

PENNSYLVANIA SECURITIES ACT OF 1972 - OMNIBUS AMENDMENTS

Act of Nov. 24, 1998, P.L. 829, No. 109

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SB 1385

AN ACT

Amending the act of December 5, 1972 (P.L.1280, No.284), entitled "An act relating to securities; prohibiting fraudulent practices in relation thereto; requiring the registration of broker-dealers, agents, investment advisers and securities; and making uniform the law with reference thereto," further providing for definitions; further providing, in the securities area, for registration, for exemptions, for registration by coordination, for registration in general, for registration sanctions, for records and for retroactive registration; providing for Federally covered securities; further providing, in the area of broker-dealers, agents and investment advisers, for registration, for exemptions, for registration procedure, for postregistration procedure, for registration sanctions; further providing for prohibitions, for contract requirements and for misrepresentations; providing for school district prohibitions; further providing for civil liability, for enforcement, for investigations and for criminal penalties; providing for barring activities and for rescission; further providing for fees, for assessments, for administrative files, for powers of the Pennsylvania Securities Commission and for regulations and orders; and canceling Federal preemption.

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

Section 1. Section 102(c), (c.1), (e), (j), (k) and (o) of the act of December 5, 1972 (P.L.1280, No.284), known as the Pennsylvania Securities Act of 1972, added December 18, 1990 (P.L.755, No.190), are amended and the section is amended by adding subsections to read:

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

* * *

(c) "Agent" means any individual, other than a broker-dealer, who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include: (i) an individual who represents an issuer in effecting transactions in securities exempted by section 202 [or in effecting], transactions exempted by section 203 [and does not include] **or transactions in a covered security described in sections 18(b)(3) and (4)(D) of the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77 r) if no compensation is paid or given directly or indirectly for soliciting any person in this State in connection with any of the foregoing transactions;** (ii) an individual who represents a broker-dealer in effecting transactions in this State, which transactions are limited to those described in section 15(h)(2) of the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C.

§ 78 o(h)(2)); and (iii) an individual who has no place of business in this State if he effects transactions in this State exclusively with broker-dealers. [An] **Except where representing an issuer in effecting transactions in securities registered under section 205 or 206, a bona fide** officer, director, or partner or employe of a broker-dealer or issuer, or an individual occupying a similar status or performing similar functions, is an agent only if he otherwise comes within this definition and receives compensation directly or indirectly related to purchases or sales of securities.

[(c.1) "Associated person" means any partner, officer or director of (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:

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

(ii) Manages accounts or portfolios of clients;

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

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

* * *

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

(i) An agent;

(ii) An issuer;

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

(iv) An executor, administrator, guardian, conservator or pledgee;

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

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

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

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

* * *

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

(f.2) **"Federally covered security" means any security that is a covered security under section 18(b) of the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77r(b)).**

* * *

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

- (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 employees 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 Government, State or any agency or political subdivision thereof, **except public school districts of this State**, or any other person so designated by regulation of the commission.

* * *

(o) "Promoter" includes (i) any person who, acting alone or in conjunction with one or more other persons, directly or indirectly takes initiative in founding and organizing the business or enterprise of an issuer; [and] (ii) any person who, in connection with the founding and organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, or both services and property, ten per cent or more of any class of securities of the issuer or ten per cent or more of the proceeds from the sale of any class of securities. [However, a person who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of this clause if such person does not otherwise take part in founding and organizing the enterprise.] **For purposes of sections 207 and 208, a "promoter" includes (iii) any person who is described in clauses (i) and (ii); (iv) any person who is an officer or director of the issuer; (v) any person who legally or beneficially owns, directly or indirectly, five per cent or more of any class of the issuer's equity securities; or (vi) any person who is an affiliate of a person described in clause (i), (ii), (iii), (iv) or (v). "Promoter" does not include a person who receives securities or proceeds solely as underwriting compensation if that person does not otherwise come within the definition of "promoter."**

* * *

Section 2. The heading of Part II of the act is amended to read:

PART II

REGISTRATION OF SECURITIES AND NOTICE FILINGS BY ISSUERS OF FEDERALLY COVERED SECURITIES

Section 3. Section 201 of the act is amended to read:

Section 201. Registration Requirement.--It is unlawful for any person to offer or sell any security in this State unless the security is registered under this act [or], the security or transaction is exempted under section 202 or 203 hereof **or the security is a federally covered security.**

Section 4. The introductory paragraph and subsection (g) of section 202 of the act, amended December 18, 1990 (P.L.755, No.190), are amended to read:

Section 202. Exempt Securities.--The following securities are exempted from [section] **sections 201 and 211:**

* * *

(g) Any [investment contract] **security** issued in connection with an employee's stock option, purchase, savings, pension, profit-sharing or similar benefit plan[, provided, in the case of plans adopted after the effective date hereof which are not qualified under section 401 of the Internal Revenue Code of 1954 and which provide for contribution by employees, the

commission (i) is notified in writing fifteen days before the commencement of the offering in this State; and (ii) the filing fee specified in section 602(b.1) is paid].

