

# **UNIFORM SECURITIES ACT (2002)\***

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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MEETING IN ITS ONE-HUNDRED-AND-ELEVENTH YEAR  
TUCSON, ARIZONA  
JULY 26 - AUGUST 2, 2002

## **UNIFORM SECURITIES ACT (2002)**

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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# UNIFORM SECURITIES ACT

## [ARTICLE] 1

### GENERAL PROVISIONS

**SECTION 101. SHORT TITLE.** This [Act] may be cited as the Uniform Securities Act (2002).

**SECTION 102. DEFINITIONS.** In this [Act], unless the context otherwise requires:

(1) “Administrator” means the [insert title of administrative agency or official].

(2) “Agent” means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer’s securities, but a partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions, is an agent only if the individual otherwise comes within the term. The term does not include an individual excluded by rule or order under this [Act].

(3) “Bank” means:

(A) a banking institution organized under the laws of the United States;

(B) a member bank of the Federal Reserve System;

(C) any other banking institution whether incorporated or not, doing business under the laws of a State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by

national banks under the authority of the Comptroller of the Currency pursuant to Section 1 of Public Law 87-722 (12 U.S.C. Section 92a), and that is supervised and examined by a state or federal agency having supervision over banks, and that is not operated for the purpose of evading this [Act]; and

(D) a receiver, conservator, or other liquidating agent of any institution or firm included in subparagraphs (A), (B), or (C).

(4) “Broker-dealer” means a person engaged in the business of effecting transactions in securities for the account of others or for the person’s own account. The term does not include:

(A) an agent;

(B) an issuer;

(C) a bank or savings institution if its activities as a broker-dealer are limited to those specified in subsections 3(a)(4)(B)(i) through (vi), (viii) through (x), and if limited to unsolicited transactions, (xi); 3(a)(5)(B); and 3(a)(5)(C) of the Securities Exchange Act of 1934 (15 U.S.C. Sections 78c(a)(4) and (5)) or the bank satisfies the conditions described in subsection 3(a)(4)(E) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78c(a)(4));

(D) an international banking institution; or

(E) a person excluded by rule or order under this [Act];

(5) “Depository institution” means:

(A) a bank; or

(B) a savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a State or of the United States, authorized to receive deposits, and supervised and examined by an official or agency of a State or the United States if

its deposits or share accounts are insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law. The term does not include:

(i) an insurance company or other organization primarily engaged in the business of insurance;

(ii) a Morris Plan bank; or

(iii) an industrial loan company.

(6) “Federal covered investment adviser” means a person registered under the Investment Advisers Act of 1940.

(7) “Federal covered security” means a security that is, or upon completion of a transaction will be, a covered security under Section 18(b) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)) or rules or regulations adopted under that provision.

(8) “Filing” means the receipt under this [Act] of a record by the administrator or a designee of the administrator.

(9) “Fraud,” “deceit,” and “defraud” include, but are not limited to, common law deceit.

(10) “Guaranteed” means guaranteed as to payment of all principal and all interest.

(11) “Institutional investor” means any of the following, whether acting for itself or for others in a fiduciary capacity:

(A) a depository institution or international banking institution;

(B) an insurance company;

(C) a separate account of an insurance company;

(D) an investment company as defined in the Investment Company Act of 1940;

(E) a broker-dealer registered under the Securities Exchange Act of 1934;

(F) an employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of \$10,000,000 or its investment decisions are made by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this [Act], a depository institution, or an insurance company;

(G) a plan established and maintained by a State, a political subdivision of a State, or an agency or instrumentality of a State or a political subdivision of a State for the benefit of its employees, if the plan has total assets in excess of \$10,000,000 or its investment decisions are made by the duly designated public official or by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this [Act], a depository institution, or an insurance company;

(H) a trust, if it has total assets in excess of \$10,000,000, its trustee is a depository institution, and its participants are exclusively plans of the types identified in subparagraph (F) or (G), regardless of size of assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans;

(I) an organization described in Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Section 501(c)(3)), a corporation, Massachusetts or similar business trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered,

with total assets in excess of \$10,000,000;

(J) a small business investment company licensed by the Small Business Administration under Section 301(c) of the Small Business Investment Act of 1958 (15 U.S.C. Section 681(c)) with total assets in excess of \$10,000,000;

(K) a private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(22)) with total assets in excess of \$10,000,000;

(L) a federal covered investment adviser acting for its own account;

(M) a “qualified institutional buyer” as defined in Rule 144A(a)(1), other than Rule 144A(a)(1)(H), adopted under the Securities Act of 1933;

(N) a “major U.S. institutional investor” as defined in Rule 15a-6(b)(4)(i) adopted under the Securities Exchange Act of 1934;

(O) any other institutional investor with total assets in excess of \$10,000,000 not organized for the specific purpose of evading this [Act]; or

(P) any other person specified by rule or order under this [Act].

(12) “Insurance company” means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and which is subject to supervision by the insurance commissioner or a similar official or agency of a State.

(13) “Insured” means insured as to payment of all principal and all interest.

(14) “International banking institution” means an international financial institution of which the United States is a member and whose securities are exempt from registration under the

Securities Act of 1933.

(15) “Investment adviser” means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. The term does not include:

- (A) an investment adviser representative;
- (B) a lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person’s profession;
- (C) a broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice;
- (D) a publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation;
- (E) a federal covered investment adviser;
- (F) a bank or savings institution;
- (G) any other person that is excluded by the Investment Advisers Act of 1940 from the definition of investment adviser; or
- (H) any other person excluded by rule or order under this [Act].

(16) “Investment adviser representative” means an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds herself or himself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing. The term does not include an individual:

(A) who performs only clerical or ministerial acts;

(B) who is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services;

(C) who is employed by or associated with a federal covered investment adviser, unless the individual:

(i) has a “place of business” in this State as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-3a) and is an “investment adviser representative” as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-3a); or

(ii) has a “place of business” in this State as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-3a) and is not a “supervised person” as that term is defined in Section 202(a)(25) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(25)); or

(D) who is excluded by rule or order under this [Act].

(17) “Issuer” means a person that issues or proposes to issue a security, subject to the following:

(A) The issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security, or share in an investment company without a board of directors or individuals performing similar functions, is the person performing the acts and assuming the duties of depositor or manager pursuant to the trust or other agreement or instrument under which the security is issued.

(B) The issuer of an equipment trust certificate or similar security serving the same purpose, is the person by which the property is, or is to be, used, or to which the property or equipment is, or is to be, leased or conditionally sold, or that is otherwise contractually responsible for assuring payment of the certificate.

(C) The issuer of a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty is the owner of an interest in the lease or in payments out of production under a lease, right, or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale.

(18) “Nonissuer transaction” or “nonissuer distribution” means a transaction or distribution not directly or indirectly for the benefit of the issuer.

(19) “Offer to purchase” includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value. The term does not include a tender offer that is subject to Section 14(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d)).

(20) “Person” means an individual, corporation, business trust, estate, trust, partnership,

limited liability company, limited liability partnership, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(21) “Place of business” of a broker-dealer, an investment adviser, or a federal covered investment adviser means:

(A) an office at which the broker-dealer, investment adviser, or federal covered investment adviser regularly provides brokerage or investment advice, or solicits, meets with, or otherwise communicates with customers or clients; or

(B) any other location that is held out to the general public as a location at which the broker-dealer, investment adviser, or federal covered investment adviser provides brokerage or investment advice, or solicits, meets with, or otherwise communicates with customers or clients.

(22) “Predecessor act” means the act repealed by Section 702.

(23) “Price amendment” means the amendment to a registration statement filed under the Securities Act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed under the Securities Act of 1933 that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(24) “Principal place of business” of a broker-dealer or an investment adviser means the executive office of the broker-dealer or investment adviser from which the officers, partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser.

(25) “Record,” except in the phrases “of record,” “official record,” and “public record,” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(26) “Sale” includes every contract of sale, contract to sell, or disposition of, a security or interest in a security for value, and “offer to sell” includes an attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value. Both terms include:

(A) a security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing constituting part of the subject of the purchase and having been offered and sold for value;

(B) a gift of assessable stock involving an offer and sale; and

(C) a sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, and every sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security.

(27) “Securities and Exchange Commission” means the United States Securities and Exchange Commission.

(28) “Security” means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a

security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a “security”; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

(A) The term includes both a certificated and an uncertificated security.

(B) The term does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed [or variable] sum of money either in a lump sum or periodically for life or other specified period.

(C) The term does not include an interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974.

(D) The term includes an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor. A “common enterprise” means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party or other investors.

(E) The term “investment contract” may include, among other contracts, an interest in a limited partnership, a limited liability company, or a limited liability partnership; or an investment in a viatical settlement or similar agreement.

(29) “Self-regulatory organization” means a national securities exchange registered under the Securities Exchange Act of 1934, a national securities association of broker-dealers registered under the Securities Exchange Act of 1934, a clearing agency registered under the Securities

Exchange Act of 1934, or the Municipal Securities Rulemaking Board established under the Securities Exchange Act of 1934.

(30) “Sign” means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach or logically associate with the record an electronic symbol, sound, or process.

(31) “State” means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

**SECTION 103. REFERENCES TO FEDERAL STATUTES.** “Securities Act of 1933” (15 U.S.C. Section 77a et seq.), “Securities Exchange Act of 1934” (15 U.S.C. Section 78a et seq.), “Public Utility Holding Company Act of 1935,”(15 U.S.C. Section 79 et seq.), “Investment Company Act of 1940” (15 U.S.C. Section 80a-1 et seq.), “Investment Advisers Act of 1940” (15 U.S.C. Section 80b-1 et seq.), “Employee Retirement Income Security Act of 1974,” (29 U.S.C. Section 1001 et seq.) “National Housing Act,” (12 U.S.C. Section 1701 et seq.), “Commodity Exchange Act” (7 U.S.C. Section 1 et seq.), “Internal Revenue Code” (26 U.S.C. Section 1 et seq.), Securities Investor Protection Act of 1970 (15 U.S.C. Section 78aaa et seq.), Securities Litigation Uniform Standards Act of 1998 (112 Stat. 3227), “Small Business Investment Act of 1958” (15 U.S.C. Section 661 et seq.), and “Electronic Signatures in Global and National Commerce Act,” (15 U.S.C. Section 7001 et seq.), mean those statutes and the rules and regulations adopted under those statutes, as in effect on the date of enactment of this [Act] [,or as

later amended].

**SECTION 104. [REFERENCES TO FEDERAL AGENCIES.]** Any reference in this [Act] to an agency or department of the United States shall also be deemed to be a reference to its successor agency, department, or entity.

**SECTION 105. ELECTRONIC RECORDS AND SIGNATURES.** This [Act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)). This [Act] authorizes the filing of records and signatures, when specified by provisions of this [Act] or by a rule or order under this [Act], in a manner consistent with 15 U.S.C. Section 7004(a).

