

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1385 Session of
1998INTRODUCED BY HOLL, GREENLEAF, SLOCUM, COSTA, MUSTO AND
THOMPSON, MARCH 24, 1998

SENATOR HOLL, BANKING AND INSURANCE, AS AMENDED, MAY 5, 1998

AN ACT

1 Amending the act of December 5, 1972 (P.L.1280, No.284),
2 entitled "An act relating to securities; prohibiting
3 fraudulent practices in relation thereto; requiring the
4 registration of broker-dealers, agents, investment advisers,
5 investment adviser representatives and securities; and making
6 uniform the law with reference thereto," further providing
7 for definitions; further providing, in the securities area,
8 for registration, for exemptions, for registration by
9 coordination, for registration in general, for registration
10 sanctions, for records and for retroactive registration;
11 providing for Federally covered securities; further
12 providing, in the area of broker-dealers, agents and
13 investment advisers, for registration, for exemptions, for
14 registration procedure, for postregistration procedure, for
15 registration sanctions; further providing for prohibitions,
16 for contract requirements and for misrepresentations;
17 providing for school district prohibitions; further providing
18 for civil liability, for enforcement, for investigations and
19 for criminal penalties; providing for barring activities and
20 for rescission; further providing for fees, for assessments,
21 for administrative files, for powers of the Pennsylvania
22 Securities Commission and for regulations and orders; and
23 canceling Federal preemption.

24 The General Assembly of the Commonwealth of Pennsylvania
25 hereby enacts as follows:

26 Section 1. Section 102(c), (c.1), (e), (j), (k) and (o) of
27 the act of December 5, 1972 (P.L.1280, No.284), known as the
28 Pennsylvania Securities Act of 1972, added December 18, 1990

1 (P.L.755, No.190), are amended and the section is amended by
2 adding subsections to read:

3 Section 102. Definitions.--When used in this act, the
4 following definitions shall be applicable, unless the context
5 otherwise requires:

6 * * *

7 (c) "Agent" means any individual, other than a broker-
8 dealer, who represents a broker-dealer or issuer in effecting or
9 attempting to effect purchases or sales of securities. "Agent"
10 does not include: (i) an individual who represents an issuer in
11 effecting transactions in securities exempted by section 202 [or
12 in effecting], transactions exempted by section 203[and does not
13 include] or transactions in a covered security described in
14 sections 18(b)(3) and (4)(D) of the Securities Act of 1933 (48
15 Stat. 74, 15 U.S.C. § 77r), if no compensation is paid or given
16 directly or indirectly for soliciting any person in this State
17 in connection with any of the foregoing transactions; (ii) an
18 individual who represents a broker-dealer in effecting
19 transactions in this State which transactions are limited to
20 those described in section 15(h)(2) of the Securities Exchange
21 Act of 1934 (48 Stat. 881, 15 U.S.C. § 78o(h)(2)); and (iii) an
22 individual who has no place of business in this State if he
23 effects transactions in this State exclusively with broker-
24 dealers. [An] Except where representing an issuer in effecting
25 transactions in securities registered under section 205 or 206,
26 a bona fide officer, director, or partner or employe of a
27 broker-dealer or issuer, or an individual occupying a similar
28 status or performing similar functions, is an agent only if he
29 otherwise comes within this definition and receives compensation
30 directly or indirectly related to purchases or sales of

1 securities.

2 [(c.1) "Associated person" means any partner, officer or
3 director of (or person occupying a similar status or performing
4 similar functions), or other individuals employed by or
5 associated with, an investment adviser, except clerical or
6 administrative personnel, who:

7 (i) Makes any recommendations or otherwise renders advice
8 regarding securities directly to advisory clients;

9 (ii) Manages accounts or portfolios of clients;

10 (iii) Determines which recommendation or advice regarding
11 securities should be given: (A) if that person is a member of
12 the investment adviser's investment committee that determines
13 general investment advice to be given to clients; or (B) if the
14 investment adviser has no investment committee, the person or
15 persons who determine general client investment advice providing
16 that, if there are more than five such persons who determine
17 general investment advice, only the supervisors of such persons
18 are deemed to be associated persons solely by virtue of this
19 paragraph; or

20 (iv) Immediately supervises employes in the performance of
21 any of the foregoing.]

22 * * *

23 (e) "Broker-dealer" means any person engaged in the business
24 of effecting transactions in securities for the account of
25 others or for his own account. "Broker-dealer" does not include:

26 (i) An agent;

27 (ii) An issuer;

28 (iii) A bank, when effecting transactions for its own
29 account or for the account of another under section 302(c);

30 (iv) An executor, administrator, guardian, conservator or

1 pledgee;

2 (v) A person who has no place of business in this State if
3 he effects transactions in this State exclusively with or
4 through (A) the issuers of the securities involved in the
5 transactions, (B) broker-dealers or institutional investors;

6 (vi) A person licensed as a real estate broker or agent
7 under the Real Estate Brokers License Act of one thousand nine
8 hundred and twenty-nine, act of May 1, 1929 (P.L.1216), as
9 amended, and whose transactions in securities are isolated
10 transactions incidental to that business; or

11 (vii) [A person whose dealings in securities are limited to
12 transactions exempt by section 203(j); or

13 (viii)] Other persons not within the intent of this
14 subsection whom the commission by regulation designates.

15 * * *

16 (f.1) "Federally covered adviser" means a person who is
17 registered under section 203 of the Investment Advisers Act of
18 1940 (54 Stat. 847, 15 U.S.C. § 80b-3).

19 (f.2) "Federally covered security" means any security that
20 is covered security under section 18(b) of the Securities Act of
21 1933 (15 U.S.C. § 77r(b)).

22 * * *

23 (j) "Investment adviser" means any person who, for
24 compensation, engages in the business of advising others, either
25 directly or through publications or writings, as to the value of
26 securities or as to the advisability of investing in, purchasing
27 or selling securities, or who, for compensation and as a part of
28 a regular business, issues or promulgates analyses or reports
29 concerning securities. "Investment adviser" does not include:

30 (i) A bank;

(ii) A lawyer, accountant, engineer or teacher whose performance of these services is solely incidental to the practice of his profession;

(iii) A broker-dealer registered under this act without the imposition of the condition referred to in section 305(b)(v);

(iv) A publisher of any bona fide newspaper, news column, newsletter, news magazine or business or financial publication or service, whether communicated in hard copy form or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client and is of general, regular and paid circulation [which is not solely engaged in the rendering of investment advice]; and the agents and servants thereof in the performance of their regular duties on behalf of such publication or service;

(v) A person whose advice, analyses or reports relate only to securities exempted under section 202(a);

(vi) A person who has no place of business in this State if his only clients in this State are other investment advisers, federally covered advisers, broker-dealers or institutional investors;

(vii) [Any] A person who has a place of business in this State and, during the [course of the] preceding [twelve months] twelve-month period has had [fewer than] not more than five clients in or out of this State and [who] does not hold himself out generally to the public as an investment adviser[.];

(viii) A person that is an investment adviser representative;

(ix) A federally covered adviser;

(x) A person excluded from the definition of "investment

adviser" under section 202(a)(11) of the Investment Advisers Act of 1940 (54 Stat. 847, 15 U.S.C. § 80b-2(a)(11)); or

(xi) Other persons not within the intent of this subsection whom the commission by regulation designates.

(j.1) "Investment adviser representative" means:

(i) with respect to any investment adviser registered or required to be registered under this act, any partner, officer, director, or person occupying a similar status or performing similar functions, or other individuals employed by or associated with an investment adviser, except clerical or administrative personnel, who performs any of the following:

(A) Makes any recommendations or otherwise renders advice regarding securities;

(B) Manages accounts or portfolios of clients;

(C) Determines which recommendation or advice regarding securities should be given;

(D) Solicits, offers or negotiates for the sale of, or sells, investment advisory services; or

(E) Supervises employes who perform any of the foregoing;

(ii) with respect to any federally covered adviser, any individual employed by or associated with a federally covered adviser who is an "investment adviser representative" and who has a "place of business" in this State as those terms are defined in the rules and regulations of the Securities and Exchange Commission.

(k) "Institutional investor" means any bank, insurance company, pension or profit sharing plan or trust, investment company, as defined in the Investment Company Act of 1940, [other financial institution] or any person, other than an individual, which controls any of the foregoing, the Federal

1 Government, State or any agency or political subdivision
2 thereof, except public school districts of this State, or any
3 other person so designated by regulation of the commission.

4 * * *

5 (o) "Promoter" includes (i) any person who, acting alone or
6 in conjunction with one or more other persons, directly or
7 indirectly takes initiative in founding and organizing the
8 business or enterprise of an issuer; [and] (ii) any person who,
9 in connection with the founding and organizing of the business
10 or enterprise of an issuer, directly or indirectly receives in
11 consideration of services or property, or both services and
12 property, ten per cent or more of any class of securities of the
13 issuer or ten per cent or more of the proceeds from the sale of
14 any class of securities. [However, a person who receives such
15 securities or proceeds either solely as underwriting commissions
16 or solely in consideration of property shall not be deemed a
17 promoter within the meaning of this clause if such person does
18 not otherwise take part in founding and organizing the
19 enterprise.] For purposes of sections 207 and 208, a "promoter"
20 includes (iii) any person who is described in clauses (i) and
21 (ii); (iv) any person who is an officer or director of the
22 issuer; (v) any person who legally or beneficially owns,
23 directly or indirectly, five per cent or more of any class of
24 the issuer's equity securities; or (vi) any person who is an
25 affiliate of a person described in clauses (i), (ii), (iii),
26 (iv) or (v). "Promoter" does not include a person who receives
27 securities or proceeds solely as underwriting compensation if
28 that person does not otherwise come within the definition of
29 "promoter."

30 * * *

1 9, 1994 (P.L.235, No.52) and December 7, 1994 (P.L.869, No.126),
2 are amended and the section is amended by adding subsections to
3 read:

4 Section 203. Exempt Transactions.--The following
5 transactions are exempted from [section] sections 201 and 211:

6 * * *

7 (D) ANY SALES BY AN ISSUER TO NOT MORE THAN TWENTY-FIVE <—
8 PERSONS IN THIS STATE DURING A PERIOD OF TWELVE CONSECUTIVE
9 MONTHS IF (I) THE ISSUER SHALL OBTAIN THE WRITTEN AGREEMENT OF
10 EACH SUCH PERSON NOT TO SELL THE SECURITY WITHIN TWELVE MONTHS
11 AFTER THE DATE OF PURCHASE; (II) NO PUBLIC MEDIA ADVERTISEMENT
12 IS USED OR MASS MAILING MADE IN CONNECTION WITH SOLICITING SUCH
13 SALES; (III) NO CASH OR SECURITIES IS GIVEN OR PAID, DIRECTLY OR
14 INDIRECTLY, TO ANY PROMOTER AS COMPENSATION IN CONNECTION
15 THEREWITH UNLESS SUCH COMPENSATION IS GIVEN OR PAID IN
16 CONNECTION WITH A SALE MADE BY A BROKER-DEALER REGISTERED
17 PURSUANT TO SECTION 301 AND ANY PERSON RECEIVING SUCH
18 COMPENSATION IS EITHER SUCH BROKER-DEALER OR AN AGENT REGISTERED
19 PURSUANT TO SECTION 301 OF SUCH BROKER-DEALER; (IV) THE FILING
20 FEE SPECIFIED IN SECTION 602(B.1) IS PAID; AND (V) THE ISSUER
21 HAS PROVIDED WRITTEN NOTICE TO EACH SUCH PERSON OF THE RIGHT TO
22 WITHDRAW AN ACCEPTANCE AS PROVIDED BY SECTION 207(M)(2).
23 PURCHASERS OF SECURITIES REGISTERED UNDER THIS ACT OR SOLD IN
24 RELIANCE UPON AN EXEMPTION UNDER THIS ACT OTHER THAN THIS
25 SUBSECTION (D) [OR SUBSECTION (F)], (F) OR (S) SHALL NOT BE
26 INCLUDED IN COMPUTING THE TWENTY-FIVE PERSONS FOR PURPOSES OF
27 THIS EXEMPTION. A NOTICE IN THE FORM PRESCRIBED BY THE
28 COMMISSION, SIGNED BY THE OFFICERS OR DIRECTORS OF THE ISSUER
29 UNDER OATH AND STATING THE NAME, PRINCIPAL BUSINESS ADDRESS OF
30 THE ISSUER, PROPOSED USE OF THE PROCEEDS FROM THE SALE AND SUCH

1 FACTS AS ARE NECESSARY TO ESTABLISH THIS EXEMPTION SHALL BE
2 FILED, TOGETHER WITH A COPY OF ANY OFFERING LITERATURE USED IN
3 CONNECTION WITH SUCH OFFER OR SALE, WITH THE COMMISSION NOT
4 LATER THAN THE DAY ON WHICH THE ISSUER RECEIVES FROM ANY PERSON
5 AN EXECUTED SUBSCRIPTION AGREEMENT OR OTHER CONTRACT TO PURCHASE
6 THE SECURITIES BEING OFFERED OR THE ISSUER RECEIVES
7 CONSIDERATION FROM ANY PERSON THEREFOR, WHICHEVER IS EARLIER.

8 (e) Any offer to not more than fifty persons in this State
9 during a period of twelve consecutive months if no sales result
10 from such offer or if sales resulting from such offer are exempt
11 by reason of subsection (d) hereof. This subsection shall not be
12 applicable to offers made pursuant to any other subsection of
13 this section [203], except subsections (d) and (f).

14 * * *

15 (h) Any offer, []but not a sale[], of a security for which
16 a registration statement has been filed under the Securities Act
17 of 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.) or a notification
18 of exemption from registration pursuant to Regulation A
19 promulgated under section 3(b) of such act (15 U.S.C. § 77c(b))
20 if (i) no stop order or refusal order is in effect and no public
21 proceeding or examination looking toward such an order is
22 pending under the Securities Act of 1933 or this act; and (ii)
23 no such offer is made until after such registration statement,
24 []including a prospectus[], has been filed with [or mailed to]
25 the commission.