* * *

Section 5. The introductory paragraph and subsections (d), (e), (h), (i.1), (j), (n), (o) and (q) of section 203 of the act, amended or added May 9, 1984 (P.L.235, No.52), December 18, 1990 (P.L.755, No.190) and December 7, 1994 (P.L.869, No.126), are amended and the section is amended by adding subsections to read:

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

* * *

(d) Any sales by an issuer to not more than twenty-five persons in this State during a period of twelve consecutive months if (i) the issuer shall obtain the written agreement of each such person not to sell the security within twelve months after the date of purchase; (ii) no public media advertisement is used or mass mailing made in connection with soliciting such sales; (iii) no cash or securities is given or paid, directly or indirectly, to any promoter as compensation in connection therewith unless such compensation is given or paid in connection with a sale made by a broker-dealer registered pursuant to section 301 and any person receiving such compensation is either such broker-dealer or an agent registered pursuant to section 301 of such broker-dealer; (iv) the filing fee specified in section 602(b.1) is paid; and (v) the issuer has provided written notice to each such person of the right to withdraw an acceptance as provided by section 207(m)(2). Purchasers of securities registered under this act or sold in reliance upon an exemption under this act other than this subsection (d) [or subsection (f)], **(f) or (s)** shall not be included in computing the twenty-five persons for purposes of this exemption. A notice in the form prescribed by the commission, signed by the officers or directors of the issuer under oath and stating the name, principal business address of the issuer, proposed use of the proceeds from the sale and such facts as are necessary to establish this exemption shall be filed, together with a copy of any offering literature used in connection with such offer or 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.

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

* * *

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

(i.1) Any sale of an equity security, [(except securities of 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. § 80 a-1 et seq.**)], if: (i) the securities are proposed to be registered under section 5 of the Securities Act of 1933 (**15 U.S.C. § 77 e**) or exempted under Regulation A promulgated under section 3(b) thereof (**15 U.S.C. § 77 c(b)**) and, in fact, become registered under section 5 of the Securities Act of 1933 (**15 U.S.C. § 77 e**) or exempted from registration pursuant to Regulation A promulgated under section 3(b) of such act; (ii) a copy of any final prospectus or final offering circular utilized or proposed to be utilized in connection therewith is [mailed to] **filed with** the commission [within two business days after such prospectus or offering circular is filed with the Securities and Exchange Commission] **at the time the notice required by clause (viii) is filed;** (iii) the applicable filing fee specified in section 602(b.1) is paid with respect to such offering; (iv) the issuer of the security is a reporting company **as defined in section 102(q);** (v) no stop order or refusal order is in effect and no public proceeding or investigation looking toward such an order is pending under the Securities Act of 1933 or this act; (vi) the equity security is listed on a national securities exchange registered under the Securities Exchange Act of 1934 (**48 Stat. 881, 15 U.S.C. § 78 a et seq.**) or quoted on the National Association of Securities Dealers Automated Quotation System; (vii) the issuer, at the time it files the notice required in clause (viii) with the commission, has not received an auditor's report for the immediately preceding fiscal year expressing substantial doubt about the issuer's ability to continue as a going concern unless the securities being sold in reliance upon this subsection are the subject of an offering that is being underwritten on a firm commitment basis by a broker-dealer registered under section 301; and (viii) the issuer has filed a notice with the commission in the form and manner which the commission, by regulation, may prescribe. As a condition of the continuing effectiveness of this exemption, copies of any post-effective amendment or sticker to such prospectus or offering circular must be [mailed to] **filed with** the commission within two business days after the same is filed with the Securities and Exchange Commission. An exemption under this section shall terminate upon the termination of the registration statement under section 5 (**15 U.S.C. § 77 e**) or the exemption from registration pursuant to Regulation A promulgated under section 3(b) (**15 U.S.C. § 77 c(b)**) of the Securities Act of 1933. For purposes of this subsection, the commission, by regulation, may define the term "equity security." [Any exemption in effect under this section as of the effective date of this subsection for the sale of securities of 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, shall terminate twelve months from the date the prospectus described in clause (ii) or exemption renewal was filed with the commission under this section. For all other issuers that have an exemption in effect under this subsection as of the effective date of this subsection, the exemption for the sale of securities by those issuers shall terminate twenty-four months after the effective date of this subsection.]