## ARTICLE 2

### EXEMPTIONS FROM REGISTRATION OF SECURITIES

**SECTION 201. EXEMPT SECURITIES.** The following securities are exempt from the requirements of Sections 301 through 306 and 504:

(1) A security, including a revenue obligation or a separate security as defined in Rule 131 adopted under the Securities Act of 1933, issued, insured, or guaranteed by the United States; by a State; by a political subdivision of a State; by a public authority, agency, or instrumentality of one or more States; by a political subdivision of one or more States; or by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by the Congress; or a certificate of deposit for any of the foregoing;

(2) A security issued, insured, or guaranteed by a foreign government with which the United States maintains diplomatic relations, or any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer, or guarantor;

(3) A security issued by and representing, or that will represent an interest in or a direct obligation of, or be guaranteed by:

(A) an international banking institution;

(B) a banking institution organized under the laws of the United States; a member bank of the Federal Reserve System; or a depository institution a substantial portion of the business of which consists or will consist of either receiving deposits or share accounts that are insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance

Fund, or a successor authorized by federal law or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the Comptroller of Currency pursuant to Section 1 of Public Law 87-722 (12 U.S.C. Section 92a); or

(C) any other depository institution, unless by rule or order the administrator proceeds under Section 204;

(4) A security issued by and representing an interest in, or a debt of, or insured or guaranteed by, an insurance company authorized to do business in this State;

(5) A security issued or guaranteed by a railroad, other common carrier, public utility, or public utility holding company that is:

(A) regulated in respect to its rates and charges by the United States or a State;

(B) regulated in respect to the issuance or guarantee of the security by the United States, a State, Canada, or a Canadian province or territory; or

(C) a public utility holding company registered under the Public Utility Holding Company Act of 1935 or a subsidiary of such a registered holding company within the meaning of that act;

(6) A federal covered security specified in Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)) or by rule adopted under that provision or a security listed or approved for listing on another appropriate securities market specified by rule under this [Act]; a put or a call option contract; warrant; a subscription right on or with respect to such securities; or an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under the Securities Exchange Act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities

exchange, or a facility of a national securities association registered under the Securities Exchange Act of 1934 or an offer or sale, of the underlying security in connection with the offer, sale or exercise of an option or other security that was exempt under this section when the option or other security was written or issued. For purposes of this paragraph, a derivative security is similar to an option if it has been designated by the Securities and Exchange Commission under Section 9(b) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78i(b));

(7) A security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic, or reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, no part of the net earnings of which inures to the benefit of a private stockholder or other person, or a security of a company that is excluded from the definition of an investment company under Section 3(c)(10)(B) of the Investment Company Act of 1940 (15 U.S.C. Section 80b-3(c)(10)(B)); with respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness, a rule under this [Act] may limit the availability of this exemption by classifying securities, persons, and transactions and adopting different requirements for different classes; such a rule may require an issuer:

(A) to file a notice specifying the material terms of the proposed offer or sale and copies of any proposed sales and advertising literature to be used and provide that the exemption becomes effective if the administrator does not disallow the exemption within the period established by the rule;

(B) to file a request for exemption authorization for which a rule under this [Act] may specify the scope of the exemption; the requirement of an offering statement; the filing of sales and advertising literature; the filing of consent to service of process; and grounds for denial

or suspension of the exemption; or

(C) to register under Section 304;

(8) A member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and operated as a nonprofit membership cooperative under the cooperative laws of a State, but not a member's or owner's interest, retention certificate, or like security sold to persons other than bona fide members of the cooperative; and

(9) An equipment trust certificate in respect to equipment leased or conditionally sold to a person, if any security issued by the person would be exempt under this section or would be a federal covered security under Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)).

**SECTION 202. EXEMPT TRANSACTIONS.** The following transactions are exempt from the requirements of Sections 301 through 306 and 504:

(1) An isolated nonissuer transaction, whether effected by or through a broker-dealer or not;

(2) A nonissuer transaction by or through a broker-dealer registered, or exempt from registration under this [Act], and a 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; if, at the date of the transaction:

(A) the issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer 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;

(B) the security is sold at a price reasonably related to its current market price;

(C) 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 or a redistribution; and

(D) a nationally recognized securities manual or its electronic equivalent designated by rule or order under this [Act] or a record filed with the Securities and Exchange Commission that is publicly available contains:

(i) a description of the business and operations of the issuer;

(ii) the names of the issuer's executive officers and the names of the issuer's directors, if any;

(iii) an audited balance sheet of the issuer as of a date within 18 months of the date of the transaction or, in the case of a reorganization or merger, and when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined entity;

(iv) an audited income statement for each of the issuer's two immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement; or

(E) 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, unless the issuer of the security is a unit investment trust registered under the Investment Company Act of 1940; or the issuer of the security, including its predecessors, has been engaged in continuous business for at least three years; or the issuer of the security has total assets of at least \$2,000,000 based on an audited balance sheet as of a date within 18 months of the time of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had the audited balance sheet, a pro forma balance sheet for the combined entity;

(3) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this [Act] in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the Board of Governors of the Federal Reserve System;

(4) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this [Act] in an outstanding security if the guarantor of the security files reports with the Securities and Exchange Commission under the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d));

(5) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this [Act] in a security that:

(A) is rated at the time of the transaction by a nationally recognized statistical rating organization in one of its four highest rating categories; or

(B) has a fixed maturity or a fixed interest or dividend, if:

(i) a default has not occurred during the current fiscal year or within the three previous fiscal years or during the existence of the issuer and any predecessor if less than three fiscal years, in the payment of principal, interest, or dividends on the security; and

(ii) the issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous 12 months 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;

(6) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this [Act] effecting an unsolicited order or offer to purchase;

(7) A nonissuer transaction executed by a bona fide pledgee without any purpose of evading this [Act];

(8) A nonissuer transaction with a federal covered investment adviser with investments under management in excess of \$100,000,000 acting in the exercise of discretionary authority in a signed record for the account of others;

(9) (a) A nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this [Act], if:

(1) The issuer is a reporting issuer in a foreign jurisdiction designated in paragraph (b), or by rule or order of the administrator, and has been subject to continuous reporting requirements in the foreign jurisdiction for not less than 180 days before the transaction; and

(2) the security is listed on the foreign jurisdiction's securities exchange that has been designated in paragraph (b), or by rule or order under this [Act], or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing;

(b) for purposes of paragraph (a), Canada, together with its provinces and territories, is a designated foreign jurisdiction and The Toronto Stock Exchange, Inc., is a

designated securities exchange;

(c) after an administrative hearing in compliance with applicable state law, the administrator, by rule or order under this [Act], may revoke the designation of a securities exchange under this subsection if the administrator finds that revocation is necessary or appropriate in the public interest and for the protection of investors;

(10) A transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(11) A transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if:

(A) the note, bond, debenture, or other evidence of indebtedness is offered and sold with a mortgage or other security agreement as a unit;

(B) a general solicitation or general advertisement of the transaction is not made; and

(C) a commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this [Act] as a broker-dealer or as an agent;

(12) A transaction by an executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(13) A sale or offer to sell to:

(A) an institutional investor;

(B) a federal covered investment adviser; or

(C) any other person exempted by rule or order under this [Act];

(14) A sale or an offer to sell securities of an issuer, if part of a single issue in which:

(A) there are not more than 25 purchasers in this State during any 12 consecutive

months, other than those designated in paragraph (13);

(B) there is no general solicitation or general advertising used in connection with the offer to sell or sale of the securities;

(C) a commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this [Act] or an agent registered under this [Act] for soliciting a prospective purchaser in this State; and

(D) the issuer reasonably believes that all the purchasers in this State other than those designated in paragraph (13) are purchasing for investment;

(15) A transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options, or warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this State;

(16) An offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if:

(A) a registration or offering statement or similar record as required under the Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance with Rule 165 adopted under the Securities Act of 1933; and

(B) a stop order of which the offeror is aware has not been issued against the offeror by the administrator or the Securities and Exchange Commission, and an audit, inspection, or proceeding that is public and may culminate in a stop order is not known by the offeror to be pending;

(17) An offer to sell, but not a sale, of a security exempt from registration under the

Securities Act of 1933 if:

(A) a registration statement has been filed under this [Act], but is not effective;

(B) a solicitation of interest is provided in a record to offerees in compliance with a rule adopted by the administrator under this [Act]; and

(C) a stop order of which the offeror is aware has not been issued by the administrator under this [Act], and an audit, inspection, or proceeding that may culminate in a stop order is not known by the offeror to be pending;

(18) A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary, and the other person, or its parent or subsidiary, are parties;

(19) A rescission offer, sale, or purchase under Section 510;

(20) An offer or sale of a security to a person not resident in this State and not present in this State if the offer or sale does not constitute a violation of the laws of the State or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this [Act];

(21) An offer or sale of a security pursuant to an employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees including:

(A) offers or sales of such securities to directors; general partners; trustees, if the issuer is a business trust; officers; or consultants and advisors;

(B) family members who acquire such securities from those persons through gifts or domestic relations orders;

(C) former employees, directors, general partners, trustees, officers, consultants, and advisors if those individuals were employed by or providing services to the issuer when the securities were offered; and

(D) insurance agents who are exclusive insurance agents of the issuer, its subsidiaries or parents, or who derive more than 50 percent of their annual income from those organizations;

(22) A transaction involving:

(A) a stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock;

(B) an act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash; or

(C) the solicitation of tenders of securities by an offeror in a tender offer in compliance with Rule 162 adopted under the Securities Act of 1933; or

(23) A transaction in a security, whether or not the security or transaction is otherwise

exempt, in exchange for one or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the administrator at a hearing.

**SECTION 203. ADDITIONAL EXEMPTIONS AND WAIVERS.** A rule or order under this [Act] may exempt a security, transaction, or offer, or a rule under this [Act] may exempt a class of securities, transactions, or offers from any or all of the requirements of Sections 301 through 306 and 504, and an order under this [Act] may waive any or all of the conditions for an exemption or offers under Sections 201 and 202. The administrator may suspend an application or a rule or order under this [Act] and the administrator may revoke an exemption or waiver created under this section, but may only do so prospectively.

**SECTION 204. DENIAL, SUSPENSION, CONDITION, OR LIMITATION OF EXEMPTIONS.**

(a) **[Enforcement related powers.]** Except with respect to a federal covered security or a transaction involving a federal covered security, an order of the administrator under this [Act] may deny or suspend application of, or condition or limit, an exemption created under Section 201(3)(C), (7), (8), or 202 or an exemption or waiver created under Section 203 with respect to a specific security, transaction, or offer. An order under this section may only be issued pursuant to the procedures in Section 306(d) or 604 and may only be issued prospectively.

(b) **[Knowledge of order required.]** A person does not violate Section 301, 303 through

306, 504, or 510 by an offer to sell, offer to purchase, sale, or purchase effected after the entry of an order issued under this section if the person did not know, and in the exercise of reasonable care could not have known, of the order.

[ARTICLE] 3

REGISTRATION OF SECURITIES AND

NOTICE FILINGS OF FEDERAL COVERED SECURITIES

**SECTION 301. SECURITIES REGISTRATION REQUIREMENT.** It is unlawful for a person to offer or sell a security in this State unless:

(1) the security is a federal covered security;

(2) the security, transaction, or offer is exempted from registration under Sections 201 through 203; or

(3) the security is registered under this [Act].

**SECTION 302. NOTICE FILINGS.**

(a) **[Required filing of records.]** A rule or order under this [Act] may require the filing of any or all of the following records with respect to a security issued by an investment company that is a federal covered security as defined in Section 18(b)(2) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(2)), that is not otherwise exempt under Sections 201 through 203:

(1) before the initial offer of a federal covered security in this State, all records that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933 and a consent to service of process signed by the issuer and a fee of \$[\_\_\_\_];

(2) after the initial offer of the federal covered security in this State, all records that are part of an amendment to a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933; and

(3) to the extent necessary or appropriate to compute fees, a report of the value of the federal covered securities sold or offered to persons present in this State, if the sales data are not included in records filed with the Securities and Exchange Commission and a fee of \$[\_\_\_\_\_].

(b) **[Notice filing effectiveness and renewal.]** A notice filing under subsection (a) is effective for one year commencing upon the later of the notice filing or the effectiveness of the offering filed with the Securities and Exchange Commission. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the Securities and Exchange Commission that are required by rule or order under this [Act] to be filed and a renewal fee of \$[ \_\_\_\_]. A previously filed consent to service of process may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.

(c) **[Notice filings for federal covered securities under Section 18(b)(4)(D).]** With respect to any security that is a federal covered security under Section 18(b)(4)(D) of the Securities Act of 1933(15 U.S.C. Section 77r(b)(4)(D)), a rule under this [Act] may require a notice filing by or on behalf of an issuer to include a copy of Form D, including the Appendix, as promulgated by the Securities and Exchange Commission, and a consent to service of process signed by the issuer not later than 15 days after the first sale of the federal covered security in this State and a fee of \$[\_\_\_\_\_]; and a fee of \$[\_\_\_\_\_] for a late filing.

(d) **[Stop orders.]** If the administrator finds that there is a failure to comply with a notice

or fee requirement of this section, the administrator may issue a stop order suspending the offer and sale of a federal covered security in this State, except a federal covered security under Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)). If the deficiency is corrected, the stop order is void as of the time of its issuance and no other penalty may be imposed by the administrator.

### **SECTION 303. SECURITIES REGISTRATION BY COORDINATION.**

(a) **[Registration permitted.]** A security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination under this section.

(b) **[Required records.]** A registration statement and accompanying records under this section must contain or be accompanied by the following records in addition to the information specified in Section 305 and a consent to service of process complying with Section 611:

- (1) a copy of the latest form of prospectus filed under the Securities Act of 1933;
- (2) a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect; a copy of any agreement with or among underwriters; a copy of any indenture or other instrument governing the issuance of the security to be registered; and a specimen, copy, or description of the security that is required by rule or order under this [Act];
- (3) copies of any other information, or any other records filed by the issuer under the Securities Act of 1933 requested by the administrator; and
- (4) an undertaking to forward each amendment to the federal prospectus, other than an amendment that delays the effective date of the registration statement, promptly after it is filed

with the Securities and Exchange Commission.