26 (i.1) Any sale of an equity security, []except securities
27 of an open-end or closed-end investment company, face amount
28 certificate company or unit investment trust, as such persons
29 are classified in the Investment Company Act of 1940 (54 Stat.
30 789, 15 U.S.C. § 80a-1 et seq.) if: (i) the securities are

1 proposed to be registered under section 5 of the Securities Act
2 of 1933 (15 U.S.C. § 77e) or exempted under Regulation A
3 promulgated under section 3(b) thereof (15 U.S.C. § 77c(b)) and,
4 in fact, become registered under section 5 of the Securities Act
5 of 1933 (15 U.S.C. § 77e) or exempted from registration pursuant
6 to Regulation A promulgated under section 3(b) of such act; (ii)
7 a copy of any final prospectus or final offering circular
8 utilized or proposed to be utilized in connection therewith is
9 [mailed to] filed with the commission [within two business days
10 after such prospectus or offering circular is filed with the
11 Securities and Exchange Commission] at the time the notice
12 required by clause (viii) is filed; (iii) the applicable filing
13 fee specified in section 602(b.1) is paid with respect to such
14 offering; (iv) the issuer of the security is a reporting company
15 as defined in section 102(q); (v) no stop order or refusal order
16 is in effect and no public proceeding or investigation looking
17 toward such an order is pending under the Securities Act of 1933
18 or this act; (vi) the equity security is listed on a national
19 securities exchange registered under the Securities Exchange Act
20 of 1934 (48 Stat. 881, 15 U.S.C. § 78a et seq.) or quoted on the
21 National Association of Securities Dealers Automated Quotation
22 System; (vii) the issuer, at the time it files the notice
23 required in clause (viii) with the commission, has not received
24 an auditor's report for the immediately preceding fiscal year
25 expressing substantial doubt about the issuer's ability to
26 continue as a going concern unless the securities being sold in
27 reliance upon this subsection are the subject of an offering
28 that is being underwritten on a firm commitment basis by a
29 broker-dealer registered under section 301; and (viii) the
30 issuer has filed a notice with the commission in the form and

1 manner which the commission, by regulation, may prescribe. As a
2 condition of the continuing effectiveness of this exemption,
3 copies of any post-effective amendment or sticker to such
4 prospectus or offering circular must be [mailed to] filed with
5 the commission within two business days after the same is filed
6 with the Securities and Exchange Commission. An exemption under
7 this section shall terminate upon the termination of the
8 registration statement under section 5 (15 U.S.C. § 77e) or the
9 exemption from registration pursuant to Regulation A promulgated
10 under section 3(b) (15 U.S.C. § 77c(b)) of the Securities Act of
11 1933. For purposes of this subsection, the commission, by
12 regulation, may define the term "equity security." [Any
13 exemption in effect under this section as of the effective date
14 of this subsection for the sale of securities of an open-end or
15 closed-end investment company, face amount certificate company
16 or unit investment trust, as such persons are classified in the
17 Investment Company Act of 1940, shall terminate twelve months
18 from the date the prospectus described in clause (ii) or
19 exemption renewal was filed with the commission under this
20 section. For all other issuers that have an exemption in effect
21 under this subsection as of the effective date of this
22 subsection, the exemption for the sale of securities by those
23 issuers shall terminate twenty-four months after the effective
24 date of this subsection.]

25 (j) Any transaction in a bond or other evidence of
26 indebtedness secured by a real or chattel mortgage or deed of
27 trust, or by an agreement for the sale of real estate or
28 chattels if[,]: (i) the entire mortgage, deed of trust, or
29 agreement, together with all the bonds or other evidences of
30 indebtedness secured thereby, is offered and sold as a unit[.];

1 (ii) no public media advertisement is used, mass mailing made or
2 other form of general solicitation is utilized in connection
3 with soliciting the transaction; and (iii) no compensation is
4 paid or given directly or indirectly for soliciting any person
5 in this State in connection with the transaction.

6 * * *

7 (n) Any transaction pursuant to an offer of securities to
8 existing equity security holders of (i) the issuer; (ii) a
9 corporation which prior to the commencement of the offer owned
10 substantially all of the voting stock of the issuer; or (iii) a
11 corporation which organized the issuer for the purpose of the
12 offer, if no [commission or other remuneration] compensation,
13 other than a standby commission, is paid or given directly or
14 indirectly for soliciting any equity security holder in this
15 State[, if the issuer first files a notice specifying the terms
16 of the offer and all other information which the commission by
17 regulation requires, and if the filing fee specified in section
18 602(b.1) is paid and the commission does not by order disallow
19 the exemption within five days]. "Equity security holders"
20 include persons who at the time of the transaction are holders
21 of convertible securities, nontransferable warrants, or
22 transferable warrants exercisable within not more than ninety
23 days of their issuance.

24 (o) Any transaction incident to a vote by security holders,
25 [()or written consent of some or all security holders in lieu of
26 such vote[)], pursuant to the articles of incorporation or the
27 applicable corporation statute or other statute governing such
28 person, or pursuant to a partnership agreement, a declaration of
29 trust, trust indenture or any agreement among security holders
30 on a merger, consolidation, sale of assets in consideration, in

1 whole or in part, of the issuance of securities of another
2 person, reclassification of securities, or reorganization
3 involving the exchange of securities, in whole or in part, for
4 the securities of any other person if, [but only if: (i) one
5 party to such transaction is required or permitted to file proxy
6 materials pursuant to section 14(a) of the Securities Exchange
7 Act of 1934 (15 U.S.C. § 78m(a)) or section 20 of the Investment
8 Company Act of 1940 15 U.S.C. § 80a-20) and does file such
9 materials with the commission at least ten days prior to a
10 meeting of security holders called for the purpose of approving
11 such transaction; and such proxy materials are distributed to
12 the security holders of each party to such transaction; or (ii)
13 such materials as may be specified by regulation of the
14 commission are prepared in connection with the proposed
15 transaction and, after review by the commission, distributed to
16 the security holders of each party to the transaction; provided,
17 however, that clause (i) and (ii) of this subsection and section
18 602(b.1) shall not be applicable to any party to a transaction
19 where not more than twenty-five per cent of the security holders
20 of such party are residents of this State.] in the case of any
21 proposed transaction where no proxy materials are required or
22 permitted to be filed with the Securities and Exchange
23 Commission by either party to the transaction and where more
24 than twenty-five per cent of the security holders of either
25 party to the transaction are residents of this State, materials
26 specified by regulation of the commission are prepared in
27 connection with the proposed transaction and, after filing with,
28 and review by, the commission, distributed to the security
29 holders of each party to the transaction prior to the vote or
30 solicitation of written consent and the filing fee specified in

1 section 602(b.1) is paid.

2 * * *

3 (q) Any bona fide distribution in partial or total
4 liquidation of a person, whether or not the assets being
5 distributed include securities of any other person and whether
6 or not wholly or partially in exchange for the securities of the
7 person making the distribution, and any stock split and any
8 stock dividend, where the corporation distributing the dividend
9 is not the issuer, if nothing of value is given by stockholders
10 for the dividend other than the surrender of a right to a cash
11 or property dividend in lieu of the stock and if the dividend is
12 issued pro rata by class[; provided, however, in the case of a
13 distribution or dividend by a corporation not the issuer, such
14 corporation shall file with the commission, ten days prior to
15 the intended date of the distribution or dividend, a statement
16 containing the facts and circumstances surrounding the
17 distribution or dividend].

18 * * *

19 (s) Any offer or sale of a security which is exempt from
20 registration under section 5 of the Securities Act of 1933 (48
21 Stat. 74, 15 U.S.C. § 77e) pursuant to Rule 505 of Regulation D
22 promulgated under section 3(b) of the Securities Act of 1933 (15
23 U.S.C. § 77c(b)) if:

24 (i) The issuer files a notice in the form prescribed by rule
25 of the commission, together with a copy of any offering document
26 or literature proposed to be used in connection with such offer
27 and sale, with the commission not later than the day on which
28 the issuer receives from any person an executed subscription
29 agreement or other contract to purchase the securities being
30 offered or the issuer receives consideration from any person,

1 therefor, whichever is earlier;

2 (ii) The issuer pays the filing fee specified in section
3 602(b.1);

4 (iii) No mass mailing is used, public media advertising made
5 or other form of general solicitation is utilized in connection
6 with offers and sales under this subsection;

7 (iv) No compensation is given or paid, directly or
8 indirectly, to any person in connection with a sale under this
9 subsection unless the compensation is given or paid in
10 connection with a sale made by a broker-dealer who is registered
11 under section 301 of the act; and

12 (v) Neither the issuer nor a predecessor of the issuer;
13 affiliated issuer; officer, director, or general partner of the
14 issuer; promoter of the issuer presently connected with the
15 issuer in any capacity; beneficial owner of ten per cent or more
16 of any class of equity securities of the issuer; underwriter of
17 the securities to be offered under this subsection or any
18 partner, director or officer of such underwriter has, within
19 five years of filing a notice pursuant to subparagraph (i):

20 (A) Filed a registration statement which is the subject of a
21 currently effective registration stop order entered by any state
22 securities administrator or the Securities and Exchange
23 Commission;

24 (B) Been convicted of any criminal offense in connection
25 with the offer, purchase or sale of a security, or involving
26 fraud or deceit;

27 (C) Been subject to a state administrative enforcement order
28 or judgment finding fraud or deceit in connection with the
29 purchase, offer or sale of any security;

30 (D) Been subject to a state administrative enforcement order

1 or judgment which prohibits, denies or revokes the use of an
2 exemption from registration in connection with the purchase,
3 offer or sale of a security; or

4 (E) Been subject to an order, judgment or decree of any
5 court of competent jurisdiction temporarily, preliminarily or
6 permanently restraining or enjoining such party from engaging in
7 or continuing to engage in any conduct or practice involving
8 fraud or deceit in connection with the purchase, offer or sale
9 of any security.

10 The provisions of this subparagraph shall not apply if the party
11 subject to a disqualification described in clauses (A), (B),
12 (C), (D) or (E) is licensed or registered to conduct securities-
13 related business in the state in which the order, judgment or
14 decree creating the disqualification was entered against such
15 party; the state securities administrator or the court or
16 regulatory authority that entered the order judgment or decree
17 waives the disqualification prior to the first offer being made
18 in this State under this subsection; or the issuer establishes
19 that it did not know and, in the exercise of reasonable care,
20 based on a factual inquiry, could not have known that a
21 disqualification existed under this subparagraph.

22 (t) Any offer and any sale resulting from such offer where
23 the securities being offered, whether in or outside of this
24 State, will be sold only to accredited investors, as that term
25 is defined in the rules and regulations of the Securities and
26 Exchange Commission if:

27 (i) The securities are sold in good faith reliance that the
28 offering would qualify for an exemption from registration under
29 section 5 of the Securities Act of 1933 (15 U.S.C. § 77e),
30 pursuant to section 3(a)(11) of the Securities Act of 1933 (15

U.S.C. § 77c(a)(11)), or the regulations adopted by the Securities and Exchange Commission under section 3(b) of the Securities Act of 1933 (15 U.S.C. § 77c(b)), except an offering under Rule 505 of Regulation D promulgated by the Securities and Exchange Commission under section 3(b) of the Securities Act of 1933 (15 U.S.C. § 77c(b));

(ii) The issuer files a notice in the form prescribed by rule of the commission, together with a copy of any offering document or literature proposed to be used in connection with such offer and sale, with the commission not later than the day on which the issuer receives from any person an executed subscription agreement or other contract to purchase the securities being offered or the issuer receives consideration from any person, therefor, whichever is earlier;

(iii) The issuer pays the filing fee specified in section 602(b.1);

(iv) No compensation is given or paid, directly or indirectly, to any person in connection with a sale under this subsection unless the compensation is given or paid in connection with a sale made by a broker-dealer who is registered under section 301;

(v) Neither the issuer nor a predecessor of the issuer, affiliated issuer; officer, director or general partner of the issuer; promoter of the issuer presently connected with the issuer in any capacity; beneficial owner of ten per cent or more of any class of equity securities of the issuer; underwriter of the securities to be offered under this subsection or any partner, director or officer of such underwriter has, within five years of filing a notice pursuant to subparagraph (i);

(A) Filed a registration statement which is the subject of a

currently effective registration stop order entered by any state securities administrator or the Securities and Exchange Commission;

(B) Been convicted of any criminal offense in connection with the offer, purchase or sale of a security, or involving fraud or deceit;

(C) Been subject to a state administrative enforcement order or judgment finding fraud or deceit in connection with the purchase, offer or sale of any security;

(D) Been subject to a state administrative enforcement order or judgment which prohibits, denies or revokes the use of an exemption from registration in connection with the purchase, offer or sale of a security; or

(E) Been subject to an order, judgment or decree of any court of competent jurisdiction temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase, offer or sale of any security;

The provisions of this subparagraph shall not apply if the party subject to a disqualification described in clauses (A), (B), (C), (D) or (E) is licensed or registered to conduct securities-related business in the state in which the order, judgment or decree creating the disqualification was entered against such party; the state securities administrator or the court of regulatory authority that entered the order judgment or decree waives the disqualification prior to the first offer being made in this State under this subsection; or the issuer establishes that it did not know and, in the exercise of reasonable care, based on a factual inquiry, could not have known that a

1 disqualification existed under this subparagraph;

2 (vi) The issuer specifies in any advertisement,
3 communication, sales literature or other information which is
4 publicly disseminated in connection with the offering of
5 securities, including by means of electronic transmission or
6 broadcast media, that the securities will be sold only to
7 accredited investors. For purposes of this paragraph, "publicly
8 disseminated" means communicated to 100 or more persons or
9 otherwise communicated, used or circulated in a public manner;

10 (vii) The issuer does not engage in any solicitation of
11 prospective purchasers by telephone until the issuer has
12 reasonable grounds to believe that the person to be solicited is
13 an accredited investor;

14 (viii) The issuer places a legend on the cover page of any
15 disclosure document proposed to be used in connection with the
16 offering or on the cover page of the subscription agreement
17 advising that the securities described in the disclosure
18 document or the subscription agreement will be sold only to
19 accredited investors;

20 (ix) The issuer is not an investment company as defined in
21 the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. §
22 80a-1 et seq.); and

23 (x) The issuer is not a development stage company with no
24 specific business plan or purpose or a development stage company
25 that has indicated that its business plan is to engage in a
26 merger or acquisition with an unidentified company or companies;
27 or other entity or person.