(j) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of

trust, or by an agreement for the sale of real estate or chattels if[,]: (i) the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit[.]; **(ii) no public media advertisement is used, mass mailing made or other form of general solicitation is utilized in connection with soliciting the transaction; and (iii) no compensation is paid or given directly or indirectly for soliciting any person in this State in connection with the transaction.**

* * *

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

(o) Any transaction incident to a vote by security holders, [(or written consent of some or all security holders in lieu of such vote)], pursuant to the articles of incorporation or the applicable corporation statute or other statute governing such person, or pursuant to a partnership agreement, a declaration of trust, trust indenture or any agreement among security holders on a merger, consolidation, sale of assets in consideration, in whole or **in** part, of the issuance of securities of another person, reclassification of securities, or reorganization involving the exchange of securities, in whole or in part, for the securities of any other person if, [but only if: (i) one party to such transaction is required or permitted to file proxy materials pursuant to section 14(a) of the Securities Exchange Act of 1934 or section 20 of the Investment Company Act of 1940 and does file such materials with the commission at least ten days prior to a meeting of security holders called for the purpose of approving such transaction; and such proxy materials are distributed to the security holders of each party to such transaction; or (ii) such materials as may be specified by regulation of the commission are prepared in connection with the proposed transaction and, after review by the commission, distributed to the security holders of each party to the transaction; provided, however, that clause (i) and (ii) of this subsection and section 602(b.1) shall not be applicable to any party to a transaction where not more than twenty-five per cent of the security holders of such party are residents of this State.] **in the case of any proposed transaction where no proxy materials are required or permitted to be filed with the Securities and Exchange Commission by either party to the transaction and where more than twenty-five per cent of the security holders of either party to the transaction are residents of this State, materials specified by regulation of the commission are prepared in connection with the proposed transaction and, after filing with**

and review by the commission, distributed to the security holders of each party to the transaction prior to the vote or solicitation of written consent and the filing fee specified in section 602(b.1) is paid.

* * *

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

* * *

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

(i) 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;

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

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

(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; and

(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 clause (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 or 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 disqualification existed under this subparagraph.

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

(i) The securities are sold in good faith reliance that the offering would qualify for an exemption from registration under section 5 of the Securities Act of 1933 (15 U.S.C. § 77e), 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 clause (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 disqualification existed under this subparagraph;

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

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

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

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

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

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

Section 205. Registration by Coordination.--(a)

Registration by coordination may be used for any offering for which a registration statement has been filed under the Securities Act of 1933 (**48 Stat. 74, 15 U.S.C. § 77 a et seq.**) or for any proposed sale pursuant to Regulation A promulgated under the exemption contained in section 3(b) of such act (**15 U.S.C. § 77 c(b)**) provided, except in the case of 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. § 80 a-1 et seq.**), such registration statement or notification of proposed sale has not become effective.

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

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

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

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

(iv) An undertaking to forward to the commission all future amendments to the Federal prospectus or offering circular, other than an amendment which merely delays the effective date of the registration statement, not later than the first business day after they are forwarded to or filed with the Securities and Exchange Commission, or such longer period as the commission permits.

(c) (1) A registration statement filed under this section for the offering of securities by 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, automatically becomes effective if (i) the Federal registration statement or notification is effective with the Securities and Exchange Commission; (ii) no stop order is in effect in this State and no proceeding is pending under section 208; (iii) the registration statement or a predecessor registration statement has been on file with the commission for at least five days; and (iv) the fee specified in section 602(b.1) has been paid.

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

(d) The registrant shall notify the commission promptly by telephone or telegram of the date and time when the Federal

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

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

Section 7. Section 207(g), (j.1) and (n) of the act, amended or added 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. § 80 a-1 et seq.), a registration by coordination is effective for one year from its effective date[, or any longer period during which]. **The effectiveness of a registration by coordination may be extended beyond the initial one-year effectiveness period in increments of one-year periods up to a maximum of three years from the initial effectiveness date, provided that** the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is still offering part of an unsold allotment or subscription taken by him as a participant in the distribution[, provided that] **and** the commission has been notified of such continued offering and the period thereof. A registration by coordination for an open-end or closed-end investment company[, or face amount certificate company [or unit investment trust], as such persons are classified in the Investment Company Act of 1940, is effective for the period beginning with its effective date and ending sixty days after the registrant's fiscal year end for the year in which the filing under section 205 became effective. A registration by coordination for a unit investment trust, as such a person is classified in the Investment Company Act of 1940, is 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 registration by qualification is effective for one year from its effective date. The fact that a registration statement has been effective in this State with respect to any security does not permit sales of securities of the same class by the issuer or an affiliate of the issuer if such person did not file the registration statement, unless a separate registration statement is filed and declared effective with respect thereto, or an exemption from registration is available. A registration statement may not be withdrawn after its effective date if any of the securities registered have been sold in this State, unless permitted by regulation or order of the commission. No registration statement is effective during the time a stop order is in effect under section 208. The effectiveness of a registration statement filed by an open-end or closed-end investment company, face amount certificate company or unit investment trust, as such [terms] **persons** are [defined] **classified** in the Investment Company Act of 1940, shall not be terminated as a result of a post-effective amendment seeking to register an additional amount of securities which becomes effective under the Securities Act of 1933 (**48 Stat. 74, 15 U.S.C. § 77 a et seq.**). [A registration statement for the sale of securities in this State by an open-end or closed-end investment company, face amount certificate company or unit investment trust that is effective under section 205 or 206 as of the effective date of this subsection shall terminate twelve months from the date the registration statement became effective.]