(c) **[Conditions for effectiveness of registration statement.]** A registration statement under this section becomes effective simultaneously with or subsequent to the federal registration statement when all the following conditions are satisfied:

(1) a stop order under subsection (d) or Section 306 or issued by the Securities and Exchange Commission is not in effect and a proceeding is not pending against the issuer under Section 412; and

(2) the registration statement has been on file for at least 20 days or such shorter period provided by rule or order under this [Act].

(d) **[Notice of federal registration statement effectiveness.]** The registrant shall promptly notify the administrator in a record of the date and time when the federal registration statement becomes effective and the content of a price amendment, if any, and shall promptly file a record containing the price amendment. If the notice is not timely received, the administrator may issue a stop order, without prior notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this section. The administrator shall promptly notify the registrant of an order by telegram, telephone, or electronic means and promptly confirm this notice by a record. If the registrant subsequently complies with the notice requirements of this section, the stop order is void as of the time of its issuance.

(e) **[Effectiveness of registration statement.]** If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the administrator, the registration statement is automatically effective under this [Act] when all the conditions are satisfied or waived. If the registrant notifies the administrator of the date when the

federal registration statement is expected to become effective, the administrator shall promptly notify the registrant by telegram, telephone, or electronic means and promptly confirm this notice by a record, indicating whether all the conditions are satisfied or waived and whether the administrator intends the institution of a proceeding under Section 306. The notice by the administrator does not preclude the institution of such a proceeding.

#### **SECTION 304. SECURITIES REGISTRATION BY QUALIFICATION.**

(a) **[Registration permitted.]** A security may be registered by qualification under this section.

(b) **[Required records.]** A registration statement under this section must contain the information specified in Section 305, a consent to service of process complying with Section 611, and, if provided by rule under this [Act], the following information and the following records:

(1) with respect to the issuer and any significant subsidiary, its name, address, and form of organization; the State or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

(2) with respect to each director and officer of the issuer, and other person having a similar status or performing similar functions, the person's name, address, and principal occupation for the previous five years; the amount of securities of the issuer held by the person as of the 30th day before the filing of the registration statement; the amount of the securities

covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest of the person in any material transaction with the issuer or a significant subsidiary effected within the previous three years or proposed to be effected;

(3) with respect to persons covered by paragraph (2), the aggregate sum of the remuneration paid to those persons during the previous 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer, and all predecessors, parents, subsidiaries, and affiliates of the issuer;

(4) with respect to a person owning of record or owning beneficially, if known, 10 percent or more of the outstanding shares of any class of equity security of the issuer, the information specified in paragraph (2) other than the person's occupation;

(5) with respect to a promoter if the issuer was organized within the previous three years, the information specified in paragraph (2), any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for the payment;

(6) with respect to a person on whose behalf any part of the offering is to be made in a nonissuer distribution, the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; a description of any material interest of the person in any material transaction with the issuer or any significant subsidiary effected within the previous three years or proposed to be effected; and a statement of the reasons for making the offering;

(7) the capitalization and long term debt, on both a current and pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration,

whether in the form of cash, physical assets, services, patents, goodwill, or anything else of value, for which the issuer or any subsidiary has issued its securities within the previous two years or is obligated to issue its securities;

(8) the kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation at which a proportion of the offering is to be made to a person or class of persons other than the underwriters, with a specification of the person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering, or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of each underwriter and each recipient of a finder's fee; a copy of any underwriting or selling group agreement under which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities that are to be offered otherwise than through an underwriter;

(9) the estimated monetary proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the estimated amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of the funds; and, if a part of the proceeds is to be used to acquire property, including goodwill,

otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons that have received commissions in connection with the acquisition, and the amounts of the commissions and other expenses in connection with the acquisition, including the cost of borrowing money to finance the acquisition;

(10) a description of any stock options or other security options outstanding, or to be created in connection with the offering, and the amount of those options held or to be held by each person required to be named in paragraph (2), (4), (5), (6), or (8) and by any person that holds or will hold 10 percent or more in the aggregate of those options;

(11) the dates of, parties to, and general effect concisely stated of each managerial or other material contract made or to be made otherwise than in the ordinary course of business to be performed in whole or in part at or after the filing of the registration statement or that was made within the previous two years, and a copy of the contract;

(12) a description of any pending litigation, action, or proceeding to which the issuer is a party and that materially affects its business or assets, including any litigation, action, or proceeding known to be contemplated by governmental authorities;

(13) a copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering and any solicitation of interest used in compliance with Section 202(17)(B);

(14) a specimen or copy of the security being registered, unless the security is uncertificated, a copy of the issuer's articles of incorporation and bylaws, or their substantial equivalents, in effect; and a copy of any indenture or other instrument covering the security to be registered;

(15) a signed or conformed copy of an opinion of counsel concerning the legality of the security being registered, with an English translation if it is in a language other than English, which states whether the security when sold will be validly issued, fully paid, and nonassessable and, if a debt security, a binding obligation of the issuer;

(16) a signed or conformed copy of a consent of any accountant, engineer, appraiser, or other person whose profession gives authority for a statement made by the person, if the person is named as having prepared or certified a report or valuation, other than an official record, that is public, which is used in connection with the registration statement;

(17) a balance sheet of the issuer as of a date within four months before the filing of the registration statement; a statement of income and changes in financial position for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the immediately previous fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of a business, the financial statements that would be required if that business were the registrant; and

(18) any additional information required by rule or order under this [Act].

(c) **[Conditions for effectiveness of registration statement.]** A registration statement under this section becomes effective 30 days, or any shorter period provided by rule or order under this [Act], after the date the registration statement or the last amendment other than a price amendment is filed, if:

(1) a stop order is not in effect and a proceeding is not pending under Section 306;

(2) the administrator has not issued an order under Section 306(c) delaying

effectiveness; and

(3) the applicant or registrant has not requested that effectiveness be delayed.

(d) **[Delay of effectiveness of registration statement.]** The administrator may delay effectiveness once for not more than 90 days if the administrator determines the registration statement is not complete in all material respects and promptly notifies the applicant or registrant of that determination. The administrator may also delay effectiveness for a further period of not more than 30 days if the administrator determines that the delay is necessary or appropriate.

(e) **[Prospectus distribution may be required.]** A rule or order under this [Act] may require as a condition of registration under this section that a prospectus containing a specified part of the information specified in subsection (b) be sent or given to each person to which an offer is made, before or concurrently, with the earliest of:

(1) the first offer made in a record to the person otherwise than by means of a public advertisement, by or for the account of the issuer or another person on whose behalf the offering is being made, or by an underwriter or broker-dealer that is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution;

(2) the confirmation of any sale made by or for the account of the person;

(3) payment pursuant to such a sale; or

(4) delivery of the security pursuant to such a sale.

## SECTION 305. SECURITIES REGISTRATION FILINGS.

(a) [**Who may file.**] A registration statement may be filed by the issuer, a person on whose behalf the offering is to be made, or a broker-dealer registered under this [Act].

(b) [**Filing fee.**] A person filing a registration statement shall pay a filing fee of \$[\_\_\_\_]. If a registration statement is withdrawn before the effective date or a preeffective stop order is issued under Section 306, the administrator shall retain \$[\_\_\_\_] of the fee.

(c) [**Status of offering.**] A registration statement filed under Section 303 or 304 must specify:

- (1) the amount of securities to be offered in this State;
- (2) the States in which a registration statement or similar record in connection with the offering has been or is to be filed; and
- (3) any adverse order, judgment, or decree issued in connection with the offering by a state securities regulator, the Securities and Exchange Commission, or a court.

(d) [**Incorporation by reference.**] A record filed under this [Act] or the predecessor act, within five years preceding the filing of a registration statement, may be incorporated by reference in the registration statement to the extent that the record is currently accurate.

(e) [**Nonissuer distribution.**] In the case of a nonissuer distribution, information may not be required under subsection (i) or Section 304, unless it is known to the person filing the registration statement or to the person on whose behalf the distribution is to be made, or unless it can be furnished by those persons without unreasonable effort or expense.

(f) [**Escrow and impoundment.**] A rule or order under this [Act] may require as a condition of registration that a security issued within the previous five years or to be issued to a

promoter for a consideration substantially less than the public offering price, or to a person for a consideration other than cash, be deposited in escrow; and that the proceeds from the sale of the registered security in this State be impounded until the issuer receives a specified amount from the sale of the security either in this State or elsewhere. The conditions of any escrow or impoundment required under this subsection may be established by rule or order under this [Act], but the administrator may not reject a depository institution solely because of its location in another State.

(g) [**Form of subscription.**] A rule or order under this [Act] may require as a condition of registration that a security registered under this [Act] be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed under this [Act] or preserved for a period of not more than five years.

(h) [**Effective period.**] Except while a stop order is in effect under Section 306, a registration statement is effective for one year after its effective date, or for a longer period designated in an order under this [Act] during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this [Act] are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement may not be withdrawn until one year after its effective date. A registration statement may be withdrawn only with the approval of the administrator.

(i) [**Periodic reports.**] While a registration statement is effective, a rule or order under this [Act] may require the person that filed the registration statement to file reports, not more often than quarterly, to keep the information or record in the registration statement reasonably current and to disclose the progress of the offering.

(j) [**Posteffective amendments.**] A registration statement may be amended after its effective date. The posteffective amendment becomes effective when the administrator so orders. If a posteffective amendment is made to increase the number of securities specified to be offered or sold, the person filing the amendment shall pay a registration fee of \$[\_\_\_]. A posteffective amendment relates back to the date of the offering of the additional securities being registered, if within one year after the date of the sale the amendment is filed and the additional registration fee is paid.

## **SECTION 306. DENIAL, SUSPENSION, AND REVOCATION OF SECURITIES REGISTRATION.**

(a) [**Stop orders.**] The administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the administrator finds that the order is in the public interest and that:

(1) the registration statement as of its effective date or before the effective date in the case of an order denying effectiveness, an amendment under Section 305(j) as of its effective date, or a report under Section 305(i), is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(2) this [Act] or a rule adopted or order issued under this [Act] or a condition imposed under this [Act] has been willfully violated, in connection with the offering, by the person filing the registration statement; by the issuer, a partner, officer, or director of the issuer or a person having a similar status or performing a similar function; a promoter of the issuer or a person directly or indirectly controlling or controlled by the issuer; but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or by an underwriter;

(3) the security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent jurisdiction or an administrative stop order or similar order issued under any federal, foreign, or state law other than this [Act] applicable to the offering, but the administrator may not institute a proceeding against an effective registration statement under this paragraph more than one year after the date of the order or injunction on which it is based, and the administrator may not issue an order under this paragraph on the basis of an order or injunction issued under the securities act of another state unless the order or injunction was based on facts that would constitute, as of the date of the order, a ground for a stop order under this section;

(4) the issuer's enterprise or method of business includes or would include activities that are illegal where performed;

(5) with respect to a security sought to be registered under Section 303, there has been a failure to comply with the undertaking required by Section 303(b)(4);

(6) the applicant or registrant has not paid the proper filing fee, but the administrator may issue only a stop order under this paragraph and shall void the order if the deficiency is

corrected; or

(7) the offering:

(A) will work or tend to work a fraud upon purchasers or would so operate; [or]

(B) has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participations, or unreasonable amounts or kinds of options[; or

(C) is being made on terms that are unfair, unjust, or inequitable].

(b) [**Enforcement of subsection (a)(7).**] To the extent practicable, the administrator by rule or order under this [Act] shall publish standards that provide notice of conduct that violates subsection (a)(7).

(c) [**Institution of stop order.**] The administrator may not institute a stop order proceeding against an effective registration statement on the basis of conduct or a transaction known to the administrator when the registration statement became effective unless the proceeding is instituted within 30 days after the registration statement became effective.

(d) [**Summary process.**] The administrator may summarily revoke, deny, postpone, or suspend the effectiveness of a registration statement pending final determination of an administrative proceeding. Upon the issuance of the order, the administrator shall promptly notify each person specified in subsection (e) that the order has been issued, the reasons for the postponement or suspension, and that within 15 days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator, within 30 days after the date of service of the order, the order becomes final. If a hearing is requested or ordered, the administrator, after notice of and

opportunity for hearing for each person subject to the order may modify or vacate the order or extend the order until final determination.

(e) [**Procedural requirements for stop order.**] A stop order may not be issued under this section without:

(1) appropriate notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered;

(2) an opportunity for hearing; and

(3) findings of fact and conclusions of law in a record [in accordance with the state administrative procedure act].

(f) [**Modification or vacation of stop order.**] The administrator may modify or vacate a stop order issued under this section if the administrator finds that the conditions that caused its issuance have changed or that it is necessary or appropriate in the public interest or for the protection of investors.