28 Section 6. Section 205 of the act, amended March 25, 1981
29 (P.L.1, No.1), May 9, 1984 (P.L.235, No.52), and December 18,
30 1990 (P.L.755, No.190), is amended to read:

1 Section 205. Registration by Coordination.--(a)
2 Registration by coordination may be used for any offering for
3 which a registration statement has been filed under the
4 Securities Act of 1933 (48 Stat. 74, 15 U.S.C. 77a et seq.) or
5 for any proposed sale pursuant to Regulation A promulgated under
6 the exemption contained in section 3(b) of such act (15 U.S.C. §
7 77c(b)) provided, except in the case of open-end or closed-end
8 investment company, face amount certificate company or unit
9 investment trust, as such persons are classified in the
10 Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1
11 et seq.), such registration statement or notification of
12 proposed sale has not become effective.

13 (b) A registration statement under this section shall
14 contain the following information and be accompanied by the
15 following documents in addition to the information specified in
16 section 207(b):

17 (i) Two copies of the preliminary prospectus or offering
18 circular filed under the Securities Act of 1933;

19 (ii) If the commission by regulation requires, a copy of the
20 articles of incorporation and bylaws or their substantial
21 equivalents currently in effect, a copy of any agreements with
22 or among underwriters, a copy of any indenture or other
23 instrument governing the issuance of the security to be
24 registered, and a specimen or copy of the security;

25 (iii) If the commission by regulation or order requires, any
26 other information, or copies of any documents, filed under the
27 Securities Act of 1933; and

28 (iv) An undertaking to forward to the commission all future
29 amendments to the Federal prospectus or offering circular, other
30 than an amendment which merely delays the effective date of the

1 registration statement, not later than the first business day
2 after they are forwarded to or filed with the Securities and
3 Exchange Commission, or such longer period as the commission
4 permits.

5 (c) (1) A registration statement filed under this section
6 for the offering of securities by an open-end or closed-end
7 investment company, face amount certificate company or unit
8 investment trust, as such persons are classified in the
9 Investment Company Act of 1940, automatically becomes effective
10 if (i) the Federal registration statement or notification is
11 effective with the Securities and Exchange Commission; (ii) no
12 stop order is in effect in this State and no proceeding is
13 pending under section 208; (iii) the registration statement or a
14 predecessor registration statement has been on file with the
15 commission for at least five days; and (iv) the fee specified in
16 section 602(b.1) has been paid.

17 (2) All other registration statements filed under this
18 section automatically become effective at the moment the Federal
19 registration statement or notification becomes effective if (i)
20 no stop order is in effect in this State and no proceeding is
21 pending under section 208; (ii) [and] the registration statement
22 has been on file with the commission for at least ten days;
23 [(iii) a statement of the maximum and minimum proposed offering
24 prices and the maximum underwriting discounts and commissions
25 has been on file for two full business days, or such shorter
26 period as the commission permits;] and (iv) the offering is made
27 within these limitations.

28 (d) The registrant shall notify the commission promptly by
29 telephone or telegram of the date and time when the Federal
30 registration statement became effective and the content of the

1 price amendment, if any, and shall file a post-effective
2 amendment promptly containing the information and documents in
3 the price amendment. "Price amendment" means the final Federal
4 amendment which includes a statement of the offering price,
5 underwriting and selling discounts or commissions, amount of
6 proceeds, conversion rates, call prices and other matters
7 dependent upon the offering price. Upon failure to receive the
8 required notification and post-effective amendment with respect
9 to the price amendment, the commission may enter a stop order,
10 without notice or hearing, retroactively denying effectiveness
11 to the registration statement or suspending its effectiveness
12 until compliance with this subsection is effected, if it
13 promptly notifies the registrant by telephone or telegram of the
14 issuance of such order. If the registrant proves compliance with
15 the requirements of this subsection as to notice and post-
16 effective amendment, the stop order shall be vacated as of the
17 time of its entry. The commission may by regulation or order
18 waive any of the conditions specified in subsection (b) or (c).

19 (e) If the Federal registration statement becomes effective
20 before all the conditions in this section are satisfied and they
21 are not waived, the registration statement automatically becomes
22 effective as soon as all the conditions are satisfied. If the
23 registrant advises the commission of the date when the Federal
24 registration statement is expected to become effective, the
25 commission shall promptly advise the registrant by telephone or
26 telegram, at the registrant's expense, whether all the
27 conditions are satisfied and whether it then contemplates the
28 institution of a proceeding under section 208; but this advice
29 by the commission does not preclude the institution of such a
30 proceeding at any time.

Section 7. Section 207(g), (j.1) and (n) of the act, amended December 7, 1994 (P.L.869, No.126), are amended to read:

Section 207. General Registration Provisions.--* * *

(g) The commission may by regulation or order require as a condition of registration that any security issued within the past [two] five years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; or that the proceeds from the sale of the registered security in this State be escrowed until the issuer receives a specified amount from the sale of the security either in this State or elsewhere; or that the proceeds from the sale of the registered security in this State be escrowed for a specific use as set forth in the prospectus; or it may impose [both such] any or all of these requirements.[: Provided, however, That this subsection (g) shall not apply to any security registered by coordination if the issuer has been in existence for more than three years: And provided further, That with] With respect to securities registered by coordination, no escrow of promotional shares hereunder shall be required to extend beyond [three] four years. The commission may by regulation or order determine the conditions of any escrow required hereunder, but may not reject a depository solely because of location in another state.

* * *

(j.1) Except for a registration by coordination for an open-end or closed-end investment company, face amount certificate company or unit investment trust, as such persons are classified in the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.), a registration by coordination is effective for

1 one year from its effective date[, or any longer period during
2 which]. The effectiveness of a registration by coordination may
3 be extended beyond the initial one year effectiveness period in
4 increments of one year periods up to a maximum of three years
5 from the initial effectiveness date, provided that the security
6 is being offered or distributed in a nonexempted transaction by
7 or for the account of the issuer or other person on whose behalf
8 the offering is being made, or by any underwriter or broker-
9 dealer who is still offering part of an unsold allotment or
10 subscription taken by him as a participant in the distribution[,
11 provided that] and the commission has been notified of such
12 continued offering and the period thereof. A registration by
13 coordination for an open-end or closed-end investment company[,]
14 or face amount certificate company [or unit investment trust],
15 as such persons are classified in the Investment Company Act of
16 1940, is effective for the period beginning with its effective
17 date and ending sixty days after the registrant's fiscal year
18 end for the year in which the filing under section 205 became
19 effective. A registration by coordination for a unit investment
20 trust, as such a person is classified in the Investment Company
21 Act of 1940, is effective for the period beginning with its
22 effective date in this State and ending one year after the date
23 the registration statement for the same securities became
24 effective with the Securities and Exchange Commission. A
25 registration by qualification is effective for one year from its
26 effective date. The fact that a registration statement has been
27 effective in this State with respect to any security does not
28 permit sales of securities of the same class by the issuer or an
29 affiliate of the issuer if such person did not file the
30 registration statement, unless a separate registration statement

1 is filed and declared effective with respect thereto, or an
2 exemption from registration is available. A registration
3 statement may not be withdrawn after its effective date if any
4 of the securities registered have been sold in this State,
5 unless permitted by regulation or order of the commission. No
6 registration statement is effective during the time a stop order
7 is in effect under section 208. The effectiveness of a
8 registration statement filed by an open-end or closed-end
9 investment company, face amount certificate company or unit
10 investment trust, as such [terms] persons are [defined]
11 classified in the Investment Company Act of 1940, shall not be
12 terminated as a result of a post-effective amendment seeking to
13 register an additional amount of securities which becomes
14 effective under the Securities Act of 1933 (48 Stat. 74, 15
15 U.S.C. § 77a et seq.). [A registration statement for the sale of
16 securities in this State by an open-end or closed-end investment
17 company, face amount certificate company or unit investment
18 trust that is effective under section 205 or 206 as of the
19 effective date of this subsection shall terminate twelve months
20 from the date the registration statement became effective.]

21 * * *

22 (n) For purposes of coordinating the provisions of this act
23 with uniform procedures to facilitate electronic filings of
24 registration statements and notice filings, including without
25 limitation, by [means of] a securities registration depository,
26 the commission, by regulation, may adopt appropriate procedures
27 or forms or waive or modify any provision of section 205 or 206
28 or this section. The commission, by regulation, also may
29 prescribe methods for accepting electronic or digital signatures
30 on forms to be filed electronically with the commission.

1 Section 8. Section 208 of the act is amended to read:

2 Section 208. Denial, Suspension, and Revocation of
3 Registrations.--(a) The commission may issue a stop order
4 denying effectiveness to, or suspending or revoking the
5 effectiveness of, any registration statement if it finds that
6 the order is in the public interest and that:

7 (i) The registration statement as of its effective date or
8 as of any earlier date in the case of an order denying
9 effectiveness, or any amendment filed under section 207(l) as of
10 its effective date, or any report under section 207(k) is
11 incomplete in any material respect or contains any statement
12 which was, in the light of the circumstances under which it was
13 made, false or misleading with respect to any material fact, or
14 omitted to state a material fact necessary in order to make the
15 statements made, in the light of the circumstances under which
16 they are made, not misleading;

17 (ii) Any provision of this act or any regulation, order or
18 condition lawfully imposed under this act has been wilfully
19 violated, in connection with the offering by: (A) the person
20 filing the registration statement, (B) the issuer, (C) any
21 partner, officer or director of the issuer, (D) any person
22 occupying a similar status or performing similar functions, (E)
23 any affiliate of the issuer, but only if the person filing the
24 registration statement is an affiliate of the issuer, or (F) any
25 broker-dealer;

26 (iii) The securities are the subject of an administrative
27 stop order or similar order or a permanent or temporary
28 injunction of any court of competent jurisdiction entered under
29 any other Federal or State act applicable to the offering, but
30 the commission may not institute a proceeding against an

1 effective registration statement under this section more than
2 one year from the date of the order or injunction relied on, and
3 it may not enter an order under this section on the basis of an
4 order or injunction entered under any other state act unless
5 that order or injunction was based on facts which would
6 currently constitute a ground for a stop order under this act;

7 (iv) The issuer's enterprise or method of business includes
8 or would include activities which are illegal where performed;

9 (v) The offering has been or would be made with unreasonable
10 amounts of underwriters' and sellers' discounts, commissions or
11 other compensation, or promoters' profits or participation, or
12 unreasonable amounts or kinds of options, or has worked or
13 tended to work a fraud upon purchasers or would so operate,
14 provided that any underwriting compensation approved by a
15 national securities association registered under the Securities
16 Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a et seq.)
17 with respect to the underwriting activities of its members shall
18 not be deemed unreasonable under this section;

19 (vi) The applicant or registrant has failed to pay the
20 proper filing fee[;] but the commission [may only enter a denial
21 order under this subsection, and it] shall vacate any such order
22 when the deficiency has been corrected; [or]

23 (vii) Advertising prohibited by section 606 has been used in
24 connection with the sale or offering of the securities[.];

25 (viii) In the case of an offering of debt securities, the
26 offering involves an excessive debt to equity ratio or the
27 issuer, at the time it filed an application under section 205 or
28 206, had received an auditor's report for the immediately
29 preceding fiscal year expressing substantial doubt about the
30 issuer's ability to continue as a going concern; or

1 (ix) The offering is being made by a development stage
2 company which has no specific business plan or purpose or has
3 indicated that its business plan is to engage in a merger or
4 acquisition with an unidentified company or companies or other
5 entity or person.

6 (b) The commission may not institute a stop order proceeding
7 against an effective registration statement on the basis of a
8 fact or transaction known to it when the registration statement
9 became effective unless the proceeding is instituted within
10 thirty days after effectiveness.

11 (c) The commission may [issue a summary order denying,
12 postponing, suspending or revoking], by order, deny, postpone,
13 suspend or revoke the effectiveness of a registration statement
14 [pending final determination of any proceeding under this
15 section]. No order may be entered without prior notice to the
16 applicant or registrant, opportunity for hearing and written
17 findings of fact and conclusions of law, except that the
18 commission may by order summarily deny, postpone, suspend or
19 revoke the effectiveness of a registration statement pending
20 final determination of any proceeding under this subsection.

21 Upon the entry of the order, the commission shall promptly
22 notify [each person specified in subsection (d)] the applicant
23 or registrant that it has been entered and the reasons therefor
24 and that, within fifteen days after the receipt of a written
25 request, the matter will be set down for hearing. If no hearing
26 is requested [or] and none is ordered[,] by the commission,
27 [after notice of and opportunity for hearing to each person
28 specified in subsection (d); may modify or vacate the order or
29 extend it until final determination.] the order will remain in
30 effect until it is modified or vacated by the commission. If a

1 hearing is requested or ordered, the commission, after notice of
2 and opportunity for hearing to the applicant or registrant, may
3 modify or vacate the order or make it permanent. No person may
4 be considered to have violated section 201 solely by reason of
5 an order entered under this section for any offer or sale
6 effected after the entry of an order under this section if the
7 person sustains the burden of proof that the person did not
8 know, and in the exercise of reasonable care, could not have
9 known of the order.

10 [(d) No stop order may be entered under this section except
11 under subsection (c) without appropriate prior notice to the
12 applicant or registrant, the issuer and the person on whose
13 behalf the securities are to be or have been offered;
14 opportunity for hearing; and written findings of fact and
15 conclusions of law.

16 (e) The commission may vacate or modify a stop order if it
17 finds that the conditions which prompted its entry have changed
18 or that it is otherwise in the public interest to do so.]

19 Section 9. Section 209 of the act, amended May 9, 1984
20 (P.L.235, No.52) and December 7, 1994 (P.L.869, No.126), is
21 amended to read:

22 Section 209. Books, Records and Accounts.--(a) Every issuer
23 registering securities for sale in this State or who has sold
24 securities in this State pursuant to an exemption contained in
25 section 202(e), 203(d), 203(p) or 203(r) shall at all times keep
26 and maintain a complete set of books, records, and accounts of
27 such sales and the disposition of the proceeds thereof for a
28 period of three years following the last sale of securities in
29 this State or one year after the disposition of all proceeds,
30 whichever is longer, and shall thereafter, at such times as are

1 required by the commission, make and file in the office of the
2 commission, a report, setting forth the securities sold by it
3 under such registration or exemption, the proceeds derived
4 therefrom and the disposition thereof.

5 (b) [Every] Subject to the limitations of section 18 of the
6 Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77r), every
7 open-end or closed-end investment company, face amount
8 certificate company or unit investment trust, as such persons
9 are classified in the Investment Company Act of 1940 (54 Stat.
10 789, 15 U.S.C. § 80a-1 et seq.), making a filing under section
11 205 [or 206], 206 or 211 shall file reports with the commission
12 at such times and in such manner as the commission, by rule, may
13 prescribe which, at a minimum, set forth the total amount of
14 securities offered and sold in this State during the effective
15 period of the registration statement or notice filing.