* * *

(n) For purposes of coordinating the provisions of this act with uniform procedures to facilitate electronic filings of registration statements **and notice filings, including, without limitation**, by [means of] a securities registration depository, the commission, by regulation, may adopt appropriate procedures or forms or waive or modify any provision of section 205 or 206 or this section. **The commission, by regulation, also may**

prescribe methods for accepting electronic or digital signatures on forms to be filed electronically with the commission.

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

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

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

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

(iii) The securities are the subject of an administrative stop order or similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any other Federal or State act applicable to the offering, but the commission may not institute a proceeding against an effective registration statement under this section more than one year from the date of the order or injunction relied on, and it may not enter an order under this section on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this act;

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

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

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

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

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

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

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

(c) The commission may [issue a summary order denying, postponing, suspending or revoking] **by order deny, postpone, suspend or revoke** the effectiveness of a registration statement [pending final determination of any proceeding under this section]. **No order may be entered without prior notice to the applicant or registrant, opportunity for hearing and written findings of fact and conclusions of law, except that the commission may by order summarily deny, postpone, suspend or revoke the effectiveness of a registration statement pending final determination of any proceeding under this subsection.** Upon the entry of the order, the commission shall promptly notify [each person specified in subsection (d)] **the applicant or registrant** that it has been entered and the reasons therefor and that, within fifteen days after the receipt of a written request, the matter will be set down for hearing. If no hearing is requested [or] **and none is ordered[,]** by the commission, [after notice of and opportunity for hearing to each person specified in subsection (d); may modify or vacate the order or extend it until final determination.] **the order will remain in effect until it is modified or vacated by the commission. If a hearing is requested or ordered, the commission, after notice of and opportunity for hearing to the applicant or registrant, may modify or vacate the order or make it permanent. No person may be considered to have violated section 201 solely by reason of an order entered under this section for any offer or sale effected after the entry of an order under this section if the person sustains the burden of proof that the person did not know and in the exercise of reasonable care could not have known of the order.**

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

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

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

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

commission, a report, setting forth the securities sold by it under such registration or exemption, the proceeds derived therefrom and the disposition thereof.

(b) [Every] **Subject to the limitations of section 18 of the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77 r), every** 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. § 80 a-1 et seq.**), making a filing under section 205 [or 206], **206 or 211** shall file reports with the commission at such times and in such manner as the commission, by rule, may prescribe which, at a minimum, set forth the total amount of securities **offered and** sold in this State during the effective period of the registration statement **or notice filing.**

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

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

Section 210. **Retroactive Registration [of] or Amendment of Notice of Filing for Certain Securities.--**The commission, by regulation, may establish procedures whereby 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. § 80 a-1 et seq.**), which, during the effective period of registration under section 205 or 206 **or the effective period of a notice filing,** sold securities in this State in excess of the aggregate amount of securities registered for sale in this State under section 205 or 206 **or covered by the notice filing** may apply to the commission to register such securities retroactive to the date of the initial registration **or to amend the notice filing retroactive to the date of the initial notice filing.** An application for retroactive registration [of] **or amendment of a notice filing for** such securities shall not be granted if, at the time the application is filed, a civil, criminal or administrative proceeding is pending alleging violations of section 201 for the sale of such securities in this State, or such securities were sold more than twenty-four months prior to the date the application was filed with the commission. An application under this section shall not be granted unless the applicable oversale assessment prescribed by section 602.1(d) has been paid.

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

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

(1) An open-end or closed-end investment company, unit investment trust or face amount certificate company, as such persons are classified in the Investment Company Act of 1940 (54 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 (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 a covered security under section 18(b)(4)(D) of the Securities Act of 1933 (48 Stat. 74, 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) The order is necessary or appropriate in the public interest for protection of investors; and

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

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

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

PART III
REGISTRATION OF BROKER-DEALERS, AGENTS [AND],
INVESTMENT ADVISERS, **INVESTMENT ADVISER
REPRESENTATIVES AND NOTICE FILINGS
BY FEDERALLY COVERED ADVISERS**

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

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

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

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

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

(c.1) **The following apply:**

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

(i) **Person required to be registered as an investment adviser under this act** to employ an [associated person to represent him in this Commonwealth unless the associated person is registered under this act. The registration of an associated person is not effective during any period when he is not associated with a specified investment adviser registered under this act. When an associated person begins or terminates association with an investment adviser, or begins or terminates those activities which make him an associated person, the investment adviser shall promptly notify the commission.] **investment adviser representative unless the investment adviser**

representative is registered under this act or exempted from registration, provided that the registration of an investment adviser representative is not effective during any period when he is not employed by an investment adviser registered under this act; or