**SECTION 307. WAIVERS AND MODIFICATIONS.** The administrator, may waive or modify any or all of the requirements of Sections 302, 303, and 304(b) or the requirement of any information or record in a registration statement or in a periodic report pursuant to Section 305(i).

[ARTICLE] 4

**BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS, INVESTMENT ADVISER  
REPRESENTATIVES, AND FEDERAL COVERED INVESTMENT ADVISERS**

**SECTION 401. BROKER-DEALER REGISTRATION REQUIREMENT AND  
EXEMPTIONS.**

(a) **[Registration requirement.]** It is unlawful for a person to transact business in this State as a broker-dealer, unless the person is registered under this [Act] as a broker-dealer or is exempt from registration as a broker-dealer under subsection (b) or (d).

(b) **[Exemptions from registration.]** The following persons are exempt from the registration requirement of subsection (a):

(1) a broker-dealer without a place of business in this State if its only transactions effected in this State are with:

(A) the issuer of the securities involved in the transactions;

(B) a person registered as a broker-dealer under this [Act] or not required to be registered as a broker-dealer under this [Act];

(C) an institutional investor;

(D) a nonaffiliated federal covered investment adviser with investments under management in excess of \$100 million acting for the account of others pursuant to discretionary authority in a signed record;

(E) a bona fide preexisting customer whose principal place of residence is not in this State and the person is registered as a broker-dealer under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities act of the State in which the customer maintains a principal place of residence;

(F) a bona fide preexisting customer whose principal place of residence is in this State but was not present in this State when the customer relationship was established, if:

(i) the broker-dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities laws of the State in which the customer relationship was established and where the customer had maintained a principal place of residence; and

(ii) within 45 days after the customer's first transaction in this State, the person files an application for registration as a broker-dealer in this State and a further transaction is not effected more than 75 days after the date on which the application is filed, or, if earlier, the date on which the administrator notifies the person that the administrator has denied the application for registration or has stayed the pendency of the application for cause;

(G) not more than three customers in this State during the previous 12 months, in addition to those specified in subparagraphs (A) through (F) and under subparagraph (H), if the broker-dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities act of the State in which the broker-dealer has its principal place of business; and

(H) any other person exempted by rule or order under this [Act]; and

(2) a person that deals solely in United States government securities and is supervised as a dealer in government securities by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Office of Thrift Supervision.

(c) [**Limits on employment or association.**] It is unlawful for a broker-dealer, or for an issuer engaged in offering, offering to purchase, purchasing, or selling securities in this State, directly or indirectly, to employ or associate with an individual to engage in an activity related to securities transactions in this State if the registration of the individual is suspended or revoked or the individual is barred from employment or association with a broker-dealer, an issuer, an investment adviser, or a federal covered investment adviser by an order of the administrator under this [Act], the Securities and Exchange Commission, or a self-regulatory organization. A broker-dealer or issuer does not violate this subsection if the broker-dealer or issuer did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from a broker-dealer or issuer and for good cause shown, an order under this [Act] may modify or waive the prohibitions of this subsection.

(d) [**Foreign transactions.**] A rule or order under this [Act] may permit:

(1) a broker-dealer that is registered in Canada or other foreign jurisdiction and that does not have a place of business in this State to effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by:

(A) an individual from Canada or other foreign jurisdiction that is temporarily resident in this State and with whom the broker-dealer had a bona fide client relationship before the individual entered the United States;

(B) an individual from Canada or other foreign jurisdiction who is resident in this State and whose transactions are in a self-directed tax advantaged retirement plan in that foreign jurisdiction of which the individual is the holder or contributor; or

(C) an individual who is resident in this State, with whom the broker-dealer client relationship arose while the individual was temporarily or permanently resident in Canada or the other foreign jurisdiction; and

(2) an agent who represents a broker-dealer, that is exempt under this subsection to effect transactions in securities or attempt to effect the purchase or sale of any securities in this State as permitted for a broker-dealer described in paragraph (d)(1).

#### **SECTION 402. AGENT REGISTRATION REQUIREMENT AND EXEMPTIONS.**

(a) [**Registration requirement.**] It is unlawful for an individual to transact business in this State as an agent unless the individual is registered under this [Act] as an agent or is exempt from registration as an agent under subsection (b).

(b) [**Exemptions from registration.**] The following individuals are exempt from the registration requirement of subsection (a):

(1) an individual who represents a broker-dealer in effecting transactions in this State limited to those described in Section 15(h)(2) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78(o)(2));

(2) an individual who represents a broker-dealer that is exempt under Section 401(b) or (d);

(3) an individual who represents an issuer with respect to an offer or sale of the

issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries, and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

(4) an individual who represents an issuer and who effects transactions in the issuer's securities exempted by Section 202, other than Section 202(11) and (14);

(5) an individual who represents an issuer who effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security under Section 18(b)(3) or 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(3) or 77r(b)(4)(D)) is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

(6) an individual who represents a broker-dealer registered in this State under Section 401(a) or exempt under Section 401(b) in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of \$100,000,000 acting for the account of others pursuant to discretionary authority in a signed record;

(7) an individual who represents an issuer in connection with the purchase of the issuer's own securities;

(8) an individual who represents an issuer and who restricts participation to performing ministerial or clerical work; or

(9) any other individual exempted by rule or order under this [Act].

(c) [**Registration effective only while employed or associated.**] The registration of an agent is effective only while the agent is employed by or associated with a broker-dealer registered under this [Act] or an issuer that is offering or selling its securities in this State.

(d) [**Limit on employment or association.**] It is unlawful for a broker-dealer, or an issuer engaged in offering, selling, or purchasing securities in this State, to employ or associate with an agent who transacts business in this State on behalf of broker-dealers or issuer unless the agent is registered under subsection (a) or exempt from registration under subsection (b).

(e) [**Limit on affiliations.**] An individual may not act as an agent for more than one broker-dealer or more than one issuer at a time, unless the broker-dealers or the issuers for which the agent acts are affiliated by direct or indirect common control or are authorized by rule or order under this [Act].

#### **SECTION 403. INVESTMENT ADVISER REGISTRATION REQUIREMENT AND EXEMPTIONS.**

(a) [**Registration requirement.**] It is unlawful for a person to transact business in this State as an investment adviser unless the person is registered under this [Act] as an investment adviser or is exempt from registration as an investment adviser under subsection (b).

(b) [**Exemptions from registration.**] The following persons are exempt from the registration requirement of subsection (a):

(1) a person without a place of business in this State that is registered under the securities act of the state in which the person has its principal place of business if its only clients in this State are:

(A) federal covered investment advisers, investment advisers registered under this [Act], or broker-dealers registered under this [Act];

(B) institutional investors;

(C) bona fide preexisting clients whose principal places of residence are not in this State if the investment adviser is registered under the securities act of the State in which the clients maintain principal places of residence; or

(D) any other client exempted by rule or order under this [Act];

(2) a person without a place of business in this State if the person has had, during the preceding 12 months, not more than five clients that are residents of this State in addition to those specified under paragraph (1); or

(3) any other person exempted by rule or order under this [Act]

(c) **[Limits on employment or association.]** It is unlawful for an investment adviser, directly or indirectly, to employ or associate with an individual to engage in an activity related to investment advice in this State if the registration of the individual is suspended or revoked, or the individual is barred from employment or association with an investment adviser, federal covered investment adviser, or broker-dealer by an order under this [Act], the Securities and Exchange Commission, or a self-regulatory organization, unless the investment adviser did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from the investment adviser and for good cause shown, the administrator, by order, may waive the prohibitions of this subsection.

(d) **[Investment adviser representative registration required.]** It is unlawful for an investment adviser to employ or associate with an individual required to be registered under this

[Act] as an investment adviser representative who transacts business in this State on behalf of the investment adviser unless the individual is registered under Section 404(a) or is exempt from registration under Section 404(b).

**SECTION 404. INVESTMENT ADVISER REPRESENTATIVE REGISTRATION REQUIREMENT AND EXEMPTIONS.**

(a) **[Registration requirement.]** It is unlawful for an individual to transact business in this State as an investment adviser representative unless the individual is registered under this [Act] as an investment adviser representative or is exempt from registration as an investment adviser under subsection (b).

(b) **[Exemptions from registration.]** The following individuals are exempt from the registration requirement of subsection (a):

(1) an individual who is employed by or associated with an investment adviser that is exempt from registration under Section 403(b) or a federal covered investment adviser that is excluded from the notice filing requirements of Section 405; and

(2) any other individual exempted by rule or order under this [Act].

(c) **[Registration effective only while employed or associated.]** The registration of an investment adviser representative is not effective while the investment adviser representative is not employed by or associated with an investment adviser registered under this [Act] or a federal covered investment adviser that has made or is required to make a notice filing under Section 405.

(d) **[Limit on affiliations.]** An individual may transact business as an investment adviser

representative for more than one investment adviser or federal covered investment adviser unless a rule or order under this [Act] prohibits or limits an individual from acting as an investment adviser representative for more than one investment adviser or federal covered investment adviser.

(e) [**Limits on employment or association.**] It is unlawful for an individual acting as an investment adviser representative, directly or indirectly, to conduct business in this State on behalf of an investment adviser or a federal covered investment adviser if the registration of the individual as an investment adviser representative is suspended or revoked or the individual is barred from employment or association with an investment adviser or a federal covered investment adviser by an order under this [Act], the Securities and Exchange Commission, or a self-regulatory organization. Upon request from a federal covered investment adviser and for good cause shown, the administrator, by order, may waive the requirements of this subsection.

(f) [**Referral fees.**] An investment adviser registered under this [Act], a federal covered investment adviser that has filed a notice under Section 405, or a broker-dealer registered under this [Act], is not required to employ or associate with an individual as an investment adviser representative when the sole compensation paid to the individual for a referral of investment advisory clients is paid to an investment adviser registered under this [Act], a federal covered investment adviser who has filed a notice under Section 405, or a broker-dealer registered under this [Act] with which the individual is employed or associated as an investment adviser representative.

**SECTION 405. FEDERAL COVERED INVESTMENT ADVISER NOTICE FILING REQUIREMENT.**

(a) [**Notice filing requirement.**] Except with respect to a federal covered investment adviser described in subsection (b), it is unlawful for a federal covered investment adviser to transact business in this State unless the federal covered investment adviser complies with subsection (c).

(b) [**Exclusions from notice filing requirement.**] The following federal covered investment advisers are not required to comply with subsection (c):

(1) a federal covered investment adviser without a place of business in this State if its only clients in this State are:

(A) federal covered investment advisers, investment advisers registered under this Act, and broker-dealers registered under this [Act];

(B) institutional investors;

(C) bona fide preexisting clients whose principal places of residence are not in this State; or

(D) other clients specified by rule or order under this [Act];

(2) a federal covered investment adviser without a place of business in this State if the person has had, during the preceding 12 months, not more than five clients that are residents of this State in addition to those specified under paragraph (1); and

(3) any other person excluded by rule or order under this [Act].

(c) [**Notice filing procedure.**] A person acting as a federal covered investment adviser, not excluded under subsection (b), shall file a notice, a consent to service of process, and such

records that have been filed with the Securities and Exchange Commission under the Investment Advisers Act of 1940 required by rule or order under this [Act] and pay the fees specified in Section 410(e).

(d) **[Effectiveness of filing.]** The notice under subsection (c) becomes effective upon its filing.

**SECTION 406. REGISTRATION BY BROKER-DEALERS, AGENTS,  
INVESTMENT ADVISERS, AND INVESTMENT ADVISER REPRESENTATIVES.**

(a) **[Application for initial registration.]** A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application and a consent to service of process complying with Section 611, and paying the fee specified in Section 410 and any reasonable fees charged by the designee of the administrator for processing the filing. Each application must contain:

- (1) the information required for the filing of a uniform application; and
- (2) upon request by the administrator, any other financial or other information that the administrator determines is appropriate.

(b) **[Amendment.]** If the information contained in an application that is filed under subsection (a) is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment.

(c) **[Effectiveness of registration.]** If an order is not in effect and no proceeding is pending under Section 412, registration becomes effective at noon on the 45th day after a completed application is filed unless the registration is denied. A rule or order under this [Act]

may set an earlier effective date or may defer the effective date until noon on the 45th day after the filing of any amendment completing the application.

(d) [**Registration renewal.**] A registration is effective until midnight on December 31 of the year for which the application for registration is filed. Unless an order is in effect under Section 412, a registration may be automatically renewed each year by filing such records as are required by rule or order under this [Act], by paying the fee specified in Section 410, and by paying costs charged by the designee of the administrator for processing the filings.

(e) [**Additional conditions or waivers.**] A rule or order under this [Act] may impose such other conditions, unless inconsistent with the National Securities Markets Improvement Act of 1996, or an order under this [Act] may waive specific requirements in connection with registration as are appropriate in the public interest and for the protection of investors.