16 (c) Except open-end and closed-end investment companies,
17 face amount certificate companies and unit investment trusts, as
18 such persons are classified in the Investment Company Act of
19 1940, every issuer registering securities for sale in this State
20 under section 206 shall file an annual report with the
21 commission, no earlier than three hundred sixty-five days and no
22 later than four hundred twenty days from the effective date of
23 the registration, setting forth the total amount of securities
24 sold in this State during the effective period of the
25 registration statement.

26 Section 10. Section 210 of the act, December 7, 1994
27 (P.L.869, No.126), is amended to read:

28 Section 210. Retroactive Registration [of] or Amendment of
29 Notice of Filing for Certain Securities.--The commission, by
30 regulation, may establish procedures whereby an open-end or

1 closed-end investment company, face amount certificate company
2 or unit investment trust, as such persons are classified in the
3 Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. 80a-1 et
4 seq.), which, during the effective period of registration under
5 section 205 or 206 or the effective period of a notice filing,
6 sold securities in this State in excess of the aggregate amount
7 of securities registered for sale in this State under section
8 205 or 206 or covered by the notice filing may apply to the
9 commission to register such securities retroactive to the date
10 of the initial registration or to amend the notice filing
11 retroactive to the date of the initial notice filing. An
12 application for retroactive registration [of] or amendment of a
13 notice filing for such securities shall not be granted if, at
14 the time the application is filed, a civil, criminal or
15 administrative proceeding is pending alleging violations of
16 section 201 for the sale of such securities in this State, or
17 such securities were sold more than twenty-four months prior to
18 the date the application was filed with the commission. An
19 application under this section shall not be granted unless the
20 applicable oversale assessment prescribed by section 602.1(d)
21 has been paid.

22 Section 11. The act is amended by adding a section to read:

23 Section 211. Federally Covered Securities.--(a) With
24 respect to any security that is a covered security under section
25 18(b)(2) of the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. §
26 77r(b)(2)), the following shall apply:

27 (1) An open-end or closed-end investment company, unit
28 investment trust or face amount certificate company, as such
29 persons are classified in the Investment Company Act of 1940 (54
30 Stat. 789, 15 U.S.C. § 80a-1 et seq.), annually shall notify the

commission of its intent to offer such federally covered securities for sale in this State, by paying the filing fee specified in section 602(b.1) and, if applicable, the assessment specified in section 602.1(a)(5), and filing any or all of the following documents which the commission, by rule or order, may require:

(i) Prior to the initial offer of such federally covered security in this State, all documents that are part of a Federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.), or as an alternative thereto, a notice form adopted by the commission.

(ii) After the initial offer of such federally covered security in this State, all documents that are part of an amendment to a Federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933 or as an alternative thereto, a notice form adopted by the commission, which shall be filed concurrently with the commission.

(iii) Any other documents that are part of a Federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, which shall be filed concurrently with the commission.

(2) An initial notice filing by a unit investment trust shall be effective for the period beginning with its effective date in this State and ending one year after the date the registration statement for the same securities became effective with the Securities and Exchange Commission. A renewal notice filing by a unit investment trust shall be effective for a period of one year. An initial or renewal notice filing by a

unit investment trust becomes effective upon receipt by the commission of a properly completed filing, including documents required by paragraph (1), and a correct fee and, if applicable the correct assessment, unless another date is requested in writing by the issuer in the notice filing made with the commission.

(3) A notice filing by an open-end or closed-end investment company or face amount certificate company, as such terms are classified in the Investment Company Act of 1940, shall be effective for the period beginning with its effective date in this State and ending sixty days after the filer's fiscal year end for the year in which the notice filing was made. A notice filing by an open-end or closed-end investment company or face amount certificate company becomes effective upon receipt by the commission of a properly completed filing, including documents required by paragraph (1), and a correct fee and, if applicable, the correct assessment, unless another date is requested in writing by the issuer in the notice filing made with the commission.

(b) With respect to any security that is covered security under section 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. § 77r(b)(4)(D)), an issuer shall file a notice with the commission, on Form D promulgated by the Securities and Exchange Commission and effective as of September 1, 1996, not later than fifteen calendar days after the first sale of such federally covered security occurs in this State, together with the filing fee specified in section 602(b.1).

(c) The commission may issue a stop order suspending the offer or sale of a security described in subsection (a) or (b) upon finding that:

1 (1) The order is necessary or appropriate in the public
2 interest for protection of investors; and

3 (2) There is a failure to comply with any condition
4 established under this section.

5 (d) Notwithstanding the provisions of subsections (a) and
6 (b), for the period ending October 10, 1999, the commission may
7 require the registration of a security described in subsection
8 (a) or (b) pursuant to section 201 if the issuer has not paid
9 the correct fee and, if applicable, the correct assessment, and
10 the nonpayment or underpayment of the fee or assessment has not
11 been remedied by the commission receiving the amount due from
12 the issuer within ten calendar days following receipt by the
13 issuer of a written notice from the commission concerning the
14 nonpayment or underpayment of the fee or assessment required by
15 this section, section 602(b.1) or section 602.1(a)(5).

16 Section 12. The heading of Part III of the act is amended to
17 read:

18 PART III

19 REGISTRATION OF BROKER-DEALERS, AGENTS [AND],

20 INVESTMENT ADVISERS, INVESTMENT ADVISER

21 REPRESENTATIVES AND NOTICE FILINGS

22 BY FEDERALLY COVERED ADVISERS

23 Section 13. Section 301 of the act, amended December 18,
24 1990 (P.L.755, No.190) and May 4, 1993 (P.L.4, No.4), is amended
25 to read:

26 Section 301. Registration Requirement.--Unless exempted
27 under section 302 hereof:

28 (a) It is unlawful for any person to transact business in
29 this State as a broker-dealer or agent unless he is registered
30 under this act.

1 (b) It is unlawful for any broker-dealer or issuer to employ
2 an agent to represent him in this State unless the agent is
3 registered under this act. The registration of an agent is not
4 effective during any period when he is not associated with a
5 specified broker-dealer registered under this act or a specified
6 issuer. No agent shall at any time represent more than one
7 broker-dealer or issuer, except that where affiliated
8 organizations are registered broker-dealers, an agent may
9 represent one or more of such organizations. When an agent
10 begins or terminates a connection with a broker-dealer or
11 issuer, or begins or terminates those activities which make him
12 an agent, the agent as well as the broker-dealer or issuer shall
13 promptly notify the commission. The commission may adopt a
14 temporary registration procedure to permit agents to change
15 employers without suspension of their registrations hereunder.

16 (c) It is unlawful for any person to transact business in
17 this State as an investment adviser unless he is so registered
18 or registered as a broker-dealer under this act or unless he is
19 exempted [under section 302(d)] from registration. It is
20 unlawful for any person to transact business in this State as an
21 [associated person] investment adviser representative unless he
22 is so registered or exempted from registration [under section
23 302(d.1)].

24 (c.1) The following apply:

25 (1) It is unlawful for any [investment adviser]:

26 (i) person required to be registered as an investment
27 adviser under this act to employ an [associated person to
28 represent him in this Commonwealth unless the associated person
29 is registered under this act. The registration of an associated
30 person is not effective during any period when he is not

1 associated with a specified investment adviser registered under
2 this act. When an associated person begins or terminates
3 association with an investment adviser, or begins or terminates
4 those activities which make him an associated person, the
5 investment adviser shall promptly notify the commission.]
6 investment adviser representative unless the investment adviser
7 representative is registered under this act or exempted from
8 registration, provided that the registration of an investment
9 adviser representative is not effective during any period when
10 he is not employed by an investment adviser registered under
11 this act; or

12 (ii) federally covered adviser to employ, supervise or
13 associate with an investment adviser representative having a
14 place of business in this Commonwealth, unless such investment
15 adviser representative is registered under this act or exempted
16 from registration.

17 (2) If a registered investment adviser representative begins
18 or terminates employment with an investment adviser or a
19 federally covered adviser, the investment adviser in the case
20 under paragraph (1)(i), or the investment adviser representative
21 in the case of paragraph (1)(ii), shall promptly notify the
22 commission.

23 (3) The commission may adopt a temporary registration
24 procedure to permit [associated persons] investment adviser
25 representatives to change employers without suspension of their
26 registrations under this act.

27 (d) It is unlawful for any licensed broker-dealer, agent or
28 investment adviser to effect a transaction in securities,
29 directly or indirectly, in this State if the registrant is in
30 violation of this act, or any regulation or order promulgated

1 under this act of which he has notice, if such violation (i) is
2 a material violation; (ii) relates to transactions effected in
3 this State; and (iii) has been committed by such registrant, or
4 if the information contained in his application for
5 registration, as of the date of such transaction, is incomplete
6 in any material respect or is false or misleading with respect
7 to any material fact.

8 (e) Every registration or notice filing expires on December
9 31 of each year unless renewed. No registration or notice filing
10 is effective after its expiration, unless a renewal application
11 has been timely filed, and expiration of a registration for
12 which no renewal application has been filed is deemed an
13 application for withdrawal under section 305(f).

14 (f) It is unlawful for any federally covered adviser to
15 conduct advisory business in this State, unless such person
16 complies with the provisions of section 303(a)(iii).

17 Section 14. Section 302 of the act, amended May 4, 1993
18 (P.L.4, No.4), is amended to read:

19 Section 302. Exemptions.--The following persons shall be
20 exempted from the registration provisions of section 301:

21 (a) A broker-dealer registered under the Securities Exchange
22 Act of 1934, who has not previously had any certificate denied
23 or revoked under this act or any predecessor statute, if he has
24 no place of business in this State and, during any period of
25 twelve consecutive months, he does not direct offers to sell or
26 buy into this State in any manner to persons other than broker-
27 dealers, institutional investors or governmental agencies and
28 other instrumentalities designated by regulation of the
29 commission, or to more than five other customers in this State,
30 whether or not the offeror or any of the offerees is then

1 present in this State.

2 (b) An agent in so far as he effects transactions on behalf
3 of a broker-dealer who is exempted by the provisions of
4 subsection (a).

5 (c) A bank not registered as a broker-dealer under this act
6 executing orders for the purchase or sale of securities for the
7 account of the purchaser or seller thereof.

8 (d) [A person registered under the Investment Advisers Act
9 of 1940, who has not previously had any certificate denied or
10 revoked under this act or any predecessor statute, if (i) his
11 only clients in this State are other investment advisers,
12 broker-dealers, institutional investors or governmental agencies
13 and other instrumentalities designated by regulation of the
14 commission, or (ii) during any period of twelve consecutive
15 months he does not direct business communications into this
16 State in any manner to more than five clients other than those
17 specified in clause (i) above, whether or not he or any of the
18 persons to whom the communications are directed is then present
19 in this State.] An investment adviser who does not have a place
20 of business in this State and during the preceding twelve-month
21 period has had not more than five clients who are residents of
22 this State exclusive of other investment advisers, federally
23 covered advisers, broker-dealers or institutional investors.

24 (d.1) An [associated person] investment adviser
25 representative who is employed by or associated with an
26 investment adviser insofar as he transacts business in this
27 State on behalf of an investment adviser who is exempted by the
28 provisions of subsection (d).

29 (d.2) An investment adviser representative who has a place
30 of business in this State and is employed by or associated with

1 a federally covered adviser and the federally covered adviser
2 meets any of the criteria described in section 303(a)(iii)(A),
3 (B) or (C).

4 (e) [Any bona fide officer, director, partner or employe of
5 an issuer, or an individual occupying similar status or
6 performing similar functions, if such person does not receive
7 any compensation, directly or indirectly, for his activities on
8 behalf of an issuer in connection with any security or
9 transaction except those exempted under section 202 or 203.] Any
10 person who represents an issuer in effecting transactions in:

11 (1) securities that are exempted by section 202(e), (f) or
12 (g);

13 (2) securities involved in a transaction exempted by section
14 203(c), (g), (k), (l) or (m); or

15 (3) securities which are covered securities under section
16 18(b)(1) of the Securities Act of 1933 (48 Stat. 74, 15 U.S.C.
17 77r(b)(1)).

18 (e.1) Any person who represents an issuer in effecting
19 transactions in securities registered under section 205 or 206
20 who:

21 (1) is a bona fide officer, director, partner or employe of
22 the issuer or an individual occupying similar status or
23 performing similar functions; and

24 (2) does not receive any compensation, directly or
25 indirectly, for effecting the transactions.

26 (f) The commission may by such regulations as it deems
27 necessary or appropriate in the public interest or for the
28 protection of investors, either unconditionally or upon
29 specified terms and conditions or for specified periods, exempt
30 from the provisions of section 301 any class of persons

1 specified in such regulations.

2 Section 15. Section 303 of the act, amended December 18,
3 1990 (P.L.755, No.190), is amended to read:

4 Section 303. Registration and Notice Filing Procedure.--(a)

5 (i) [A] except as provided by clause (iii), any broker-dealer,
6 agent, investment adviser or [associated person] investment
7 adviser representative may obtain an initial or renewal license
8 by filing an application with the commission. The application
9 shall contain such information, and in such detail, as the
10 commission by rule requires concerning the applicant's form and
11 place of organization, proposed method of doing business, and
12 financial condition, the qualifications and experience of the
13 applicant, including, in the case of a broker-dealer or
14 investment adviser, the qualifications and experience of any
15 partner, officer, director, or affiliate, or a person occupying
16 a similar status or performing similar functions any injunction
17 or administrative order or conviction referred to in section
18 305(a)(ii), information about affiliates or predecessors of the
19 applicant, and any other matters which the commission determines
20 are relevant to the application. If a broker-dealer, agent,
21 investment adviser or investment adviser representative seeks to
22 obtain an initial or renewal license and, in connection
23 therewith, requests a waiver of any requirement imposed under
24 this section or section 304 or any regulation promulgated
25 thereunder, the commission, in granting the waiver, may impose
26 conditions on, or limit the scope of, the initial or renewal
27 license.

28 (ii) If no denial order is in effect and no proceeding is
29 pending under section 305, the registration becomes effective on
30 the [thirtieth] forty-fifth day after the filing of the

1 application therefor or any material amendment thereto, or on
2 such earlier date as the commission may order. The commission is
3 directed to cooperate with other securities administrators and
4 regulatory authorities to simplify and coordinate registration,
5 application and renewal procedures.