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

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

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

(d) It is unlawful for any licensed broker-dealer, agent or investment adviser to effect a transaction in securities, directly or indirectly, in this State if the registrant is in violation of this act, or any regulation or order promulgated under this act of which he has notice, if such violation (i) is a material violation; (ii) relates to transactions effected in this State; and (iii) has been committed by such registrant, or if the information contained in his application for registration, as of the date of such transaction, is incomplete in any material respect or is false or misleading with respect to any material fact.

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

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

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

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

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

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

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

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

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

(d.2) **An investment adviser representative who has a place of business in this State and is employed by or associated with a federally covered adviser and the federally covered adviser meets any of the criteria described in section 303(a)(iii)(A), (B) or (C).**

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

- (1) **Securities that are exempted by section 202(e), (f) or (g);**
- (2) **Securities involved in a transaction exempted by section 203(c), (g), (k), (l) or (m); or**
- (3) **Securities which are covered securities under section 18(b)(1) of the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77r(b)(1)).**

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

(1) **Is a bona fide officer, director, partner or employee of the issuer or an individual occupying similar status or performing similar functions; and**

(2) **Does not receive any compensation, directly or indirectly, for effecting the transactions.**

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

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

Section 303. **Registration and Notice Filing Procedure.--(a)**
(i) **[A] Except as provided by clause (iii), any broker-dealer, agent, investment adviser or [associated person] investment adviser representative** may obtain an initial or renewal license by filing an application with the commission. The application

shall contain such information, and in such detail, as the commission by rule requires concerning the applicant's form and place of organization, proposed method of doing business, and financial condition, the qualifications and experience of the applicant, including, in the case of a broker-dealer or investment adviser, the qualifications and experience of any partner, officer, director, or affiliate, or a person occupying a similar status or performing similar functions any injunction or administrative order or conviction referred to in section 305(a)(ii), information about affiliates or predecessors of the applicant, and any other matters which the commission determines are relevant to the application. **If a broker-dealer, agent, investment adviser or investment adviser representative seeks to obtain an initial or renewal license and, in connection therewith, requests a waiver of any requirement imposed under this section or section 304 or any regulation promulgated thereunder, the commission in granting the waiver may impose conditions on or limit the scope of the initial or renewal license.**

(ii) If no denial order is in effect and no proceeding is pending under section 305, the registration becomes effective on the [thirtieth] **forty-fifth** day after the filing of the application therefor or any material amendment thereto, or on such earlier date as the commission may order. The commission is directed to cooperate with other securities administrators and regulatory authorities to simplify and coordinate registration, application and renewal procedures.

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

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

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

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

(iv) Notwithstanding the provisions of clause (iii), until October 10, 1999, the commission may require the registration of a federally covered adviser under section 301 if the federally covered adviser has not paid the correct fee and the nonpayment or underpayment of the fee has not been remedied by the commission receiving the amount due within ten calendar days following receipt by the federally covered adviser of written notice from the commission concerning the nonpayment or underpayment of the fee required by this section and section 602(d.1).

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

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

(d) The commission may by regulation require a minimum capital for **registered broker-dealers subject to the limitations of section 15 of the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78 o)** and [investment advisers and establish limitations on aggregate indebtedness of broker-dealers in relation to net capital and] **establish minimum financial requirements for investment advisers subject to the limitations of section 222 of the Investment Advisers Act of 1940 (54 Stat. 847, 15 U.S.C. § 80 b-18a).** The commission may classify broker-dealers [and investment advisers for purposes of such requirements. The commission may not, however, with respect to any broker-dealer who is a member of the National Association of Securities Dealers, Inc. or who is registered with the Securities and Exchange Commission require a higher minimum capital or lower ratio of aggregate indebtedness to net capital than is contained in the rules or regulations adopted by such association or commission.] **for purposes of such requirements and may establish different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over same and those investment advisers who do not.**

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

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

Section 304. Post-registration Provisions.--(a) Every registered broker-dealer and investment adviser shall make and keep all accounts, correspondence, memoranda, papers, books and other records which the commission by regulation prescribes[. All], **except as provided by section 15 of the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78 o) in the**

case of a broker-dealer and section 222 of the Investment Advisers Act of 1940 (54 Stat. 847, 15 U.S.C. § 80 b-18a) in the case of an investment adviser. All records so required with respect to an investment adviser shall be preserved for such period as the commission prescribes by regulation. Subject to the limitations of section 15 of the Securities Exchange Act of 1934 in the case of a broker-dealer and section 222 of the Investment Advisers Act of 1940 in the case of an investment adviser, all records required shall be preserved for three years unless the commission by regulation prescribes otherwise for particular types of records[. All], and all required records shall be kept within this State or shall, at the request of the commission, be made available at any time for examination by it either in the principal office of the registrant or by production of exact copies thereof in this State.