#### **SECTION 407. SUCCESSION AND CHANGE IN REGISTRATION OF BROKER-DEALER OR INVESTMENT ADVISER.**

(a) [**Succession.**] A broker-dealer or investment adviser may succeed to the current registration of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser, and a federal covered investment adviser may succeed to the current registration of an investment adviser or notice filing of another federal covered investment adviser, by filing as a successor an application for registration pursuant to Section 401 or 403, or a notice pursuant to Section 405, for the unexpired portion of the current registration or notice filing.

(b) [**Organizational change.**] A broker-dealer or investment adviser that changes its

form of organization or state of incorporation or organization may continue its registration by filing an amendment to its registration if the change does not involve a material change in its financial condition or management. The amendment becomes effective when filed or upon a date designated by the registrant in its filing. The new organization is a successor to the original registrant for the purposes of this [Act]. If there is a material change in financial condition or management, the broker-dealer or investment adviser shall file a new application for registration. Any predecessor registered under this [Act] shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser registration within 45 days after filing its amendment to effect succession.

(c) [**Name change.**] A broker-dealer or investment adviser that changes its name may continue its registration by filing an amendment to its registration. The amendment becomes effective when filed or upon a date designated by the registrant.

(d) [**Change of control.**] A change of control of a broker-dealer or investment adviser may be made in accordance with a rule or order under this [Act].

#### **SECTION 408. TERMINATION OF EMPLOYMENT OR ASSOCIATION OF AGENTS AND INVESTMENT ADVISER REPRESENTATIVE AND TRANSFER OF EMPLOYMENT OR ASSOCIATION.**

(a) [**Notice of termination.**] If an agent registered under this [Act] terminates employment by or association with a broker-dealer or issuer, or if an investment adviser representative terminates employment by or association with an investment adviser or federal covered investment adviser, or if either registrant terminates activities that require registration as an agent or investment

adviser representative, the broker-dealer, investment adviser, or federal covered investment adviser shall promptly file a notice of termination. If the registrant learns that the broker-dealer, issuer, investment adviser, or federal covered investment adviser has not filed the notice, the registrant may do so.

(b) [**Transfer of employment or association.**] If an agent registered under this [Act] terminates employment by or association with a broker-dealer registered under this [Act] and begins employment by or association with another broker-dealer registered under this [Act], or if an investment adviser representative registered under this [Act] terminates employment by or association with an investment adviser registered under this [Act], or a federal covered investment adviser, who has filed a notice under Section 405 and begins employment by or association with another investment adviser registered under this [Act] or a federal covered investment adviser, who has filed a notice under Section 405, upon the filing by or on behalf of the registrant, within 30 days after the termination, of an application for registration that complies with the requirement of Section 406(a) and payment of the filing fee required under Section 410, the registration of the agent or investment adviser representative, is:

(1) immediately effective as of the date of the completed filing if the agent's Central Registration Depository record or successor record or the investment adviser representative's Investment Adviser Registration Depository record or successor record does not contain a new or amended disciplinary disclosure within the previous 12 months; or

(2) temporarily effective as of the date of the completed filing if the agent's Central Registration Depository record or the investment adviser representative's Investment Advisor Registration Depository record contains a new or amended disciplinary disclosure within the

preceding 12 months.

(c) [**Withdrawal of temporary registration.**] The administrator may withdraw a temporary registration if there were grounds for discipline under Section 412 and the administrator does so within 30 days after the filing of the application. If the administrator does not withdraw the temporary registration, registration becomes automatically effective on the 31st day after filing.

(d) [**Power to prevent temporary registration.**] The administrator may prevent the effectiveness of a transfer of an agent or investment adviser representative under subsection (b)(1) or (2) based on the public interest and the protection of investors.

(e) [**Termination of registration or application for registration.**] If the administrator determines that a registrant or applicant for registration is no longer in existence or has ceased to act as a broker-dealer, agent, investment adviser, or investment adviser representative, or is the subject of an adjudication of incapacity or is subject to the control of a committee, conservator, or guardian, or cannot reasonably be located, a rule or order under this [Act] may require the registration be canceled or terminated or the application denied. The administrator may reinstate a canceled or terminated registration, with or without hearing, and may make the registration retroactive.

**SECTION 409. WITHDRAWAL OF REGISTRATION OF BROKER-DEALERS,  
AGENTS, INVESTMENT ADVISERS, AND INVESTMENT ADVISER**

**REPRESENTATIVES.** Withdrawal of registration by a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective 60 days after filing of the application to withdraw or within such shorter period as required by rule or order under this [Act] unless a revocation or suspension proceeding is pending when the application is filed. If a proceeding is

pending, withdrawal becomes effective when and upon such conditions as required by rule or order under this [Act]. The administrator may institute a revocation or suspension proceeding under Section 412 within one year after the withdrawal became effective automatically and issue a revocation or suspension order as of the last date on which registration was effective if a proceeding is not pending.

#### **SECTION 410. FILING FEES.**

(a) [**Broker-dealers.**] A person shall pay a fee of \$[\_\_\_] when initially filing an application as a broker-dealer for registration, and a fee of \$[\_\_\_] when filing a renewal of registration as a broker-dealer. If the filing results in a denial or withdrawal, the administrator shall retain \$[\_\_\_] of the fee.

(b) [**Agents.**] The fee for an individual is \$[\_\_\_] when filing an application for registration as an agent, a fee of \$[\_\_\_] when filing a renewal of registration as an agent, and a fee of \$[\_\_\_] when filing for a change of registration as an agent. If the filing results in a denial or withdrawal, the administrator shall retain \$[\_\_\_] of the fee.

(c) [**Investment advisers.**] A person shall pay a fee of \$[\_\_\_] when filing an application for registration as an investment adviser, and a fee of \$[\_\_\_] when filing a renewal of registration as an investment adviser. If the filing results in a denial or withdrawal, the administrator shall retain \$[\_\_\_] of the fee.

(d) [**Investment adviser representatives.**] The fee for an individual is \$[\_\_\_] when filing an application for registration as an investment adviser representative, a fee of \$[\_\_\_] when filing a renewal of registration as an investment adviser representative, and a fee of \$[\_\_\_] when filing a

change of registration as an investment adviser representative. If the filing results in a denial or withdrawal, the administrator shall retain \$[\_\_\_\_] of the fee.

(e) **[Federal covered investment advisers.]** A federal covered investment adviser required to file a notice under Section 405, shall pay an initial and annual notice fee of \$[\_\_\_\_].

(f) **[Payment.]** A person required to pay a filing or notice fee under this section may transmit the fee through or to a designee as a rule or order requires under this [Act].

[(g) **[Dual agent/investment adviser representative.]** An investment adviser representative who is registered as an agent under Section 402 and who represents a person that is both registered as a broker-dealer under Section 401 and registered as an investment adviser under Section 403 or required as a federal covered investment adviser to make a notice filing under Section 405 is not required to pay an initial or annual registration fee for registration as an investment adviser representative.]

#### **SECTION 411. POSTREGISTRATION REQUIREMENTS.**

(a) **[Financial requirements.]** Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), a rule or order under this [Act] may establish minimum financial requirements for broker-dealers registered or required to be registered under this [Act] and investment advisers registered or required to be registered under this [Act].

(b) **[Financial reports.]** Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222(b) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), a broker-dealer registered or required to be registered under this [Act] and an

investment adviser registered or required to be registered under this [Act] shall file such financial reports as are required by rule or order under this [Act]. If the information contained in a record filed under this subsection is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment.

(c) [**Recordkeeping.**] Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22):

(1) a broker-dealer registered or required to be registered under this [Act] and an investment adviser registered or required to be registered under this [Act] shall make and maintain the accounts, correspondence, memoranda, papers, books, and other records required by the administrator;

(2) broker-dealer records required to be maintained under paragraph (1) may be maintained in any form of data storage acceptable under Section 17(a) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78q(a)) if they are readily accessible to the administrator; and

(3) investment adviser records required to be maintained under paragraph (1) may be maintained in any form of data storage required by rule or order under this [Act].

(d) [**Audits or inspections.**] The records of a broker-dealer registered or required to be registered under this [Act] and of an investment adviser registered or required to be registered under this [Act] are subject to such reasonable periodic, special, or other audits or inspections by a representative of the administrator, within or without this State, as the administrator considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The administrator may copy and

remove for audit or inspection, copies of all records the administrator reasonably considers necessary or appropriate to conduct the audit or inspection. The administrator may assess a reasonable charge for conducting an audit or inspection under this subsection.

(e) [**Custody and discretionary authority bond or insurance.**] Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), a rule or order under this [Act] may require each broker-dealer and investment adviser that has custody of or discretionary authority over funds or securities of a client to obtain insurance, or post a bond or other satisfactory form of security in an amount not to exceed \$[\_\_\_\_\_]. The administrator may determine the requirements of the insurance, bond, or other satisfactory form of security. Insurance or a bond or other satisfactory form of security may not be required of a broker-dealer registered under this [Act] whose net capital exceeds or, of an investment adviser registered under this [Act] whose minimum financial requirements exceed, the amounts required by rule or order under this [Act]. The insurance, bond, or other satisfactory form of security must permit an action by a person to enforce any liability on the insurance, bond, or other satisfactory form of security if commenced within the time limitations in Section 509(j)(2).

(f) [**Requirements for custody.**] Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), an agent may not have custody of funds or securities of a customer except under the supervision of a broker-dealer and an investment adviser representative may not have custody over funds or securities of a client except under the supervision of an investment adviser or federal covered investment adviser. A rule or order under this [Act] may prohibit, limit, or impose

conditions on a broker-dealer regarding custody of funds or securities of a customer and on an investment adviser regarding custody of securities or funds of a client.

(g) **[Investment adviser brochure rule.]** With respect to an investment adviser registered or required to be registered under this [Act], a rule or order under this [Act] may require that information be furnished or disseminated to clients or prospective clients in this State as necessary or appropriate in the public interest and for the protection of investors and advisory clients.

(h) **[Continuing education.]** A rule or order under this [Act] may require any individual registered under Section 402 or 404 to participate in a continuing education program approved by the Securities and Exchange Commission and administered by a self-regulatory organization or, in the absence of such a program, a rule or order under this [Act] may require continuing education for an individual registered under Section 404.

#### **SECTION 412. DENIAL, REVOCATION, SUSPENSION, CANCELLATION, WITHDRAWAL, RESTRICTION, CONDITION, OR LIMITATION OF REGISTRATION.**

(a) **[Disciplinary conditions-applicants.]** An order under this [Act] may deny an application, or condition or limit registration of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative and if the applicant is a broker-dealer or investment adviser, any partner, officer, or director, any person having a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser, if the administrator finds that the order is in the public interest and subsection (d) authorizes the action.

(b) **[Disciplinary conditions – registrants.]** An order under this [Act] may revoke, suspend,

condition, or limit the registration of a current registrant and if the registrant is a broker-dealer or investment adviser, any partner, officer, or director, any person having a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser, if the administrator finds that the order is in the public interest and subsection (d) authorizes the action, but:

(1) the administrator may not institute a revocation or suspension proceeding under this subsection based on an order issued by another State that is reported to the administrator or designee later than one year after the date of the order on which it is based; and

(2) under subsection (d)(5)(A) and (B) the administrator may not issue an order on the basis of an order under the state securities act of another State unless the other order was based on conduct for which subsection (d) would authorize the action had the conduct occurred in this State.

(c) **[Disciplinary penalties – registrants.]** An order under this [Act] may censure, impose a bar, or impose a civil penalty in an amount not to exceed a maximum of \$[\_\_\_\_] for a single violation or \$[\_\_\_\_] for several violations on a registrant and if the registrant is a broker-dealer or investment adviser, any partner, officer, or director, any person having a similar functions or any person directly or indirectly controlling the broker-dealer or investment adviser, if the administrator finds that the order is in the public interest and subsection (d)(1) through (6), (9) through (10) or (12) through (14) authorizes the action.