6 (iii) A federally covered adviser shall file with the
7 commission, prior to acting as a federally covered adviser in
8 this State, a copy of such documents as have been filed with the
9 Securities and Exchange Commission which the commission, by
10 regulation, may require, together with the fee specified in
11 section 602(d.1). This requirement shall not apply to a
12 federally covered adviser that:

13 (A) Has its principal place of business in this State and
14 whose only clients in this State are investment advisers,
15 federally covered advisers, broker-dealers or institutional
16 investors;

17 (B) Does not have a place of business in this State and
18 during the preceding twelve-month period has had not more than
19 five clients who are residents of this State, exclusive of other
20 investment advisers, federally covered advisers, broker-dealers
21 or institutional investors; or

22 (C) Meets the definition of any person described in section
23 102(j)(i) through (viii) or (x) and (xi).

24 (iv) Notwithstanding the provisions of clause (iii), until
25 October 10, 1999, the commission may require the registration of
26 a federally covered adviser under section 301 if the federally
27 covered adviser has not paid the correct fee and the nonpayment
28 or underpayment of the fee has not been remedied by the
29 commission receiving the amount due within ten calendar days
30 following receipt by the federally covered adviser of written

1 notice from the commission concerning the nonpayment or
2 underpayment of the fee required by this section and section
3 602(d.1).

4 (b) A registered broker-dealer or investment adviser may
5 file an application for registration of a successor, whether or
6 not the successor is then in existence, for the unexpired
7 portion of the registrant's term. A federally covered adviser
8 may file a notice filing for a successor, whether or not the
9 successor is then in existence, for the unexpired portion of the
10 notice period. There shall be no filing fee.

11 (c) The commission may by regulation prescribe standards of
12 qualification with respect to training, experience and knowledge
13 of the securities business and provide for an examination, which
14 may be written or oral or both, to be taken by any class of or
15 all applicants, as well as persons who represent or will
16 represent an investment adviser, and the commission may by order
17 require an examination of a licensed broker-dealer, agent or
18 investment adviser for due cause.

19 (d) The commission may by regulation require a minimum
20 capital for registered broker-dealers, subject to the
21 limitations of section 15 of the Securities Exchange Act of
22 1934, (48 Stat. 881, 15 U.S.C. § 78o) and [investment advisers
23 and establish limitations on aggregate indebtedness of broker-
24 dealers in relation to net capital and] establish minimum
25 financial requirements for investment advisers, subject to the
26 limitations of section 222 of the Investment Advisers Act of
27 1940 (54 Stat. 847, 15 U.S.C. § 80b-18a). The commission may
28 classify broker-dealers [and investment advisers for purposes of
29 such requirements. The commission may not, however, with respect
30 to any broker-dealer who is a member of the National Association

1 of Securities Dealers, Inc. or who is registered with the
2 Securities and Exchange Commission require a higher minimum
3 capital or lower ratio of aggregate indebtedness to net capital
4 than is contained in the rules or regulations adopted by such
5 association or commission.] for purposes of such requirements
6 and may establish different requirements for those investment
7 advisers who maintain custody of clients' funds or securities or
8 who have discretionary authority over same and those investment
9 advisers who do not.

10 (e) The commission may by regulation require surety bonds to
11 be posted by any broker-dealer, investment adviser, and any
12 issuer who employs agents subject to registration under section
13 301 in connection with [any security or transaction] effecting
14 transactions in any security not exempted by section [202 or
15 203] 202(e), (f) or (g) or effecting securities transactions not
16 exempted by section 203(c), (g), (k), (l) or (m) in [an] any
17 amount [not exceeding ten thousand dollars (\$10,000), and all]
18 the commission may prescribe, subject to the limitations of
19 section 15 of the Securities Exchange Act of 1934 (48 Stat. 881,
20 15 U.S.C. § 78o) for broker-dealers and section 222 of the
21 Investment Advisers Act of 1940 for investment advisers and may
22 determine their conditions. All bonds required shall provide for
23 suit thereon by injured customers, clients or purchasers, but no
24 bond may be required of any registered broker-dealer or
25 investment adviser whose net capital or minimum financial
26 requirements exceeds the amount prescribed [in this section 303
27 or] by regulation for this purpose. Such bond, unless cancelled
28 as provided herein, shall be in effect during the entire period
29 that a registration is in effect. Every bond shall contain a
30 provision that such bond is not cancellable, except on thirty-

1 days prior written notice to the person by whom the bond was
2 posted and the commission, provided that such cancellation shall
3 not affect any liability incurred or accrued prior to the
4 effective date of such cancellation.

5 Section 16. Section 304 of the act is amended to read:

6 Section 304. Post-registration Provisions.--(a) Every
7 registered broker-dealer and investment adviser shall make and
8 keep all accounts, correspondence, memoranda, papers, books and
9 other records which the commission by regulation prescribes[.
10 All], except as provided by section 15 of the Securities
11 Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78o) in the case
12 of a broker-dealer and section 222 of the Investment Advisers
13 Act of 1940 (54 Stat. 847, 15 U.S.C. § 80b-18a) in the case of
14 an investment adviser. All records so required, with respect to
15 an investment adviser, shall be preserved for such period as the
16 commission prescribes by regulation. Subject to the limitations
17 of section 15 of the Securities Exchange Act of 1934 in the case
18 of a broker-dealer and section 222 of the Investment Advisers
19 Act of 1940 in the case of an investment adviser, all records
20 required shall be preserved for three years unless the
21 commission by regulation prescribes otherwise for particular
22 types of records[. All] and all required records shall be kept
23 within this State or shall, at the request of the commission, be
24 made available at any time for examination by it either in the
25 principal office of the registrant or by production of exact
26 copies thereof in this State.

27 (b) Every registered broker-dealer and investment adviser
28 shall file such financial reports as the commission by
29 regulation prescribes[.], except as provided by section 15 of
30 the Securities Exchange Act of 1934 in the case of a broker-

1 dealer and section 222 of the Investment Advisers Act of 1940 in
2 the case of an investment adviser.

3 (c) If the information contained in any document filed with
4 the commission is or becomes inaccurate or incomplete in any
5 material respect, the registrant or federally covered adviser
6 shall promptly file a correcting amendment[.] if the document is
7 filed with respect to a registrant, or when such amendment is
8 required to be filed with the Securities and Exchange Commission
9 if the document is filed with respect to a federally covered
10 adviser.

11 (d) The commission shall make periodic examinations, within
12 or without this State, of each broker-dealer and investment
13 adviser at reasonable times and in reasonable scope. These
14 examinations may be made without prior notice to the broker-
15 dealer or investment adviser. For the purpose of avoiding
16 unnecessary duplication of examinations, the commission, in so
17 far as it deems it practicable in administering this subsection,
18 shall cooperate with securities administrators of other states,
19 the Securities and Exchange Commission, and any national
20 securities exchange or national securities association
21 registered under the Securities Exchange Act of 1934 or any
22 other department or agency of this State.

23 (e) The commission may by regulation prohibit unreasonable
24 charges, commissions or other compensation of broker-dealers and
25 investment advisers, provided that any charges, commissions, or
26 other compensation consistent with rates set by a national
27 securities exchange, when applied to transactions on that
28 exchange, or by the Securities and Exchange Commission or
29 national securities association registered under the Securities
30 Exchange Act of 1934 15 U.S.C. § 78a et seq.), shall not be

1 deemed unreasonable under this section. Any underwriting
2 compensation permitted by a national securities association
3 registered under the Securities Exchange Act of 1934 with
4 respect to the underwriting activities of its members shall not
5 be deemed unreasonable under this section.

6 (f) The commission may prescribe rules which it finds
7 appropriate in the public interest and for the protection of
8 investors for the conduct of business by broker-dealers and
9 investment advisers who are not members of the National
10 Association of Securities Dealers, Inc. or any other national
11 securities association registered under the Securities Exchange
12 Act of 1934, which association has adopted rules of conduct.

13 (g) All broker-dealers and investment advisers registered
14 hereunder shall display copies of their currently effective
15 licenses, bearing the seal of the commission, prominently in
16 each place of business within this State. Each such certificate
17 shall contain the names of such persons as the commission shall
18 by rule provide.

19 Section 17. Section 305 heading, (a)(ii), (iv), (v), (vi)
20 and (vii), (b)(ii), (c) and (f) of the act, amended June 25,
21 1986 (P.L.256, No.68) and December 18, 1990 (P.L.755, No.190),
22 are amended to read:

23 Section 305. Denial, Suspension [and], Revocation and
24 Conditioning of Registration.--(a) The commission may, by
25 order, deny, suspend, [or] revoke, or condition any registration
26 or may censure any registrant if it finds that such order is in
27 the public interest and that such registrant or applicant, or in
28 the case of any broker-dealer or investment adviser, any
29 affiliate thereof, whether prior or subsequent to becoming
30 associated with such person:

1 * * *

2 (ii) Has[, within ten years of the date of the commission's
3 action, been either (A) convicted of a felony or misdemeanor, or
4 (B) held liable in a civil action by final judgment of a court
5 based upon conduct showing moral turpitude, and the commission
6 finds that any such felony, misdemeanor or civil action (I)
7 involved the purchase or sale of any security or commodity
8 futures contract, or any other aspect of the securities or
9 commodity futures contract business, (II) arose out of the
10 conduct of the business of a broker-dealer, investment adviser
11 or issuer with respect to a security or transaction not exempt
12 under section 202 or 203, (III) involved embezzlement,
13 fraudulent conversion or misappropriation of property, funds or
14 securities, or (IV) involved the violation of section 1341, 1342
15 or 1343 of Title 18 of the United States Code; or] been: (A)
16 convicted within ten years of the date of the commission's
17 action, of any felony or misdemeanor, or of any substantially
18 equivalent crime by a foreign court of competent jurisdiction,
19 or held liable in a civil action by final judgment of a court
20 and the commission finds that such felony, misdemeanor or civil
21 action: (I) involved the purchase or sale of any security, the
22 taking of a false oath, the making of a false report, bribery,
23 perjury, burglary and any substantially equivalent activity
24 however denominated by the laws of a relevant foreign government
25 or conspiracy to commit any such offense; (II) arose out of the
26 conduct of the business of an issuer, broker-dealer, municipal
27 securities dealer, government securities broker, government
28 securities dealer, investment adviser, bank, insurance company,
29 fiduciary, transfer agent, foreign person performing a function
30 substantially equivalent to any of the foregoing or any entity

1 or person required to be registered under the Commodity Exchange
2 Act (42 Stat. 988, 7 U.S.C. § 1 et seq.) or any substantially
3 equivalent foreign statute or regulation; (III) involved the
4 larceny, theft, robbery, extortion, forgery, counterfeiting,
5 fraudulent concealment, embezzlement, fraudulent conversion or
6 misappropriation of funds or securities, or any substantially
7 equivalent activity however denominated by the laws of a
8 relevant foreign government; or (IV) involved the violation of
9 18 U.S.C. §§ 152 (relating to concealment of assets; false oaths
10 and claims, bribery), 1341 (relating to frauds and swindles),
11 1342 (relating to fictitious name or address), 1343 (relating to
12 fraud by wire, radio or television), Chs. 25 (relating to
13 counterfeiting and forgery) or 47 (relating to fraud and false
14 statements) or a violation of any substantially equivalent
15 foreign statute; or (B) convicted of any other felony; or

16 * * *

17 (iv) Is subject to (A) any currently effective order or
18 order entered within the past five years of the Securities and
19 Exchange Commission, the Commodity Futures Trading Commission or
20 the securities administrator of any other state denying
21 registration to or revoking or suspending the registration of
22 such person as a broker-dealer, agent, investment adviser,
23 [associated person] investment adviser representative, futures
24 commission merchant, commodity pool operator , commodity trading
25 advisor or a person associated with a futures commission
26 merchant, commodity pool operator or commodity trading adviser,
27 or [is subject to] (B) any currently effective order of any
28 national securities association, national securities exchange
29 (as defined in the Securities Exchange Act of 1934 (48 Stat.
30 881, 15 U.S.C. 78a et seq.)) or self-regulatory organization

1 operating under the authority of the Commodity Futures Trading
2 Commission suspending or expelling such person from membership
3 in such association, exchange or self-regulatory organization,
4 or (C) any currently effective cease and desist order or a cease
5 and desist order entered within the past five years by the
6 Securities and Exchange Commission, the Commodity Futures
7 Trading Commission or by the securities administrator of any
8 other state and where, in the case of a cease and desist order
9 entered by a state, the cease and desist order contained a
10 finding of a willful violation of that state's securities law,
11 or [is the subject of] (D) a currently effective United States
12 Postal Service fraud order; but the commission may not institute
13 a revocation or suspension proceeding under this subsection on
14 the basis of an order under another state law more than one year
15 after termination of the effectiveness of the order relied on
16 and unless the order was based on facts which would currently
17 constitute grounds for an order under this section; or

18 (v) Has wilfully violated any provision of the Securities
19 Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.), the
20 Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a
21 et seq.), the Trust Indenture Act of 1939 (53 Stat. 1149, 15
22 U.S.C. § 77 aaa et seq.), the Investment Advisers Act of 1940
23 (54 Stat. 847, 15 U.S.C. § 80b-1 et seq.), the Investment
24 Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.),
25 the Commodity Exchange Act [of 1974] (42 Stat. 988, 7 U.S.C. § 1
26 et seq.), any law of a foreign country governing or regulating
27 any aspect of the business of securities, commodities futures or
28 banking or this act, [or any predecessor law,] or of any rule
29 [or], regulation or order under any of such statutes; or

30 (vi) Has wilfully aided, abetted, counseled, commanded,

1 induced, or procured the violation by any other person of any of
2 the statutes [or], rules [or], regulations or orders referred to
3 in subsection (v); or

4 (vii) Has failed reasonably to supervise his agents or
5 employes, if he is a broker-dealer, or his [associated persons]
6 investment adviser representatives or employes, if he is an
7 investment adviser[, but no person shall be deemed to have
8 failed in such supervision if there have been established
9 procedures, and a system for applying such procedures, which
10 would reasonably be expected to prevent and detect, in so far as
11 practicable, any violation of statutes, rules or orders
12 described in subsection (v) and if such person has reasonably
13 discharged the duties and obligations incumbent upon him by
14 reason of such procedures and system without reasonable cause to
15 believe that such procedures and system were not being complied
16 with]; or

17 * * *

18 (b) The following provisions govern the application of
19 section 305(a)(xi):

20 * * *

21 (ii) The commission may not enter an order against an
22 investment adviser on the basis of the lack of qualification of
23 any person other than (A) the investment adviser himself if he
24 is an individual, (B) any other person who represents the
25 investment adviser in doing any of the acts which make him an
26 investment adviser or (C) an [associated person] investment
27 adviser representative.