(b) Every registered broker-dealer and investment adviser shall file such financial reports as the commission by regulation prescribes[.], **except as provided by section 15 of the Securities Exchange Act of 1934 in the case of a broker-dealer and section 222 of the Investment Advisers Act of 1940 in the case of an investment adviser.**

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

(d) The commission shall make periodic examinations, within or without this State, of each broker-dealer and investment adviser at reasonable times and in reasonable scope. These examinations may be made without prior notice to the broker-dealer or investment adviser. For the purpose of avoiding unnecessary duplication of examinations, the commission, in so far as it deems it practicable in administering this subsection, shall cooperate with securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934 (**15 U.S.C. § 78 a et seq.**) or any other department or agency of this State.

(e) The commission may by regulation prohibit unreasonable charges, commissions or other compensation of broker-dealers and investment advisers, provided that any charges, commissions, or other compensation consistent with rates set by a national securities exchange, when applied to transactions on that exchange, or by the Securities and Exchange Commission or national securities association registered under the Securities Exchange Act of 1934, shall not be deemed unreasonable under this section. Any underwriting compensation permitted by a national securities association registered under the Securities Exchange Act of 1934 with respect to the underwriting activities of its members shall not be deemed unreasonable under this section.

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

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

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

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

* * *

(ii) Has[, within ten years of the date of the commission's action, been either (A) convicted of a felony or misdemeanor, or (B) held liable in a civil action by final judgment of a court based upon conduct showing moral turpitude, and the commission finds that any such felony, misdemeanor or civil action (I) involved the purchase or sale of any security or commodity futures contract, or any other aspect of the securities or commodity futures contract business, (II) arose out of the conduct of the business of a broker-dealer, investment adviser or issuer with respect to a security or transaction not exempt under section 202 or 203, (III) involved embezzlement, fraudulent conversion or misappropriation of property, funds or securities, or (IV) involved the violation of section 1341, 1342 or 1343 of Title 18 of the United States Code; or] **been: (A) convicted within ten years of the date of the commission's action of any felony or misdemeanor, or of any substantially equivalent crime by a foreign court of competent jurisdiction, or held liable in a civil action by final judgment of a court and the commission finds that such felony, misdemeanor or civil action: (I) involved the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary and any substantially equivalent activity however denominated by the laws of a relevant foreign government or conspiracy to commit any such offense; (II) arose out of the conduct of the business of an issuer, broker-dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, bank, insurance company, fiduciary, transfer agent, foreign person performing a function substantially equivalent to any of the foregoing or any entity or person required to be registered under the Commodity Exchange Act (42 Stat. 988, 7 U.S.C. § 1 et seq.) or any substantially equivalent foreign statute or regulation; (III) involved the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion or misappropriation of funds or securities or any substantially equivalent activity however denominated by the laws of a relevant foreign government; or (IV) involved the violation of 18 U.S.C. § 152 (relating to concealment of assets; false oaths and claims; bribery), 1341 (relating to frauds and swindles), 1342 (relating to fictitious name or address) or 1343 (relating to fraud by wire, radio, or television) or Ch. 25 (relating to**

counterfeiting and forgery) or 47 (relating to fraud and false statements) or a violation of any substantially equivalent foreign statute; or (B) convicted of any other felony; or

* * *

(iv) Is subject to (A) any currently effective order or order entered within the past five years of the Securities and Exchange Commission, the Commodity Futures Trading Commission or the securities administrator of any other state denying registration to or revoking or suspending the registration of such person as a broker-dealer, agent, investment adviser, [associated person] **investment adviser representative**, futures commission merchant, commodity pool operator, commodity trading advisor or a person associated with a futures commission merchant, commodity pool operator or commodity trading advisor, or [is subject to] (B) any currently effective order of any national securities association, national securities exchange (as defined in the Securities Exchange Act of 1934 (**48 Stat. 881, 15 U.S.C. 78a et seq.**)) or self-regulatory organization operating under the authority of the Commodity Futures Trading Commission suspending or expelling such person from membership in such association, exchange or self-regulatory organization, or (C) any currently effective cease and desist order or a cease and desist order entered within the past five years by the Securities and Exchange Commission, the Commodity Futures Trading Commission or the securities administrator of any other state and where, in the case of a cease and desist order entered by a state, the cease and desist order contained a finding of a wilful violation of that state's securities law, or [is the subject of] (D) a currently effective United States Postal Service fraud order; but the commission may not institute a revocation or suspension proceeding under this subsection on the basis of an order under another state law more than one year after termination of the effectiveness of the order relied on and unless the order was based on facts which would currently constitute grounds for an order under this section; or