(d) **[Grounds for discipline.]** A person may be disciplined under subsections (a) through (c) if the person:

(1) has filed an application for registration under this [Act] or the predecessor act within the previous 10 years in this State, which, as of the effective date of registration or as of any date

after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(2) willfully violated or willfully failed to comply with this [Act] or the predecessor act or a rule adopted or order issued under this [Act] or the predecessor act within the previous 10 years;

(3) has been convicted of any felony or within the previous 10 years has been convicted of a misdemeanor involving a security, a commodity futures or option contract, or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;

(4) is enjoined or restrained by a court of competent jurisdiction in an action instituted by the administrator under this [Act] or the predecessor act, a State, the Securities and Exchange Commission, or the United States from engaging in or continuing an act, practice, or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;

(5) is the subject of an order, issued after notice and opportunity for hearing:

(A) by the securities, depository institution, insurance or other financial services regulator of a State, or by the Securities and Exchange Commission or other federal agency denying, revoking, barring, or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative;

(B) by the securities regulator of a State or by the Securities and Exchange Commission against a broker-dealer, agent, investment adviser, investment adviser representative, or federal covered investment adviser;

(C) by the Securities and Exchange Commission or by a self-regulatory organization suspending or expelling the registrant from membership in a self-regulatory organization;

(D) by a court adjudicating a United States Postal Service fraud;

(E) by the insurance regulator of a state denying, suspending, or revoking the registration of an insurance agent; or

(F) by a depository institution regulator suspending or barring a person from the banking or depository institution business;

(6) is the subject of an adjudication or determination, after notice and opportunity for hearing, by the Securities and Exchange Commission; the Commodity Futures Trading Commission, the Federal Trade Commission; a federal depository institution regulator, or a depository institution, insurance, or other financial services regulator of a State that the person willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act, the securities or commodities law of a State, or a federal or state law under which a business involving investments, franchises, insurance, banking, or finance is regulated;

(7) is insolvent, either in the sense that the person's liabilities exceed the person's assets or in the sense that the person cannot meet the person's obligations as they mature, but the administrator may not enter an order against an applicant or registrant under this paragraph without a finding of insolvency as to the applicant or registrant;

(8) is not qualified on the basis of factors such as training, experience, and knowledge of the securities business, but in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment

adviser representative, a denial order may not be based on this paragraph if the individual has successfully completed all examinations required by subsection (e); but the administrator may require an applicant for registration under Section 402 or 404 who has not been registered in any State within the two years preceding the filing of an application in this State to successfully complete an examination;

(9) has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this [Act] or the predecessor act or a rule adopted or order issued under this [Act] or the predecessor act within the previous 10 years;

(10) has not paid the proper filing fee within 30 days after having been notified by the administrator of a deficiency, but the administrator shall vacate an order under this paragraph when the deficiency is corrected;

(11) after notice and opportunity for a hearing, has been found within the previous 10 years:

(A) by a court of competent jurisdiction to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated;

(B) to have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative, or similar person; or

(C) to have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign

jurisdiction;

(12) is the subject of a cease and desist order issued by the Securities and Exchange Commission or issued under the securities, franchise, or commodities laws of a State;

(13) has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous 10 years; or

(14) refuses to allow or otherwise impedes the administrator from conducting an audit or inspection under Section 411(d) or refuses access to any registrant's office to conduct an audit or inspection.

(e) [**Examinations.**] A rule or order under this [Act] may require an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order under this [Act] may waive an examination as to an individual and a rule under this [Act] may waive an examination as to a class of individuals if the administrator determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.

(f) [**Summary process.**] The administrator may suspend or deny an application summarily, or restrict, condition, limit, or suspend a registration, or censure, bar, or impose a civil penalty on a registrant pending final determination of an administrative proceeding. Upon the issuance of the order, the administrator shall promptly notify each person subject to the order that the order has been issued, the reasons for the action, and that within 15 days after the receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator, within 30 days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the administrator, after

notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

(g) [**Procedural requirements.**] An order may not be issued under this section, except under subsection (f), without:

- (1) appropriate notice to the applicant or registrant;
- (2) opportunity for hearing; and
- (3) findings of fact and conclusions of law in a record [in accordance with the state administrative procedure act].

(h) [**Control person liability.**] A person who controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the administrator under subsections (a) through (c) to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is the basis for discipline under this section.

(i) [**Limit on investigation or proceeding.**] The administrator may not institute a proceeding under subsection(a), (b), or (c) solely based on material facts actually known by the administrator unless an investigation or the proceeding is instituted within one year after the administrator actually knew the material facts.

[ARTICLE] 5

**FRAUD AND LIABILITIES**

**SECTION 501. GENERAL FRAUD.** It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

(1) to employ a device, scheme, or artifice to defraud;

(2) to make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading; or

(3) to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

**SECTION 502. PROHIBITED CONDUCT IN PROVIDING INVESTMENT ADVICE.**

(a) [**Fraud in providing investment advice.**] It is unlawful for a person that advises others, for compensation, either directly or indirectly, or through publications or writings, as to the value of securities or the advisability of investing in, purchasing or selling securities, or that, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities:

(1) to employ a device, scheme, or artifice to defraud another person; or

(2) to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

(b) [**Rulemaking.**] (1) A rule under this [Act] may define an act, practice, or course of

business of an investment adviser or an investment adviser representative, other than a supervised person of a federal covered investment adviser, as fraudulent, deceptive, or manipulative, and prescribe means reasonably designed to prevent investment advisers and investment adviser representatives, other than supervised persons of a federal covered investment adviser, from engaging in acts, practices, and courses of business defined as fraudulent, deceptive, or manipulative.

(2) A rule under this [Act] may specify the contents of an investment advisory contract entered into, extended, or renewed by an investment adviser.

#### **SECTION 503. EVIDENTIARY BURDEN.**

(a) [**Civil.**] In a civil action or administrative proceeding under this [Act], a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the exemption, exception, preemption, or exclusion.

(b) [**Criminal.**] In a criminal proceeding under this [Act], a person claiming an exemption, exception, preemption, or exclusion has the burden of going forward with evidence of the claim.

#### **SECTION 504. FILING OF SALES AND ADVERTISING LITERATURE.**

(a) [**Filing requirement.**] Except as otherwise provided in subsection (b), a rule or order under this [Act] may require the filing of a prospectus, pamphlet, circular, form letter, advertisement, sales literature, or other advertising communication relating to a security or investment advice, addressed or intended for distribution to prospective investors, including clients or prospective clients of a person registered or required to be registered as an investment adviser

under this [Act].

(b) [**Scope limitations.**] This section does not apply to sales and advertising literature specified in subsection (a) relating to a federal covered security, a federal covered investment adviser, or a security or transaction exempted by Section 201, 202, or 203 except as required pursuant to Section 201(7).

**SECTION 505. MISLEADING FILINGS.** It is unlawful for a person to make or cause to be made, in a record that is used in an action or proceeding or filed under this [Act], a statement that, at the time and in the light of the circumstances under which it is made, is false or misleading in a material respect, or, in connection with the statement, to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it was made, not false or misleading.

**SECTION 506. MISREPRESENTATIONS CONCERNING REGISTRATION OR EXEMPTION.** The filing of an application for registration, a registration statement, a notice filing under this [Act], or the registration of a person, the notice filing by a person, or the registration of a security under this [Act] does not constitute a finding by the administrator that a record filed under this [Act] is true, complete, and not misleading. The filing or registration or the availability of an exemption, exception, preemption, or exclusion for a security or a transaction does not mean that the administrator has passed upon the merits or qualifications of, or recommended or given approval to, a person, security, or transaction. It is unlawful to make, or cause to be made, to a purchaser, customer, client, or prospective customer or client, a representation inconsistent with this section.

**SECTION 507. QUALIFIED IMMUNITY.** A broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative is not liable to another broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative for defamation relating to an alleged untrue statement that is contained in a record required by the administrator, or designee of the administrator, the Securities and Exchange Commission, or a self-regulatory organization, unless it is proven that the person knew, or should have known at the time that the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.

**SECTION 508. CRIMINAL PENALTIES.**

(a) [**Criminal penalties.**] A person that willfully violates this [Act], or a rule adopted or order issued under this [Act], except Section 504 or the notice filing requirements of Section 302 or 405, or that willfully violates Section 505 knowing the statement made to be false or misleading in a material respect, upon conviction, shall be fined not more than \$[\_\_\_\_] or imprisoned not more than [\_\_\_\_] years, or both. An individual convicted of violating a rule or order under this [Act] may be fined, but may not be imprisoned, if the individual did not have knowledge of the rule or order.

(b) [**Criminal reference not required.**] The [Attorney General or the proper prosecuting attorney] with or without a reference from the administrator, may institute appropriate criminal proceedings under this [Act].

(c) [**No limitation on other criminal enforcement.**] This [Act] does not limit the power of this State to punish a person for conduct that constitutes a crime under other laws of this State.

**SECTION 509. CIVIL LIABILITY.**

(a) [**Securities Litigation Uniform Standards Act.**] Enforcement of civil liability under this section is subject to the Securities Litigation Uniform Standards Act of 1998.

(b) [**Liability of seller to purchaser.**] A person is liable to the purchaser if the person sells a security in violation of Section 301, or by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the purchaser not knowing the untruth or omission, and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following:

(1) The purchaser may maintain an action at law or in equity to recover the consideration paid for the security, less the amount of any income received on the security, and interest [at the legal rate of interest] per year from the date of the purchase, costs, and reasonable attorneys' fees determined by the court, upon the tender of the security, or for actual damages as provided in paragraph (3).

(2) The tender referred to in paragraph (1) may be made any time before entry of judgment. Tender requires only notice in a record of ownership of the security and willingness to exchange the security for the amount specified. A purchaser that no longer owns the security may recover actual damages.

(3) Actual damages in an action arising under this subsection are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it, and interest [at the legal rate of interest] from the date of purchase, costs, and reasonable attorneys' fees determined by the court.

(c) [**Liability of purchaser to seller.**] A person is liable to the seller if the person buys a security by means of an untrue statement of a material fact or omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the seller not knowing of the untruth or omission, and the purchaser not sustaining the burden of proof that the purchaser did not know, and in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following:

(1) The seller may maintain an action at law or in equity to recover the security, and any income received on the security, costs, and reasonable attorney's fees determined by the court, upon the tender of the purchase price, or for actual damages as provided in paragraph (3).

(2) The tender referred to in paragraph (1) may be made any time before entry of judgment. Tender requires only notice in a record of the present ability to pay the amount tendered and willingness to take delivery of the security for the amount specified. If the purchaser no longer owns the security, the seller may recover actual damages.

(3) Actual damages in an action arising under this subsection are the difference between the price at which the security was sold and the value the security would have had at the time of the sale in the absence of the purchaser's conduct causing liability, and interest [at the legal rate of interest] from the date of sale of the security, costs, and reasonable attorneys' fees determined by the court.

(d) [**Liability of unregistered broker-dealer and agent.**] A person acting as a broker-dealer or agent that sells or buys a security in violation of Section 401(a), 402(a), or 506 is liable to the customer. The customer, if a purchaser, may maintain an action at law or in equity for recovery

of actual damages as specified in subsections (b)(1) through (3); or, if a seller, a remedy as specified in subsections (c)(1) through (3).

(e) [**Liability of unregistered investment adviser and investment adviser representative.**] A person acting as an investment adviser or investment adviser representative that provides investment advice for a fee in violation of Section 403(a), 404(a), or 506 is liable to the client. The client may maintain an action at law or in equity to recover the consideration paid for the advice, interest [at the legal rate of interest] from the date of payment, costs, and reasonable attorney's fees determined by the court.

(f) [**Liability for investment advice.**] (1) A person that receives directly or indirectly any consideration for providing investment advice to another person and that employs a device, scheme, or artifice to defraud the other person or engages in an act, practice, or course of business that operates or would operate as a fraud or deceit on the other person, is liable to the other person.

(2) The other person specified in paragraph (1) may maintain an action at law or in equity to recover the consideration paid for the advice and the amount of any actual damages caused by the conduct specified in paragraph (1), interest [at the legal rate of interest] from the date of the conduct causing liability, costs, and reasonable attorneys' fees determined by the court, less the amount of any income received as a result of the conduct specified in paragraph (1).

(3) This subsection does not apply to a broker-dealer or its agents whose providing of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice.

(g) [**Joint and several liability.**] The following persons are liable jointly and severally with and to the same extent as persons liable under subsections (b) through (f):

(1) a person that directly or indirectly controls a person liable under subsections (b) through (f), unless the person sustains the burden of proof that the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist;

(2) an individual who is a managing partner, executive officer, or director of a person liable under subsections (b) through (f), including each individual having a similar status or performing similar functions, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist;

(3) an individual who is an employee of or associated with a person liable under subsections (b) through (f) and who materially aids the conduct giving rise to the liability, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist; and

(4) a person that is a broker-dealer, agent, investment adviser, or investment adviser representative that materially aids the conduct giving rise to the liability under subsections (b) through (f), unless the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care could not have known, of the existence of the facts by reason of which liability is alleged to exist.

(h) **[Right of contribution.]** A person liable under this section has a right of contribution as in cases of contract against any other person liable under this section for the same conduct.

(i) **[Survival of cause of action.]** A cause of action under this section survives the death of

an individual who might have been a plaintiff or defendant.