28 * * *

29 (c) The commission may not institute a suspension or
30 revocation proceeding solely on the basis of a [fact or

1 transaction known to it when the registration became effective
2 unless the proceeding is instituted within thirty days after
3 such effective date.] final judicial or administrative order
4 made known to it by the applicant prior to the effective date of
5 the registration unless the proceeding is instituted within the
6 next ninety days following registration. This provision shall
7 not apply to renewals of registrations.

8 * * *

9 (f) Withdrawal from the status of a registered broker-
10 dealer, agent, investment adviser or [associated person]
11 investment adviser representative becomes effective on the
12 thirtieth day after receipt of an application to withdraw, or
13 within such shorter period as the commission determines, unless
14 a revocation or suspension proceeding is pending before the
15 commission when the application is filed or a proceeding to
16 revoke or suspend or to impose conditions upon the withdrawal is
17 instituted before the commission within thirty days after the
18 withdrawal application is filed. If a proceeding is so pending
19 or instituted, withdrawal becomes effective at such time and
20 upon such conditions as the commission by order determines. If
21 no proceeding is so pending or instituted and withdrawal
22 automatically becomes effective, the commission may institute a
23 revocation or suspension proceeding under [subsection (a)(ii)]
24 subsections (a)(i), (v), (vi), (vii), (viii), (ix), (xii) and
25 (xiii) within one year after withdrawal became effective and
26 enter a revocation or suspension order as of the last date on
27 which the registration was in effect.

28 * * *

29 Section 18. Sections 404, 405 and 407 of the act are amended
30 to read:

Section 404. Prohibited [Activities; Investment Advisers]
Advisory Activities.--(a) It is unlawful for any [investment
adviser, directly or indirectly,] person who receives, directly
or indirectly, any consideration from another person for
advising the other person as to the value of securities or their
purchase or sale, whether through the issuance of analyses or
reports or otherwise, in this State:

[(a)] (1) To employ any device, scheme, or artifice to
defraud [any client or prospective client] the other person.

[(b)] (2) To engage in any transaction, act, practice, or
course of business which operates as a fraud or deceit upon any
[client or prospective client] other person.

[(c)] (3) Acting as principal for his own account, knowingly
to sell any security to or purchase any security from a client
[for whom he is acting as investment adviser], or, acting as
broker for a person other than such client, knowingly to effect
any sale or purchase of any security for the account of such
client, without disclosing to such client in writing before the
completion of the transaction the capacity in which he is acting
and obtaining the [written] consent of the client to such
transaction. The prohibitions of this paragraph shall not apply
to any transaction with a customer of a broker-dealer if such
broker-dealer is not acting as an investment adviser in relation
to such transaction.

[(d)] (4) To engage in any act, practice, or course of
business which is fraudulent, deceptive, or manipulative.

(5) TO FAIL TO DISCLOSE TO THE BOARD OF SCHOOL DIRECTORS OF
A PUBLIC SCHOOL DISTRICT IN THIS COMMONWEALTH THE COMPENSATION
THAT SUCH PERSON WILL GIVE, DIRECTLY OR INDIRECTLY, TO ANOTHER
PERSON IN CONNECTION WITH EITHER OBTAINING THE BOARD OF SCHOOL

<—

1 DIRECTORS AS AN ADVISORY CLIENT OR ADVISING THE BOARD OF SCHOOL
2 DIRECTORS AS TO ANY TRANSACTION INVOLVING THE PURCHASE OR SALE
3 OF A SECURITY WITH RESPECT TO AN INVESTMENT OF PUBLIC SCHOOL
4 DISTRICT FUNDS PURSUANT TO SECTION 440.1 OF THE ACT OF MARCH 10,
5 1949 (P.L.30, NO.14), KNOWN AS THE PUBLIC SCHOOL CODE OF 1949,
6 AND 53 PA.C.S. PT. VII SUBPT. B (RELATING TO INDEBTEDNESS AND
7 BORROWING).

8 [(e)] ~~(5)~~ (6) To represent that he is an investment counsel <—
9 or to use the name "investment counsel" as descriptive of his
10 business unless [his principal business consists of acting as
11 investment adviser and] a substantial part of his business
12 consists of rendering investment advisory services on the basis
13 of the individual needs of his clients.

14 [(f)] ~~(6)~~ (7) Unless [an adviser] the person is registered <—
15 as a broker-dealer under this act, to take and have custody of
16 any securities or funds of any client if he fails to meet such
17 requirements therefor as may be prescribed by the commission by
18 regulation.

19 (b) In the solicitation of advisory clients, it is unlawful
20 for any person to make any untrue statement of material fact, or
21 omit to state a material fact necessary in order to make the
22 statements made, in light of the circumstances under which they
23 are made, not misleading.

24 (c) The prohibitions of this section shall apply to
25 federally covered advisers and other persons excluded from the
26 definition of investment adviser under section 102(j)(i) through
27 (viii), (x) and (xi) only to the extent that the prohibited
28 conduct involves fraud or deceit.

29 Section 405. Contract Requirements.--It is unlawful for any
30 investment adviser to enter into, extend, or renew any

1 investment advisory contract [unless it provides in writing] if
2 such contract:

3 [(1) that the investment adviser shall not be compensated on
4 the basis of a share of capital gains upon or capital
5 appreciation of the funds or any portion of the funds of the
6 client;

7 (2) that no assignment of the contract may be made by the
8 investment adviser without the consent of the other party to the
9 contract; and

10 (3) that the investment adviser, if a partnership, shall
11 notify the other party to the contract of any change in the
12 membership of the partnership within a reasonable time after the
13 change.]

14 (1) provides for compensation to the investment adviser on
15 the basis of a share of capital gains upon, or capital
16 appreciation of, the funds or any portion of the funds of the
17 client;

18 (2) fails to provide in writing that no assignment of such
19 contract shall be made by the investment adviser without the
20 consent of the other party to the contract; or

21 (3) fails to provide in writing that the investment adviser,
22 if a partnership, will notify the other party to the contract of
23 any change in the membership of such partnership within a
24 reasonable time after such change.

25 Clause (1) does not prohibit an investment advisory contract
26 which provides for compensation based upon the total value of a
27 fund averaged over a definite period, or as of definite dates or
28 taken as of a definite date, or in any other manner permitted by
29 the Investment Advisers Act of 1940 (54 Stat. 847, 15 U.S.C. §
30 80b-1 et seq.), and the rules and regulations promulgated

1 thereunder or any contract for the rendering of investment
2 advisory services to an institutional investor. "Assignment," as
3 used in clause (2), includes any direct or indirect transfer or
4 hypothecation of an investment advisory contract by the assignor
5 or of a controlling block of the assignor's outstanding voting
6 securities by a security holder of the assignor; but, if the
7 investment adviser is a partnership, no assignment of an
8 investment advisory contract is considered to result from the
9 death or withdrawal of a minority of the members of the
10 investment adviser having only a minority interest in the
11 business of the investment adviser, or from the admission to the
12 investment adviser of one or more members who, after admission,
13 will be only a minority of the members and will have only a
14 minority interest in the business.

15 Section 407. Misleading Filings; Misrepresentations of
16 Commission Approval.--(a) It is unlawful for any person to make
17 or cause to be made, in any document filed with the commission
18 or in any proceeding under this act, any statement which is, at
19 the time and in the light of the circumstances under which it is
20 made, false or misleading in any material respect or, in
21 connection with such statement, to omit to state a material fact
22 necessary in order to make the statements made, in the light of
23 the circumstances under which they are made, not misleading.
24 Where any person has failed to make reasonable inquiry as to the
25 accuracy of the information being filed with the commission,
26 such person may not rely upon that failure as a defense to a
27 violation of this section.

28 (b) It is unlawful for any person registered as a broker-
29 dealer, agent or investment adviser under this act to represent
30 or imply in any manner whatsoever that such person has been

1 sponsored, recommended, or approved or that his abilities or
2 qualifications have in any respect been passed upon by the
3 commission. Nothing in this section prohibits a statement (other
4 than in a paid advertisement) that a person is registered under
5 this act, if such statement is true in fact and if the effect of
6 such registration is not misrepresented.

7 (c) (i) Neither the fact that an application for
8 registration of securities or a notice filing under this act has
9 been filed nor the fact that such application or notice filing
10 becomes effective constitutes a finding by the commission that
11 any document filed under this act is true, complete or not
12 misleading. Neither any such fact nor the fact that an exemption
13 is available for a security or a transaction means that the
14 commission has passed upon the merits or qualifications of, or
15 recommended or given approval to any person, security or
16 transaction.

17 (ii) It is unlawful to make, or cause to be made, to any
18 prospective purchaser or any other person, any representation
19 inconsistent with clause (i) of this subsection.

20 Section 19. The act is amended by adding a section to read:

21 Section 409. Prohibited Transactions Involving Public School
22 Districts of this State.--It shall be unlawful for any person to
23 purchase or sell, or induce or attempt to induce the purchase or
24 sale of, any security in this State by means of any
25 manipulative, deceptive or other fraudulent scheme, device or
26 contrivance, or in violation of this act or regulation or order
27 issued under this act, in a transaction involving a public
28 school district in this State.

29 Section 20. Section 501(f) and (g) of the act, added
30 December 18, 1990 (P.L.755, No.190), are amended to read:

1 Section 501. Civil Liabilities.--* * *

2 (f) Any investment adviser who violates section 301 shall be
3 liable to the client for all fees paid, directly or indirectly,
4 to the investment adviser for investment advisory services
5 during the period of such violation.

6 (g) Any [investment adviser] person who violates section
7 [404(a) through (d) or any material provision of section
8 404(f),] 404(a)(1) through (4), any material provision of
9 section ~~404(a)(6)~~ 404(A)(7), or otherwise makes any untrue

<—

10 statement of a material fact or omits stating a material fact
11 necessary in order to make statements made, in the light of the
12 circumstances under which they are made, not misleading (the
13 [client] person not knowing of the untruth or omission) and who
14 does not sustain the burden of proof that he did not know and,
15 in the exercise of reasonable care, could not have known of the
16 untruth or omission, shall be liable to the [client] person
17 purchasing the security. The [client] person purchasing the
18 security may sue either at law or in equity to recover the
19 consideration paid for the security, together with interest at
20 the legal rate from the date of payment, less the amount of
21 income or distribution, in cash or in kind, received on the
22 security, upon the tender of the security or for damages if the
23 [client] person no longer owns the security. Damages are the
24 amount that would be recoverable upon a tender, less the value
25 of the security when the [client] person disposed of it, plus
26 interest at the legal rate from the date of disposition. Tender
27 shall require only notice of willingness to exchange the
28 security for the amount specified. Any notice may be given by
29 service as in civil actions specified in the Pennsylvania Rules
30 of Civil Procedure. [An investment adviser] A person who is

1 liable under this section and any offeror or seller of the
2 security liable under subsection (a) are jointly and severally
3 liable to the [client of the investment adviser] the person
4 purchasing the security.

5 Section 21. Sections 509 and 510 of the act are amended to
6 read:

7 Section 509. Right of Commission to Bring [Action; Class
8 Actions] Actions for Injunction and Equitable Relief; Class
9 Actions; Contempt of Commission Orders.--(a) Whenever it
10 appears to the commission that any person has engaged or is
11 about to engage in any act or practice constituting a violation
12 of any provision of this act or any rule or order hereunder, it
13 may in its discretion bring an action in the name of the people
14 of the Commonwealth of Pennsylvania in the Commonwealth Court or
15 in any of the several courts of common pleas [of Pennsylvania]
16 to enjoin, through a preliminary or permanent injunction,
17 temporary restraining order or writ of mandamus, the acts or
18 practices or to enforce compliance with this act or any rule or
19 order hereunder. [Upon a proper showing, a permanent or
20 preliminary injunction, restraining order, or writ of mandamus
21 shall be granted, and a receiver or conservator may be appointed
22 for the defendant or the defendant's assets.] The commission
23 also may seek, and the court, upon proper showing, shall grant
24 such other ancillary and equitable relief as the facts warrant
25 including, without limitation, appointment of a receiver,
26 temporary receiver or conservator of the defendant's assets, a
27 freeze of the defendant's assets, obtaining of an accounting,
28 orders of rescission, orders of restitution, orders of
29 disgorgement or other relief as may be appropriate in the public
30 interest. The court shall not require the commission to meet the

1 criteria for an equitable injunction in order for the court to
2 grant an injunction, restraining order or writ of mandamus. The
3 court [may] shall not require the commission to post a bond.

4 (b) The commission may, with the approval of the Attorney
5 General, include in any action authorized by subsection (a) a
6 claim for [restitution or] damages under section 501, 502 or 503
7 on behalf of the persons injured by the act or practice
8 constituting the subject matter of the action, and the court
9 shall have jurisdiction to award appropriate relief to such
10 persons, if the court finds that enforcement of the rights of
11 such persons by private civil action, whether by class action or
12 otherwise, would be so burdensome or expensive as to be
13 impractical.

14 (c) Any person violating any (i) stop order issued under
15 section 208, (ii) cease advertising order issued under section
16 606(c), (iii) cease and desist order issued under section
17 606(c.1), (iv) order of the commission requiring a rescission
18 pursuant to section 513, or (v) order of the commission imposing
19 any bar described in section 512 from which no appeal of such an
20 order has been taken pursuant to section 607(d) of the act or
21 which has been sustained on appeal, or which has been appealed
22 but where no supersedeas has been granted for the period in
23 which the order has been violated, shall be deemed to be in
24 contempt of such order. Upon petition and certification of such
25 order by the commission, the Commonwealth Court or any of the
26 courts of common pleas, if it finds after hearing or otherwise
27 that the person is not in compliance with the order, shall
28 adjudge the person in contempt of the order and shall assess
29 such civil penalties of an amount not less than three thousand
30 dollars (\$3,000) nor greater than ten thousand dollars (\$10,000)

1 per violation and issue such further orders as it may deem
2 appropriate.