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

(vi) Has wilfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any of the statutes [or], rules [or], regulations **or orders** referred to in subsection (v); or

(vii) Has failed reasonably to supervise his agents or employees, if he is a broker-dealer, or his [associated persons] **investment adviser representatives** or employees, if he is an investment adviser[, but no person shall be deemed to have failed in such supervision if there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, in so far as practicable, any violation of statutes, rules or orders described in subsection (v) and if such person has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures and system without reasonable cause

to believe that such procedures and system were not being complied with]; or

* * *

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

* * *

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

* * *

(c) The commission may not institute a suspension or revocation proceeding **solely** on the basis of a [fact or transaction known to it when the registration became effective unless the proceeding is instituted within thirty days after such effective date.] **final judicial or administrative order made known to it by the applicant prior to the effective date of the registration unless the proceeding is instituted within the next ninety days following registration. This provision shall not apply to renewals of registrations.**

* * *

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

* * *

Section 18. Sections 404, 405 and 407 of the act are amended 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 directors as an advisory client or advising the board of school directors as to any transaction involving the purchase or sale of a security with respect to an investment of public school district funds pursuant to section 440.1 of the act of March 10, 1949 (P.L.30, No.14), known as the "Public School Code of 1949," and 53 Pa.C.S. Pt. VII Subpt. B (relating to indebtedness and borrowing).

[(e)] **(6)** To represent that he is an investment counsel or to use the name "investment counsel" as descriptive of his business unless [his principal business consists of acting as investment adviser and] a substantial part of his business consists of rendering investment advisory services on the basis of the individual needs of his clients.

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

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

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

Section 405. Contract Requirements.--It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract [unless it provides in writing] **if such contract:**

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

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

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

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

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

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

Clause (1) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date, or in any other manner permitted by the Investment Advisers Act of 1940 (**54 Stat. 847, 15 U.S.C. § 80 b-1 et seq.**), and the rules and regulations promulgated thereunder or any contract for the rendering of investment advisory services to an institutional investor. "Assignment," as used in clause (2), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

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

(b) It is unlawful for any person registered as a broker-dealer, agent or investment adviser under this act to represent or imply in any manner whatsoever that such person has been sponsored, recommended, or approved or that his abilities or qualifications have in any respect been passed upon by the commission. Nothing in this section prohibits a statement (other than in a paid advertisement) that a person is registered under this act, if such statement is true in fact and if the effect of such registration is not misrepresented.

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

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

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

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

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

Section 501. Civil Liabilities.--* * *

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

(g) Any [investment adviser] **person** who violates section [404(a) through (d) or any material provision of section 404(f),] **404(a)(1) through (4) or any material provision of section 404(a)(7)** or otherwise makes any untrue statement of a material fact or omits stating a material fact necessary in order to make statements made, in the light of the circumstances under which they are made, not misleading (the [client] **person** not knowing of the untruth or omission) and who does not sustain the burden of proof that he did not know and, in the exercise of reasonable care, could not have known of the untruth or omission, shall be liable to the [client] **person** purchasing the security. The [client] **person** purchasing the security may sue either at law or in equity to recover the consideration paid for the security, together with interest at the legal rate from the date of payment, less the amount of income or distribution, in cash or in kind, received on the security, upon the tender of the security or for damages if the [client] **person** no longer owns the security. Damages are the amount that would be recoverable upon a tender, less the value of the security when the [client] **person** disposed of it, plus interest at the legal rate from the date of disposition. Tender shall require only notice of willingness to exchange the security for the amount specified. Any notice may be given by service as in civil actions specified in the Pennsylvania Rules of Civil Procedure. [An investment adviser] **A person** who is liable under this section and any offeror or seller of the security liable under subsection (a) are jointly and severally liable to the [client of the investment adviser] **person purchasing the security.**

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

Section 509. Right of Commission to Bring [Action; Class Actions] **Actions for Injunction and Equitable Relief; Class Actions; Contempt of Commission Orders.--**(a) Whenever it appears to the commission that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this act or any rule or order hereunder, it may in its discretion bring an action in the name of the people of the Commonwealth of Pennsylvania in the Commonwealth Court or in any of the several courts of common pleas [of Pennsylvania] to enjoin, **through a preliminary or permanent injunction, temporary restraining order or writ of mandamus,** the acts or practices or to enforce compliance with this act or any rule or order hereunder. [Upon a proper showing, a permanent or preliminary injunction, restraining order, or writ of mandamus shall be granted, and a receiver or conservator may

be appointed for the defendant or the defendant's assets.] **The commission also may seek and the court upon proper showing shall grant such other ancillary and equitable relief as the facts warrant, including, without limitation, appointment of a receiver, temporary receiver or conservator of the defendant's assets, a freeze of the defendant's assets, obtaining of an accounting, orders of rescission, orders of restitution, orders of disgorgement or other relief as may be appropriate in the public interest. The court shall not require the commission to meet the criteria for an equitable injunction in order for the court to grant an injunction, restraining order or writ of mandamus.** The court [may] shall not require the commission to post a bond.

