]

*Objection to rules 50.19 and 50.44, see IAC Supplement 3/8/76
◊Two ARCs

[Filed 3/24/95, Notice 2/15/95—published 4/12/95, effective 5/17/95]
[Filed 6/16/95, Notice 2/15/95—published 7/5/95, effective 8/9/95]
[Filed 2/22/96, Notice 1/17/96—published 3/13/96, effective 4/17/96]
[Filed 7/25/96, Notice 6/19/96—published 8/14/96, effective 9/18/96]
[Filed 10/31/96, Notice 9/25/96—published 11/20/96, effective 12/25/96]
[Filed 2/19/97, Notice 1/15/97—published 3/12/97, effective 4/16/97]
[Filed 5/2/97, Notice 3/26/97—published 5/21/97, effective 6/25/97]
[Filed 7/23/97, Notice 6/18/97—published 8/13/97, effective 9/17/97]
[Filed 1/23/98, Notice 12/17/97—published 2/11/98, effective 3/18/98]

CHAPTERS 51 to 53
Reserved