3 Section 510. Investigations and Subpoenas.--(a) The
4 commission in its discretion:

5 (i) May make such public or private investigations within or
6 without this State as it deems necessary to determine whether
7 any person has violated or is about to violate this act or any
8 rule or order hereunder, or to aid in the enforcement of this
9 act or in the prescribing of rules and forms hereunder;

10 (ii) May, for a reasonable time not exceeding thirty days,
11 take possession of the books, [records] papers, accounts and
12 other [papers] records, however created, produced or stored,
13 pertaining to the business of any broker-dealer or investment
14 adviser or pertaining to the activities of any issuer in
15 connection with any transaction in a security, whether or not
16 exempted under section 202 or 203 and the use of any proceeds
17 obtained therefrom, and place a keeper in exclusive charge of
18 them in the place where they are usually kept. During such
19 possession no person shall remove or attempt to remove any of
20 the books, records, accounts, or other papers except pursuant to
21 a court order or with the consent of the commission; but the
22 directors, officers, partners, and employees of the broker-
23 dealer, investment adviser or issuer may examine them, and
24 employees shall be permitted to make entries therein reflecting
25 current transactions;

26 (iii) May require or permit any person to file a statement
27 in writing, under oath or otherwise as the commission
28 determines, as to all the facts and circumstances concerning the
29 matter being investigated;

30 (iv) May publish information concerning any violation of

1 this act or any rule or order hereunder or concerning
2 securities, or practices in the sale thereof, which appear or
3 tend to be unfair, inequitable or fraudulent, but only where it
4 deems such publication to be in the public interest and for the
5 protection of investors; and

6 (v) May hold hearings, upon reasonable notice, in respect of
7 any matters arising out of the administration of this act.

8 (vi) May record presentations made at meetings, seminars or
9 other assemblies conducted in a public forum which may involve
10 the offer or sale of securities in this State in any manner that
11 the commission determines appropriate.

12 (b) For the purpose of any investigation, hearing or
13 proceeding under this act, the commission or any officer
14 designated by it may administer oaths and affirmations, subpoena
15 witnesses, compel their attendance, take evidence and require
16 the production of any books, papers, correspondence, memoranda,
17 agreements or other documents or records which the commission
18 deems relevant or material to the inquiry.

19 (c) In case of contumacy by, or refusal to obey a subpoena
20 issued to, any person, the Commonwealth Court or any of the
21 several courts of common pleas of Pennsylvania, upon application
22 by the commission, may issue to the person an order requiring
23 him to appear before the commission, or the officer designated
24 by it, there to produce documentary evidence, if so ordered, or
25 to give evidence touching the matter under investigation or in
26 question. Failure to obey the order of the court may be punished
27 by the court as a contempt.

28 (d) (i) If, in a proceeding before the commission, any
29 person shall refuse to testify or to produce evidence of any
30 other kind on the ground that his testimony or evidence may tend

1 to incriminate him, that person may be ordered to give such
2 testimony. The order to testify shall not be given except upon
3 an order of court after a hearing in which the Attorney General
4 has established a need for the grant of immunity, as hereinafter
5 provided;

6 (ii) The Attorney General may petition the Commonwealth
7 Court or the court of common pleas of the county in which such
8 person resides (if he is a resident of this State) for an order
9 requiring any person to testify or produce evidence, which
10 petition may be joined in by the district attorney of such
11 county. Such petition shall set forth the nature of the
12 investigation and the need for the immunization of the witness;

13 (iii) No such witness shall be prosecuted or subjected to
14 any penalty or forfeiture, nor shall there be any liability on
15 the part of and no cause of action of any nature shall arise
16 against, any such witness for or on account of any transaction,
17 matter or thing concerning which he is compelled, after having
18 claimed his privilege against self-incrimination, to testify or
19 produce evidence, nor shall testimony so compelled be used as
20 evidence in any criminal proceeding against him in any court;

21 (iv) No person so ordered to testify or to produce evidence,
22 shall be exempt from any punishment or forfeiture for perjury
23 committed by him while so testifying. Such testimony shall be
24 admissible against him in any criminal action or other
25 proceeding concerning such perjury;

26 (v) Any person who shall refuse or decline to testify or
27 produce evidence of any other kind after being granted immunity
28 and ordered by the court shall be guilty of criminal contempt
29 and, upon conviction thereof, shall be sentenced to pay a fine
30 of not exceeding one thousand dollars (\$1,000), or to undergo

1 imprisonment for a period not exceeding one year, or both.

2 Section 22. Section 511 of the act, amended June 19, 1996
3 (P.L.340, No.54), is amended to read:

4 Section 511. Criminal Penalties.--(a) Except as provided in
5 subsection (b), a person who wilfully violates any material
6 provision of this act, except section 407(a), or any rule under
7 this act, or any order of which he has notice, or who violates
8 section 407(a) knowing that the statement made was false or
9 misleading in any material respect, commits a misdemeanor of the
10 first degree and may be fined not more than five thousand
11 dollars (\$5,000) or imprisoned not more than five years, or
12 both. In addition to fine or imprisonment, or both, a person may
13 be sentenced to make restitution.

14 (b) A person who wilfully violates section [401(a), 401(c) <—
15 ~~for 401, 408 or 409~~ OR 408] 401, 408 OR 409 commits a felony of the <—
16 third degree and may be fined not more than ten thousand dollars
17 (\$10,000) if none of the victims of the person's violative
18 conduct were individuals aged 65 or more and not more than fifty
19 thousand (\$50,000) if any of the victims of the person's
20 violative conduct were individuals aged 65 or more or imprisoned
21 for not more than seven years, or both. In addition to fine or
22 imprisonment, or both, the person may be sentenced to make
23 restitution.

24 (c) Each of the acts specified in subsections (a) and (b)
25 shall constitute a separate offense and a prosecution or
26 conviction for any one of such offenses shall not bar
27 prosecution or conviction for any other offense. No indictment
28 or information may be returned under this act more than five
29 years after the alleged violation.

30 Section 23. The act is amended by adding sections to read:

1 Section 512. Statutory Bars.--(a) After giving notice and
2 opportunity for a hearing, the commission, where it has
3 determined that a person willfully violated the act or any rule
4 or order thereunder or knowingly aided in the act or transaction
5 constituting such violation, may issue an order accompanied by
6 written findings of fact and conclusions of law which bars,
7 conditionally or unconditionally, and either permanently or for
8 such period of time as the commission shall determine, such
9 person from:

10 (1) Representing an issuer offering or selling securities in
11 this State;

12 (2) Acting as promoter, officer, director, or partner of an
13 issuer (or an individual occupying a similar status or
14 performing similar functions) offering or selling securities in
15 this State or of a person who controls or is controlled by such
16 issuer;

17 (3) Being registered as a broker-dealer, agent, investment
18 adviser or investment adviser representative under section 301;

19 (4) Being an affiliate of any person registered under
20 section 301; or

21 (5) Relying upon an exemption from registration contained in
22 section 202, 203, or 302 of the act.

23 (b) The commission shall not issue an order under this
24 section with respect to any public proceeding which was
25 instituted prior to the date of enactment.

26 (C) IT SHALL BE UNLAWFUL FOR ANY BROKER-DEALER OR INVESTMENT <—
27 ADVISER TO PERMIT A PERSON AS TO WHOM AN ORDER IS IN EFFECT
28 UNDER THIS SECTION, WITHOUT THE CONSENT OF THE COMMISSION, TO
29 BECOME OR REMAIN ASSOCIATED WITH A BROKER-DEALER OR INVESTMENT
30 ADVISER IN CONTRAVENTION OF SUCH ORDER IF THE BROKER-DEALER OR

1 INVESTMENT ADVISER KNEW OR IN THE EXERCISE OF REASONABLE CARE
2 SHOULD HAVE KNOWN OF SUCH ORDER.

3 (D) IT SHALL BE UNLAWFUL FOR ANY ISSUER TO PERMIT, WITHOUT
4 THE CONSENT OF THE COMMISSION, A PERSON AS TO WHOM AN ORDER IS
5 IN EFFECT UNDER THIS SECTION TO PARTICIPATE IN THE OFFER OR SALE
6 OF THE ISSUER'S SECURITIES IN THIS STATE IN CONTRAVENTION OF
7 SUCH ORDER IF THE ISSUER KNEW OR IN THE EXERCISE OF REASONABLE
8 CARE SHOULD HAVE KNOWN OF SUCH ORDER.

9 Section 513. Commission Orders of Rescission.--After giving
10 notice and opportunity for a hearing, the commission, where it
11 has determined that an issuer willfully violated section 201 or
12 401 of the act, may issue an order accompanied by written
13 findings of fact and conclusions of law which requires the
14 issuer or any control person of the issuer who knowingly aided
15 in the act or transaction constituting such violation to effect
16 a rescission offer in a manner which the commission, by rule or
17 order may prescribe, to persons who purchased securities of the
18 issuer in this State involved in the violation. The commission
19 shall not issue an order under this section with respect to any
20 public proceeding which was instituted prior to the date of
21 enactment.

22 Section 24. Section 602(b.1), (iv), (vi), (vii), (viii) and
23 (ix) and (d.1) of the act, amended or added December 12, 1990
24 (P.L.755, No.(90) and December 7, 1994 (P.L.869, No.126), are
25 amended and the section is amended by adding a subsection to
26 read:

27 Section 602. Fees.--* * *

28 (b.1) Filing fees for sales of securities:

29 * * *

30 (iv) In the case of registration statement

1 filings under section 205 or 206 or notice filings
2 under section 211 by an open-end or closed-end
3 investment company, face amount certificate
4 company or unit investment trust, as such persons
5 are classified in the Investment Company Act of
6 1940.

7 Based upon the
8 maximum aggregate
9 offering price at which
10 such securities are to be
11 offered in this State
12 during the effective
13 period of the
14 registration, or notice
15 filing, the fee for (A)
16 \$4,000,000 or less, 1/20
17 of 1% with a minimum fee
18 of \$350; (B) more than
19 \$4,000,000 but less than
20 \$100,000,000, \$3,000; (C)
21 \$100,000,000 or more,
22 \$3,500; or (D) for an
23 indefinite amount of
24 securities to be offered
25 in this State during the
26 effective period of the
27 registration or notice
28 filing. The amount
29 specified in (C) plus a
30 \$500 assessment specified

1 in section 602.1(a)(5).
2 [*;* except that, in the
3 case of a registration
4 statement in which the
5 issuer, pursuant to its
6 articles of incorporation
7 or other governing
8 instruments, is
9 restricted to holding
10 exclusively debt
11 securities of other
12 persons having fixed
13 final maturity dates
14 occurring within 200 days
15 from the initial
16 effective date of the
17 registration statement
18 for the issuer's
19 securities filed under
20 the Securities Act of
21 1933, the maximum fee
22 payable under the above
23 schedule shall not exceed
24 \$1,500.

25 If an open-end or closed-end investment company, face amount
26 certificate company or unit investment trust, as such persons
27 are classified in the Investment Company Act of 1940, which has
28 an effective registration under section 205 or 206 elects to
29 convert to an exemption under section 203(i) without extending
30 the effective period of the exemption under section 203(i)

1 beyond the date upon which the registration under section 205 or
2 206 would have otherwise terminated, there shall be no
3 additional filing fee required.]

4 * * *

5 (vi) When a registration statement or notice
6 filing made under section 211(a) is withdrawn
7 before the effective date or a pre-effective stop
8 order is entered under section 208, the amount
9 that the commission shall retain from the filing
10 fee and, if applicable, an assessment imposed
11 under section 602.1(a)(5), shall be:

12 (A) Under section 205 or a notice filing under
13 section 211(a)..... 300

14 (B) Under section 206..... 175

15 (vii) [Filing an application for exemption
16 from registration under section 202(g)..... 50]

17 Filing a notice on SEC Form D under section
18 211(b)..... 500

19 (viii) Filing an application for exemption
20 from registration [for an offering of securities
21 to be sold] under section 203(d) or (s):

22 (A) Where the maximum aggregate offering price
23 at which such securities are offered in this State
24 is less than [\$100,000] \$1,000,000..... [50] 150

25 (B) Where the maximum aggregate offering price
26 at which such securities are offered in this State
27 is [\$100,000 or more but less than] \$1,000,000 or
28 more..... [150] 400

29 [(C) Where the maximum aggregate offering
30 price at which such securities are being offered

1 in this State is \$1,000,000 or more..... 400]

2 (ix) Filing an application for exemption from
3 registration under section 203[(n)] (t)..... [50] 500

4 * * *

5 (b.2) There shall be no refund of any filing fee specified
6 in subsection (b.1)(vii)-(x)).

7 * * *

8 (d.1) Every applicant for an initial or renewal license
9 under section 301 shall pay a filing fee of two hundred fifty
10 dollars (\$250) in the case of a broker-dealer, fifty dollars
11 (\$50) in the case of an agent, two hundred dollars (\$200) in the
12 case of an investment adviser and fifty dollars (\$50) in the
13 case of an [associated person] investment adviser
14 representative. The term of an agent's or associated person's
15 registration hereunder shall be concurrent with that of his
16 employer, if a broker-dealer or an investment adviser. When an
17 agent changes employers, a fifty-dollar (\$50) fee shall be paid.
18 When an [associated person] investment adviser representative
19 changes employers, a fifty-dollar (\$50) fee shall be paid. When
20 an application is denied or withdrawn or a registration revoked,
21 the filing fee shall be retained. A federally covered adviser
22 shall pay an annual notice filing fee of three hundred dollars
23 (\$300).

24 * * *

25 Section 25. Section 602.1(a), (c)(1) and (4) and (d) of the
26 act, amended or added May 4, 1993 (P.L.4, No.4) and December 7,
27 1994 (P.L.869, No.126) are amended to read:

28 Section 602.1. Assessments.--(a) (1) Each agent and
29 [associated person] investment adviser representative, when
30 applying for an initial license under section 301 or changing

1 employers, shall pay a compliance assessment in accordance with
2 the following schedule: [twenty-five dollars (\$25) for the
3 period beginning with the date of enactment of this section
4 through June 30, 1995,] twenty-seven dollars (\$27) for the
5 period July 1, 1995, through June 30, 1998, [and] thirty dollars
6 (\$30) for the period July 1, 1998 through June 30, 2001, thirty-
7 two dollars (\$32) for the period July 1, 2001 through June 30,
8 2004 and thirty-five dollars (\$35) thereafter.

9 (2) Each agent and [associated person] investment adviser
10 representative, when applying for a renewal license under
11 section 301, shall pay a compliance assessment in accordance
12 with the following schedule: [ten dollars (\$10) for the period
13 beginning with the date of enactment of this section through
14 June 30, 1995,] twelve dollars (\$12) for the period July 1,
15 1995, through June 30, 1998, [and] fifteen dollars (\$15) for the
16 period July 1, 1998 through June 30, 2001, seventeen dollars
17 (\$17) for the period July 1, 2001 through June 30, 2004 and
18 twenty (\$20) thereafter.