(j) **[Statute of limitations.]** A person may not obtain relief:

(1) under subsection (b) for violation of Section 301, or under subsection (d) or (e), unless the action is commenced within one year after the violation occurred; or

(2) under subsection (b), other than for violation of Section 301, or under subsection (c) or (f), unless the action is commenced within the earlier of two years after discovery of the facts constituting the violation and five years after such violation.

(k) **[No enforcement of violative contract.]** A person that has made or engaged in the performance of a contract in violation of this [Act] or a rule adopted or order issued under this [Act], or that has acquired a purported right under the contract with knowledge of the facts by reason of which its making or performance was in violation of this [Act], may not base an action on the contract.

(l) **[No contractual waiver.]** A condition, stipulation, or provision binding a person purchasing or selling a security or receiving investment advice to waive compliance with this [Act] or a rule adopted or order issued under this [Act] is void.

(m) **[Survival of other rights or remedies.]** The rights and remedies provided by this [Act] are in addition to any other rights or remedies that may exist, but this [Act] does not create a cause of action not specified in this section or Section 411(e).

**SECTION 510. RESCISSION OFFERS.** A purchaser, seller, or recipient of investment advice may not maintain an action under Section 509 if:

(1) the purchaser, seller, or recipient of investment advice receives in a record, before the

action is commenced, an offer:

(A) stating the respect in which liability under Section 509 may have arisen and fairly advising the purchaser, seller, or recipient of investment advice of that person's rights in connection with the offer, including financial or other information necessary to correct all material misstatements or omissions in the information that was required by this [Act] to be furnished to that person at the time of the purchase, sale, or investment advice;

(B) if the basis for relief under this Section may have been a violation of Section 509(b), offering to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, and interest [at the legal rate of interest] per year from the date of purchase, less the amount of any income received on the security, or, if the purchaser no longer owns the security, offering to pay the purchaser upon acceptance of the offer damages in an amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it, and interest [at the legal rate of interest] from the date of purchase in cash equal to the damages computed in the manner provided in this subsection;

(C) if the basis for relief under this Section may have been a violation of Section 509(c), offering to tender the security, on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the purchaser and interest [at the legal rate of interest] from the date of the sale, or if the purchaser no longer owns the security, offering to pay the seller upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the purchaser's conduct that may have caused liability and interest [at the legal rate of interest] from the date of the sale;

(D) if the basis for relief under this Section may have been a violation of Section 509(d), and if the customer is a purchaser, offering to pay as specified in subparagraph (1)(B); or, if the customer is a seller, offering to tender or to pay as specified in subparagraph (1)(C);

(E) if the basis for relief under this Section may have been a violation of Section 509(e), offering to reimburse in cash the consideration paid for the advice, and interest [at the legal rate of interest] from the date of payment;

(F) if the basis for relief under this Section may have been a violation of Section 509(f), offering to reimburse in cash the consideration paid for the advice and the amount of any actual damages that may have been caused by the conduct, and interest [at the legal rate of interest] from the date of the violation causing the loss; and

(G) stating that the offer must be accepted by the purchaser, seller, or recipient of investment advice within 30 days after the date of its receipt by the purchaser, seller, or recipient of investment advice, or any shorter period, of not less than three days, that the administrator, by order, specifies;

(2) the offeror has the present ability to pay the amount offered or to tender the security under paragraph (1);

(3) the offer under paragraph (1) is delivered to the purchaser seller, or recipient of investment advice, or sent in a manner that ensures receipt by the purchaser, seller, or recipient of investment advice; and,

(4) the purchaser, seller, or recipient of investment advice that accepts the offer under paragraph (1), in a record within the period specified under paragraph (1)(G) is paid in accordance with the terms of the offer.

[ARTICLE] 6

ADMINISTRATION AND JUDICIAL REVIEW

SECTION 601. ADMINISTRATION OF [ACT].

(a) **[Administration.]** The administrator shall administer this [Act] [insert any related provisions on such matters as method of selection, salary, term of office, selection and remuneration of personnel, and annual reports to the legislature or governor that are appropriate to the particular State].

(b) **[Unlawful use of records or information.]** It is unlawful for the administrator or officer, employee or designee of the administrator to use for personal benefit or the benefit of others records or other information obtained by or filed with the administrator that are not public under Section 607(b). This [Act] does not authorize the administrator or an officer, employee or designee of the administrator to disclose the record or information, except in accordance with Section 602, 607(c), or 608.

(c) **[No common law privilege or exemption created or diminished.]** This [Act] does not create or diminish any privilege or exemption that exists at common law, by statute, rule or otherwise.

(d) **[Investor education.]** The administrator may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the administrator may collaborate with public and nonprofit organizations with an interest in investor

education. The administrator may accept grants or donations from a person that is not affiliated with the securities industry or from a nonprofit organization, regardless of whether or not the organization is affiliated with the securities industry, to develop and implement investor education initiatives. This subsection does not authorize the administrator to require participation or monetary contributions of a registrant in an investor education program.

(e) **[The Securities Investor Education and Training Fund.]** There is created a Fund known as the Securities Investor Education and Training Fund to provide funds for the purposes specified in paragraph (d)(1). [All monies received by the State by reason of civil penalties pursuant to this [Act] shall be deposited in the Securities Investor Education and Training Fund. The state can insert any other provision concerning appropriations to support this Fund as well as procedures for its operations.]

## **SECTION 602. INVESTIGATIONS AND SUBPOENAS.**

(a) **[Authority to investigate.]** The administrator may:

(1) conduct public or private investigations within or outside of this State that the administrator considers necessary or appropriate to determine whether any person has violated, is violating, or is about to violate this [Act] or a rule adopted or order issued under this [Act], or to aid in the enforcement of this [Act] or in the adoption of rules and forms under this [Act];

(2) require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the administrator determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be commenced; and

(3) publish information concerning an action, proceeding, or an investigation under, or a

violation of, this [Act] or a rule adopted or order issued under this [Act] if the administrator determines it is necessary or appropriate in the public interest and for the protection of investors.

(b) **[Administrator powers to investigate.]** For the purpose of an investigation under this [Act], the administrator or a designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of a statement, and require the production of any records that the administrator considers relevant or material to the investigation.

(c) **[Procedure and remedies for noncompliance.]** If a person fails to appear or refuses to testify, file a statement, produce records, or otherwise fails to obey a subpoena as required by the administrator under this [Act], the administrator [may refer the matter to the Attorney General or the proper attorney, who] may apply to [insert name of the appropriate court] or a court of another state to enforce compliance. The court may:

- (1) hold the person in contempt;
- (2) order the person to appear before the administrator;
- (3) order the person to testify about the matter under investigation or in question;
- (4) order the production of records;
- (5) grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice;
- (6) order a civil penalty of not less than [\$\_\_] and not greater than [\$\_\_] for each violation; and
- (7) grant any other necessary or appropriate relief.

(d) **[Application for relief.]** This Section does not preclude a person from applying to

[insert name of appropriate court] or a court of another State for appropriate relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.

(e) **[Use immunity procedure.]** An individual is not excused from attending, testifying, filing a statement, producing a record or other evidence, or obeying a subpoena of the administrator under this [Act] or in an action commenced or proceeding instituted by the administrator under this [Act] on the ground that the required testimony, statement, record, or other evidence, directly or indirectly, may tend to incriminate the individual or subject the individual to a criminal fine, penalty or forfeiture. If the individual refuses to testify or file a statement, produce a record or other evidence on the basis of the individual's privilege against self-incrimination, the administrator may apply [to the name of the appropriate court] to compel the testimony, the filing of the statement, the production of the record or the giving of other evidence. The testimony, record, or other information compelled under such an order may not be used, directly or indirectly, against the individual in a criminal case, except in a prosecution for perjury or contempt or otherwise failing to comply with the order.

(f) **[Assistance to securities regulator of another state.]** At the request of the securities regulator of another state or a foreign jurisdiction, the administrator may provide assistance if the requesting regulator states that it is conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other state or foreign jurisdiction relating to securities matters which the requesting regulator administers or enforces. The administrator may provide the assistance by using the authority to investigate and the powers conferred by this Section as the administrator determines is necessary or appropriate. The assistance may be provided without regard to whether the facts stated in the request would also

constitute a violation of this [Act] or other law of this State if occurring in this State. In deciding whether to provide the assistance, the administrator may consider whether the requesting regulator is permitted and has agreed to provide assistance reciprocally within its state or foreign jurisdiction to the administrator on securities matters when requested; whether compliance with the request would violate or prejudice the public policy of this State; and the availability of resources and employees of the administrator to carry out the request for assistance.

### **SECTION 603. CIVIL ENFORCEMENT.**

(a) **[Civil action instituted by administrator.]** If it appears to the administrator that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this [Act] or a rule adopted or order issued under this [Act], or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this [Act] or a rule adopted or order issued under this [Act], the administrator may maintain an action in the [insert name of court] to enjoin the act, practice, or course of business and to enforce compliance with this [Act] or a rule adopted or order issued under this [Act].

(b) **[Relief available]** In an action under this Section and upon a proper showing, the court may:

(1) grant or require a permanent or temporary injunction, restraining order or a declaratory judgment;

(2) issue an order for other appropriate or ancillary relief, to include:

(A) an asset freeze, accounting, writ of attachment, writ of general or specific execution, and an appointment of a receiver or conservator, that may be the administrator, for the

defendant or the defendant's assets;

(B) an order to the administrator to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property;

(C) the imposition of a civil penalty up to a maximum of [\$\_\_] for a single violation or of [\$\_\_] for several violations; an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this [Act] or the predecessor act or an rule adopted or order issued under this [Act] or the predecessor act; and

(D) an order for the payment of prejudgment and postjudgment interest; or

(3) granting other relief that the court considers appropriate.

(c) **[No bond requirement.]** The administrator may not be required to post a bond.

#### **SECTION 604. ADMINISTRATIVE ENFORCEMENT.**

(a) **[Issuance of an order or notice.]** If the administrator determines that a person has engaged, is engaging, or is about to engage, in an act, practice, or course of business constituting a violation of this [Act] or a rule adopted or order issued under this [Act], or that a person has, is, or is about to materially aid an act, practice, or course of business constituting a violation of this [Act] or a rule adopted or order issued under this [Act], the administrator may:

(1) issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this [Act];

(2) issue an order denying, suspending, revoking or conditioning the exemptions for a broker-dealer under Section 401(b)(1)(D) or (F) or an investment adviser under Section 403(b)(1)(C); or

(3) issue an order under Section 204.

(b) **[Summary process.]** An order under subsection (a) is effective on the date of issuance. Upon issuance of the order, the administrator shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order shall include a statement whether the administrator will seek a civil penalty or costs of the investigation, a statement of the reasons for the order, and notice that, within 15 days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the administrator within 30 days after the date of service of the order, the order becomes final as to that person. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

(c) **[Procedure for final order.]** If a hearing is requested or ordered pursuant to subsection (b), a hearing shall be held [pursuant to the state administrative procedure act]. A final order may not be issued unless the administrator makes findings of fact and conclusions of law in a record [in accordance with the state administrative procedure act]. The final order may make final, vacate, or modify the order issued under subsection (a).

(d) **[Civil penalty.]** In a final order, the administrator may impose a civil penalty up to a maximum of [\$ ] for a single violation or [\$ ] for several violations.

(e) **[Costs.]** In a final order, the administrator may charge the actual cost of an investigation

or proceeding for a violation of this [Act] or a rule adopted or order issued under this [Act].

(f) **[Filing of certified final order with court; effect of filing.]** If a petition for judicial review of a final order is not filed in accordance with Section 609, the administrator may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed shall have the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

(g) **[Enforcement by court; further civil penalty.]** If a person fails to comply with an order under this Section, the administrator may petition a court of competent jurisdiction to enforce the order. The court may not require the administrator to post a bond. If the court finds, after service and opportunity for hearing, that the person is not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount not less than [\$ ] but not greater than [\$ ] for each violation, and may grant any other relief the court determines is just and proper in the circumstances.

## **SECTION 605. RULES, FORMS, ORDERS, INTERPRETATIVE OPINIONS, AND HEARINGS.**

(a) **[Issuance and adoption of forms, orders, and rules.]** The administrator may:

(1) issue forms and orders, and after notice and comment, may adopt and amend rules necessary or appropriate to carry out this [Act], and may repeal rules, including rules and forms governing registration statements, applications, notice filings, reports, and other records;

(2) by rule, define terms, whether or not used in this [Act], when those definitions are

not inconsistent with this [Act]; and

(3) by rule, classify securities, persons, and transactions and adopt different requirements for different classes.