19 (3) Each broker-dealer, when applying for an initial or
20 renewal license under section 301 shall pay a compliance
21 assessment in accordance with the following schedule: one
22 hundred dollars (\$100) for the period beginning with the date of
23 enactment of this paragraph through June 30, 2001 and one
24 hundred fifty dollars (\$150) thereafter.

25 (4) Each investment adviser when applying for an initial or
26 renewal license under section 301 shall pay a compliance
27 assessment in accordance with the following schedule: fifty
28 dollars (\$50) for the period beginning with the date of
29 enactment of this paragraph through June 30, 2001 and seventy-
30 five dollars (\$75) thereafter.

1 (5) The assessment for a notice filing by an open-end or
2 closed-end investment company, face amount certificate company
3 or unit investment trust, as such persons are classified in the
4 Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1
5 et seq.), for an indefinite amount of securities to be offered
6 in this State during the effective period of the notice filing
7 shall be five hundred dollars (\$500) beginning with the date of
8 enactment of this paragraph.

9 * * *

10 (c) After giving notice and opportunity for a hearing, the
11 commission may issue an order accompanied by written findings of
12 fact and conclusions of law which imposes an administrative
13 assessment in [an amount] in the amounts provided in paragraph
14 (1) against a broker-dealer, agent, investment [advisor] adviser
15 or [associated person] investment adviser representative
16 registered under section 301 or an affiliate of [the] any
17 broker-dealer or investment [advisor] adviser where the
18 commission [finds] determines that the person [either] willfully
19 has violated this act or a rule or order of the commission under
20 this act or has engaged in dishonest or unethical practices in
21 the securities business; [or] has taken unfair advantage of a
22 customer[.] ; or has failed reasonably to supervise its agents
23 or employees or against any other person if the commission
24 determines that the person willfully violated sections 401(a) or
25 (c), 406, 408 or 409, 409 OR 512(D) of the act; section 401(b) <—
26 or 407 of the act; or a cease and desist order issued by the
27 commission under section 606(c.1) of this act.

28 (1) The commission, in issuing an order under this
29 subsection, may impose [an] the administrative [assessment]
30 assessments set forth below. [of up to ten thousand dollars

1 (\$10,000) for a single violation or of up to fifty thousand
2 dollars (\$50,000) for multiple violations in a single proceeding
3 or a series of related proceedings.] Each act or omission that
4 provides a basis for issuing an order under this subsection
5 shall constitute a separate violation.

6 (i) In issuing an order against any broker-dealer, agent,
7 investment adviser, or investment adviser representative
8 registered under section 301 or an affiliate of any broker-
9 dealer or investment adviser, the commission may impose an
10 administrative assessment of up to twenty-five thousand dollars
11 (\$25,000) for a single violation or up to two hundred fifty
12 thousand dollars (\$250,000) for multiple violations in a single
13 proceeding or a series of related proceedings. If any of the
14 victims of the person's violative conduct were individuals aged
15 65 or more, the commission also may impose a special
16 administrative assessment in addition to the foregoing amounts
17 of up to twenty-five thousand dollars (\$25,000).

18 (ii) In issuing an order against a person for willful
19 violation of section 401(a) or (c), 404, 406, 408 ~~or 409~~, 409 OR <—
20 512(D) or for willful violation of a cease and desist order
21 issued under section 606(c.1), the commission may impose an
22 administrative assessment of up to twenty-five thousand dollars
23 (\$25,000) for a single violation or up to one hundred fifty
24 thousand dollars (\$150,000) for multiple violations in a single
25 proceeding or a series of related proceedings. In addition to
26 the foregoing assessment, the commission also may impose a
27 special administrative assessment of up to twenty-five thousand
28 dollars (\$25,000) for each of the provisions described as
29 follows, that the commission determines are applicable:

30 (A) The person, within seven years of the commission taking

action under this subsection, has been the subject of a criminal felony conviction, an injunction issued by any court of competent jurisdiction or an order of the Securities and Exchange Commission, the Commodity Futures Trading Commission, the securities administrator of another state or the securities regulatory authority of another country which found that the person willfully had violated any provision of the Federal or State securities or commodities laws or the securities, commodities or banking laws of another country, provided that the foregoing convictions occurred, or the injunctions or orders were entered, prior to the violation for which this special administrative assessment is being imposed.

(B) The person's violative conduct involved individuals aged 65 or more.

(C) The person's violative conduct involved boiler room tactics which included, without limitation, use of any high-pressure sales tactics designed to create an artificially short time period for which the person being solicited is pressured to make an investment decision or overcome the person's reluctance to commit to the investment being offered, use of scripts designed to allay any objections or concerns expressed by the person being solicited, or making repeated telephone calls to the same person pressuring the person to make an immediate investment decision.

(iii) In issuing an order against persons for willful violation of section 401(b) or 407, the commission may impose an administrative assessment of up to twenty-five thousand dollars (\$25,000) for each of the criteria described in subparagraphs (ii)(A) and (C) that the commission determines are applicable. No assessment shall be imposed under this subclause if the

1 person is subject to an administrative assessment imposed under
2 any other provision of this subsection.

3 * * *

4 (4) The commission shall not impose an administrative
5 assessment with respect to any public proceeding which was
6 instituted prior to the date of its enactment [of this section].

7 (d) Each application filed with the commission under section
8 210 by an open-end or closed-end investment company, face amount
9 certificate company or unit investment trust, as those persons
10 are classified in the Investment Company Act of 1940, (54 Stat.
11 789, 15 U.S.C. § 80a-1 et seq.) to register securities sold in
12 this State in excess of the aggregate amount of securities
13 registered under section 205 or 206, and each amendment to a
14 notice filing submitted relating to securities sold in the State
15 in excess of those included on an earlier notice filing, shall
16 include the payment of an oversale assessment which shall be
17 three times an amount which equals the difference between the
18 registration or notice filing fee that would have been payable
19 under section 602(b.1) based upon the total amount of securities
20 sold in this State and the total registration or notice filing
21 fees previously paid to the commission with respect to such
22 registration or notice filing, but in no case shall the oversale
23 assessment be less than three hundred fifty dollars (\$350) or be
24 more than three thousand dollars (\$3,000).

25 * * *

26 Section 26. Section 603 of this act, amended March 25, 1982
27 (P.L.1, No.1), is amended to read:

28 Section 603. Administrative Files.--(a) A document is filed
29 when it is received by the commission or by any other person
30 which the commission by regulation may designate.

1 (b) The commission shall keep a register of all registrants,
2 [and] registration statements and notice filings which are or
3 have ever been effective under this act and predecessor laws and
4 all denial, suspension or revocation orders which have been
5 entered under this act and predecessor laws. The register shall
6 be open for public inspection except with respect to summary
7 suspensions under sections 208(c) and 305(d).

8 (c) The information contained in or filed with any
9 registration statement, application, notice filing or report
10 shall be made available to the public in accordance with
11 regulations prescribed by the commission; provided that, upon
12 proper showing of the registrant or issuer, the commission shall
13 treat certain filings as confidential.

14 (d) The commission upon request shall furnish to any person,
15 at a reasonable charge, photostatic or other copies, certified
16 under seal of the commission if certification is requested, of
17 any entry in the register or any order or other document made
18 available to the public under subsection (c) above.

19 Section 27. Section 606 of the act, amended June 25, 1986
20 (P.L.256, No.68) is amended to read:

21 Section 606. Miscellaneous Powers of Commission.--(a) The
22 commission may, by regulation, require any issuer of securities
23 registered under this act or exempted from registration under
24 section 203(d)[, (o), or (q)], which issuer [is not a reporting
25 company] has not filed reports with the Securities and Exchange
26 Commission pursuant to sections 13 or 15(d) of the Securities
27 Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. §§ 78m or 78o(d),
28 to distribute financial information to its [shareholders]
29 security holders at least annually.

30 (b) If in its opinion the public interest and the protection

1 of investors, so require, the commission may apply to a court of
2 competent jurisdiction for an order, suspending all trading in
3 this State by broker-dealers and agents in any security for any
4 period.

5 (c) No person shall publish in this State any advertisement
6 concerning any security (other than advertisements relating to
7 federally covered securities, tombstone advertisements permitted
8 under the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a
9 et seq.) and the Investment Company Act of 1940 (54 Stat. 789,
10 15 U.S.C. § 80a-1 et seq.) and the rules and regulations
11 promulgated thereunder) except in accordance with such rules as
12 the commission may promulgate from time to time. No person shall
13 publish any advertisement concerning any security in this State
14 after the commission finds that the advertisement contains any
15 statement that is false or misleading in any material respect or
16 omits to make any material statement necessary in order to make
17 the statements made, in the light of the circumstances under
18 which they are made, not misleading and so notifies the person
19 in writing. Such notification may be given summarily without
20 notice or hearing. Within thirty days after the receipt of a
21 notification under this section, the person desiring to use the
22 advertisement may request in writing that the order be
23 rescinded. Upon the receipt of such a written request, the
24 matter shall be set down for hearing to commence within thirty
25 days after such receipt unless the person making the request
26 consents to a later date. After such hearing, the commission
27 shall determine whether to affirm and continue or to rescind
28 such order.

29 (c.1) Whenever the commission finds that any person has
30 engaged or is about to engage in any act or practice

1 constituting a violation of any provision of this act or any
2 rule or order thereunder, the commission may order such person
3 to cease and desist from such act or practice and shall notify
4 the person in writing. Notification may be given summarily
5 without notice or hearing. Within thirty days after receipt of a
6 notification under this section, the person desiring to engage
7 in such act or practice may file a written request that the
8 order be rescinded. Upon receipt of the written request, the
9 matter will be set down for a hearing to commence within thirty
10 days after such receipt unless the person making the request
11 consents to a later date. After such hearing, the commission
12 shall determine whether to affirm and continue, modify or
13 rescind such order.

14 (d) The commission may, by regulation, delegate any powers
15 specified in this act to be exercised by the commission to
16 members of the commission's staff, except for powers related to
17 hearings.

18 Section 28. Section 609 of the act is amended to read:

19 Section 609. Regulations, Forms and Orders.--(a) The
20 commission may make, amend and rescind any regulations, forms
21 and orders that are necessary to carry out this act, including
22 regulations and forms governing registration statements, notice
23 filings, applications and reports, and defining any terms,
24 whether or not used in this act, insofar as the definitions are
25 not inconsistent with this act. All regulations of the
26 commission (other than those relating solely to its internal
27 administration) shall be of general application and future
28 effect and shall be made, amended or rescinded in accordance
29 with the act of June 4, 1945 (P.L.1388, No.442), known as the
30 "Administrative Agency Law," and the act of July 31, 1968

1 (P.L.769, No.240), known as the "Commonwealth Documents Law[,]."
2 [and no regulation shall be effective until a public hearing is
3 held thereon or until thirty days after the regulation is
4 published pursuant to such "Commonwealth Documents Law."] For
5 the purpose of rules and forms, the commission may classify
6 securities, persons and matters within its jurisdiction, and
7 prescribe different requirements for different classes. The
8 commission may, in its discretion, waive any requirement of any
9 regulation or form in situations where, in its opinion, such
10 requirement is not necessary in the public interest or for the
11 protection of investors.

12 (b) No regulation, form or order may be made, amended or
13 rescinded unless the commission finds that the action is
14 necessary or appropriate in the public interest and for the
15 protection of investors and consistent with the purposes fairly
16 intended by the policy and provisions of this act.

17 (c) [The] Subject to the limitations of the Securities Act
18 of 1933, (48 Stat. 74, 15 U.S.C. § 77a et seq.), the Securities
19 Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a et seq.) and
20 the Investment Advisers Act of 1940 (54 Stat. 847, 15 U.S.C. §
21 80a-1 et seq.), the commission may by regulation or order
22 prescribe the kind, form and content of financial statements
23 required under this act, the fiscal or other periods and dates
24 for such statements, the circumstances under which consolidated
25 or other combining financial statements shall be filed, or other
26 requirements it deems necessary for financial statement
27 presentation purposes, and whether any required financial
28 statements shall be certified by independent [public or]
29 certified accountants in good standing with this State. All
30 financial statements shall be prepared reflecting conformity

1 with generally accepted accounting principles in the United
2 States consistently applied, unless variance therefrom is
3 disclosed in an acceptable manner, and shall reflect pertinent
4 disclosures by financial notes or other form, where required for
5 that data in compliance with pronouncements by recognized
6 authoritative accounting bodies or if applicable, by
7 governmental agencies, and [unless] if otherwise permitted by
8 regulation or order of the commission.

9 (d) No provision of this act imposing any liability applies
10 to any act done or omitted in good faith in conformity with any
11 regulation, form or order of the commission, notwithstanding
12 that the regulation form or order may later be amended or
13 rescinded or be determined to be invalid for any reason.

14 (e) The commission may propose and adopt regulations under
15 this act prior to its effective date, provided that such
16 regulations do not take effect until on or after the effective
17 date of this act.

18 (f) An application for registration of securities or
19 registration of a broker-dealer, agent, investment adviser or
20 investment adviser representative shall be deemed abandoned if
21 the application has been on file with the commission for a
22 minimum of twelve consecutive months and the applicant has
23 failed to respond to the commission's notice of warning of
24 abandonment within sixty calendar days of the date of the
25 warning. There shall be no refund of any fees or assessments
26 paid by the applicant.

27 Section 29. The act is amended by adding a section to read:
28 Section 611. Cancellation of Federal Preemption.--Under the
29 authority of section 6(c) of the Philanthropy Protection Act of
30 1995 (Public Law 104-62, 15 U.S.C. § 80a-3a(c)), on and after

1 the effective date of this section, section 6 of the
2 Philanthropy Protection Act of 1995 (15 U.S.C. § 80a-(a) shall
3 not preempt the laws of this Commonwealth referred to in section
4 6 of the Philanthropy Protection Act of 1995. This preemption
5 shall apply to all administrative and judicial actions commenced
6 on or after the effective date of this section.

7 Section 30. This act shall take effect as follows:

8 (1) The following provisions shall take effect
9 immediately:

10 (i) The addition of section 611 of the act.

11 (ii) This section.

12 (2) The remainder of this act shall take effect in 60
13 days.