(b) **[Findings and cooperation.]** A rule or form may not be adopted or amended, or an order issued or amended under this [Act], unless the administrator finds that the rule, form, or order is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes intended by this [Act]. In adopting, amending, and repealing rules and forms, the administrator may cooperate under Section 608 in order to achieve uniformity among the States and coordination with federal laws in the form and content of registration statements, applications, reports, and other records, including in the adoption of uniform rules, forms, and procedures.

(c) **[Financial statements.]** Subject to Section 15(h) of the Securities Exchange Act and Section 222 of the Investment Advisers Act of 1940, the administrator may require that a financial statement filed under this [Act] be prepared in accordance with generally accepted accounting principles in the United States and comply with other requirements specified by rule or order under this [Act]. A rule or order under this [Act] may establish:

(1) subject to Section 15(h) of the Securities Exchange Act and Section 222 of the Investment Advisers Act of 1940, the form and content of financial statements required under this [Act];

(2) whether unconsolidated financial statements must be filed; and

(3) whether required financial statements must be audited by an independent certified public accountant.

(d) **[Interpretative opinions.]** The administrator may provide interpretative opinions or

may issue determinations that the administrator will not institute an enforcement proceeding or commence an action under this [Act] against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with the purposes intended by this [Act]. A rule or order under this [Act] may assess a reasonable charge for interpretative opinions or determinations that the administrator will not commence an action or institute an enforcement proceeding under this [Act].

(e) **[Effect of compliance.]** A penalty under this [Act] may not be imposed and liability does not arise for conduct that is engaged in or omitted in good faith conformity with a rule, form, or order of the administrator under this [Act].

(f) **[Presumption for public hearings.]** A hearing in an administrative proceeding under this [Act] must be conducted in public unless the administrator for good cause consistent with the purposes intended by this [Act] determines that the hearing shall not be so conducted.

#### **SECTION 606. ADMINISTRATIVE FILES AND OPINIONS.**

(a) **[Public register of filings.]** The administrator shall maintain, or designate a person to maintain, a register of all applications for registration of securities; registration statements; notice filings, applications for registration of broker-dealers, agents, investment advisers, and investment adviser representatives; notice filings by federal covered investment advisers that are or have been effective under this [Act] or the predecessor act; notices of claims of exemption from registration or notice filing requirements contained in a record; orders issued under this [Act] or the predecessor act; and interpretative opinions or no-action determinations issued under this [Act].

(b) **[Public availability.]** The administrator shall make all rules, forms, interpretative

opinions, and orders available to the public.

(c) **[Copies of public records.]** Upon request, the administrator shall furnish to a person a copy of a record that is a public record or a certification that the public record does not exist. A rule under this [Act] may establish a reasonable charge for furnishing the record. A copy of the record certified or a certificate of its nonexistence by the administrator is prima facie evidence.

#### **SECTION 607. PUBLIC RECORDS; CONFIDENTIALITY.**

(a) **[Presumption of public records.]** Except as otherwise provided in subsection (b), records obtained by the administrator or filed under this [Act], including a record contained in or filed with any registration statement, application, notice filing, or report, are public records and are available for public examination.

(b) **[Nonpublic records.]** The following records are not public records and are not available for public examination under subsection (a):

(1) a record obtained by the administrator in connection with an examination under Section 411(c) or an investigation under Section 602;

(2) a part of a record filed in connection with a registration statement under Sections 301 and 303 through 305 or a record under Section 411(d), that contains trade secrets or confidential information when the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law;

(3) a record that is not required to be provided to the administrator or filed under this [Act] and is provided to the administrator only on the condition that the information will not be subject to public examination or disclosure;

(4) a nonpublic record received from a person specified in section 608;

(5) any social security number, residential address, and residential telephone number contained in a record that is filed; and

[(6) a record obtained by the administrator through a designee of the administrator that a rule or order under this [Act] determines has been appropriately:

(A) expunged from the administrator's records by that designee, or

(B) determined to be nonpublic or nondisclosable by that designee if the administrator finds that this is in the public interest and for the protection of investors.]

(c) [**Administrator discretion to disclose.**] The administrator may disclose a record obtained in connection with an audit or inspection under Section 411(d) or a record obtained in connection with an investigation under Section 602 if disclosure is for the purpose of a civil, administrative, or criminal investigation, action, or proceeding or to a person specified in Section 608(a).

#### **SECTION 608. UNIFORMITY AND COOPERATION WITH OTHER AGENCIES.**

(a) [**Objective of uniformity.**] The administrator shall, in its discretion, cooperate, coordinate, consult, and, subject to Section 607, share records and information with the securities regulators of one or more States, Canada or one or more of its provinces or territories, one or more foreign countries; the Securities and Exchange Commission, the United States Department of Justice, the Commodity Futures Trading Commission, the Federal Trade Commission, the Securities Investor Protection Corporation, a self-regulatory organization, a national or international organization of securities regulators, federal or state banking and insurance regulators, and any

governmental law enforcement agency, in order to effectuate greater uniformity in securities matters among the federal government, self-regulatory organizations and state and foreign governments.

(b) **[Balancing of policies.]** In cooperating under this section and in acting by rule, order, or waiver under this [Act], the administrator shall, in the discretion of the administrator, take into consideration in carrying out the public interest the following general policies:

- (1) maximizing effectiveness of regulation for the protection of investors;
- (2) maximizing uniformity in federal and state regulatory standards; and
- (3) minimizing burdens on the business of capital formation, without adversely affecting essentials of investor protection.

(c) **[Subjects for cooperation.]** The cooperation authorized by this Section includes:

(1) establishing or employing one or more designees as a central depository for registration and notice filings under this [Act] and for records required or allowed to be maintained under this [Act];

- (2) developing and maintaining uniform forms;
- (3) conducting a joint examination or investigation;
- (4) holding a joint administrative hearing;
- (5) instituting and prosecuting a joint civil or administrative proceeding;
- (6) sharing and exchanging personnel;
- (7) coordinating registrations under Sections 301 and 401 through 404 and exemptions under Section 203;
- (8) sharing and exchanging records;
- (9) formulating rules, statements of policy, guidelines, forms, and interpretative opinions

and releases;

- (10) formulating common systems and procedures;
- (11) notifying the public of proposed rules, forms, statements of policy, and guidelines;
- (12) attending conferences and other meetings among securities regulators, which may include representatives of governmental and private organizations involved in capital formation, deemed necessary or appropriate to promote or achieve uniformity; and
- (13) developing and maintaining a uniform exemption from registration for small issuers, and taking other steps to reduce the burden of raising investment capital by small businesses.

#### **SECTION 609. JUDICIAL REVIEW.**

(a) **[Judicial review of orders.]** Final orders issued by the administrator under this [Act] are subject to judicial review in accordance with [the State's administrative procedure act].

[(b) **[Judicial review of rules.]** Rules adopted under this [Act] are subject to judicial review in accordance with [the State's administrative procedure act].]

#### **SECTION 610. JURISDICTION.**

(a) **[Sales and offers to sell.]** Sections 301, 302, 401(a), 402(a), 403(a), 404(a), 501, 506, 509 and 510 apply to a person that sells or offers to sell a security if the offer to sell or the sale is made in this State, or the offer to purchase or the purchase is made and accepted in this State.

(b) **[Purchases and offers to purchase.]** Sections 401(a), 402(a), 403(a), 404(a), 501,

506, 509, and 510 apply to a person that purchases or offers to purchase a security if the offer to purchase or the purchase is made in this State, or the offer to sell or the sale is made and accepted in this State.

(c) **[Offers in this State.]** For the purpose of this Section, an offer to sell or to purchase a security is made in this State, whether or not either party is then present in this State, if the offer:

- (1) originates from this State; or
- (2) is directed by the offeror to a place in this State and received at the place to which it is directed.

(d) **[Acceptances in this State.]** For the purpose of this Section, an offer to purchase or to sell is accepted in this State, whether or not either party is then present in this State, if the acceptance:

- (1) is communicated to the offeror in this State and the offeree reasonably believes the offeror to be present in this State and the acceptance is received at the place in this State to which it is directed, and
- (2) has not previously been communicated to the offeror, orally or in a record, outside this State.

(e) **[Publications, radio, television, or electronic communication.]** An offer to sell or to purchase is not made in this State when a publisher circulates or there is circulated on the publisher's behalf in this State a bona fide newspaper or other publication of general, regular, and paid circulation that is not published in this State, or that is published in this State but has had more than two-thirds of its circulation outside this State during the previous 12 months, or when a radio or television program or other electronic communication originating outside this State is received in

this State. A radio, television program, or other electronic communication is considered as having originated in this State if either the broadcast studio or the originating source of transmission is located in this State, unless:

(1) the program or communication is syndicated and distributed from outside this State for redistribution to the general public in this State;

(2) the program or communication is supplied by a radio, television, or other electronic network with the electronic signal originating from outside this State for redistribution to the general public in this State;

(3) the program or communication is an electronic communication that originates outside this State and is captured for redistribution to the general public in this State by a community antenna or cable, radio, cable television, or other electronic system; or

(4) the program or communication consists of an electronic communication that originates in this State, but which is not intended for distribution to the general public in this State.

(f) **[Investment advice and misrepresentations.]** Sections 403(a), 404(a), 405(a), 502, 505, and 506 apply to a person if an act, practice, or course of business instrumental in effecting prohibited or actionable conduct is engaged in this State, whether or not either party is then present in this State.

## **SECTION 611. SERVICE OF PROCESS.**

(a) **[Signed consent to service of process.]** A consent to service of process required by this [Act] must be signed and filed in the form required by the administrator. A consent appointing the administrator the person's agent for service of process in a noncriminal action or proceeding against

the person, or the person's successor, or personal representative under this [Act] or a rule adopted or order issued by the administrator under this [Act] after the consent is filed, has the same force and validity as if the service were made personally on the person filing the consent. A person that has filed a consent complying with this subsection in connection with a previous application for registration or notice filing need not file an additional consent.

(b) **[Conduct constituting appointment of agent for service.]** If a person, including a nonresident of this State, engages in an act, practice, or course of business prohibited or made actionable by this [Act] or a rule adopted or order issued by the administrator under this [Act] and the person has not filed a consent to service of process under subsection (a), that act, practice, or course of business constitutes the appointment of the administrator as the person's agent for service of process in a noncriminal action or proceeding against the person, the person's successor, or personal representative.

(c) **[Procedure for service of process.]** Service under subsection (a) or (b) may be made by providing a copy of the process to the office of the administrator, but it is not effective unless:

(1) the plaintiff, which may be the administrator, promptly sends notice of the service and a copy of the process, return receipt requested, to the defendant or respondent at the address set forth in the consent to service of process or, if a consent to service of process has not been filed, at the last known address, or takes other reasonable steps to give notice; and

(2) the plaintiff files an affidavit of compliance with this subsection in the action or proceeding on or before the return day of the process, if any, or within the time that the court, or the administrator in a proceeding before the administrator, allows.

(d) **[Use in administrative proceedings]** Service as provided in subsection (c) may be

used in a proceeding before the administrator or by the administrator in a civil action in which the administrator is the moving party.

(e) **[Provision of opportunity to defend.]** If the process is served under subsection (c), the court, or the administrator in a proceeding before the administrator, shall order continuances as are necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.

**SECTION 612. SEVERABILITY CLAUSE.** If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this [Act] that can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

**ARTICLE 7**  
**TRANSITION**

**SECTION 701. EFFECTIVE DATE.** This [Act] takes effect on [insert date, which should be at least 60 days after enactment].

**SECTION 702. REPEALS.** The following act is repealed:

[Insert name of former State securities act].

**SECTION 703. APPLICATION TO EXISTING PROCEEDING.**

(a) [**Applicability of predecessor act to pending proceedings.**] The predecessor act exclusively governs all actions, prosecutions, or proceedings that are pending or may be maintained or instituted on the basis of facts or circumstances occurring before the effective date of this [Act], but a civil action may not be maintained to enforce any liability under the predecessor act unless commenced within any period of limitation that applied when the cause of action accrued or within three years after the effective date of this [Act], whichever is earlier.

(b) [**Transition.**] All effective registrations under the predecessor act, all administrative orders relating to the registrations, statements of policy, interpretative opinions, declaratory rulings, no action determinations, and all conditions imposed upon the registrations under the predecessor act remain in effect while they would have remained in effect if this [Act] had not been enacted. They are considered to have been filed, issued, or imposed under this [Act], but are exclusively governed by the predecessor act.

(c) **[Applicability of predecessor act to offers or sales]** The predecessor act exclusively governs any offer or sale made within one year after the effective date of this [Act] except with respect to a federal covered security under an offering begun before the effective date of this [Act] using an exemption available under the predecessor act.