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

(c) **Any person violating any (i) stop order issued under section 208, (ii) cease advertising order issued under section 606(c), (iii) cease and desist order issued under section 606(c.1), (iv) order of the commission requiring a rescission pursuant to section 513 or (v) order of the commission imposing any bar described in section 512 from which no appeal of such an order has been taken pursuant to section 607(d) of the act or which has been sustained on appeal, or which has been appealed but where no supersedeas has been granted for the period in which the order has been violated, shall be deemed to be in contempt of such order. Upon petition and certification of such order by the commission, the Commonwealth Court or any of the courts of common pleas if it finds after hearing or otherwise that the person is not in compliance with the order shall adjudge the person in contempt of the order and shall assess such civil penalties of an amount not less than three thousand dollars (\$3,000) nor greater than ten thousand dollars (\$10,000) per violation and issue such further orders as it may deem appropriate.**

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

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

(ii) May, for a reasonable time not exceeding thirty days, take possession of the books, [records] **papers**, accounts and other [papers] **records, however created, produced or stored**, pertaining to the business of any broker-dealer or investment adviser or pertaining to the activities of any issuer in connection with any transaction in a security, whether or not exempted under section 202 or 203 and the use of any proceeds obtained therefrom, and place a keeper in exclusive charge of them in the place where they are usually kept. During such possession no person shall remove or attempt to remove any of the books, records, accounts, or other papers except pursuant to a court order or with the consent of the commission; but the directors, officers, partners, and employees of the

broker-dealer, investment adviser or issuer may examine them, and employes shall be permitted to make entries therein reflecting current transactions;

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

(iv) May publish information concerning any violation of this act or any rule or order hereunder or concerning securities, or practices in the sale thereof, which appear or tend to be unfair, inequitable or fraudulent, but only where it deems such publication to be in the public interest and for the protection of investors; and

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

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

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

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

(d) (i) If, in a proceeding before the commission, any person shall refuse to testify or to produce evidence of any other kind on the ground that his testimony or evidence may tend to incriminate him, that person may be ordered to give such testimony. The order to testify shall not be given except upon an order of court after a hearing in which the Attorney General has established a need for the grant of immunity, as hereinafter provided;

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

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

(iv) No person so ordered to testify or to produce evidence, shall be exempt from any punishment or forfeiture for perjury committed by him while so testifying. Such testimony shall be

admissible against him in any criminal action or other proceeding concerning such perjury;

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

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

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

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

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

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

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

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

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

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

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

(5) Relying upon an exemption from registration contained in section 202, 203 or 302.

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

(c) It shall be unlawful for any broker-dealer or investment adviser to permit a person as to whom an order is in effect under this section, without the consent of the commission, to become or remain associated with a broker-dealer or investment adviser in contravention of such order if the broker-dealer or investment adviser knew or in the exercise of reasonable care should have known of such order.

(d) It shall be unlawful for any issuer to permit, without the consent of the commission, a person as to whom an order is in effect under this section to participate in the offer or sale of the issuer's securities in this State in contravention of such order if the issuer knew or in the exercise of reasonable care should have known of such order.

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

Section 24. Section 602(b.1)(iv), (vi), (vii), (viii) and (ix) and (d.1) of the act, amended or added December 8, 1990 (P.L.755, No.190) and December 7, 1994 (P.L.869, No.126), are amended and the section is amended by adding a subsection to read:

Section 602. Fees.--* * *

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

* * *

(iv) In the case of registration statement filings under section 205 or 206 **or notice filings under section 211** by 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.

Based upon the maximum aggregate offering price at which such securities are to be offered in this State during the effective period of the registration **or notice filing**, the fee for (A)

\$4,000,000 or less, 1/20 of 1% with a minimum fee of \$350; (B) more than \$4,000,000 but less than \$100,000,000, \$3,000; (C) \$100,000,000 or more, \$3,500;

or (D) for an indefinite amount of securities to be offered in this State during the effective period of the registration or notice filing. The amount specified in clause (C) plus a \$500 assessment specified in section

602.1(a)(5). [; except that, in the case of a registration statement in which the issuer, pursuant to its articles of incorporation or other governing instruments, is restricted to holding exclusively debt securities of other persons having fixed final maturity dates occurring within 200 days from the initial effective date of the registration

statement for the issuer's securities filed under the Securities Act of 1933, the maximum fee payable under the above schedule shall not exceed \$1,500.

If 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, which has an effective registration under section 205 or 206 elects to convert to an exemption under section 203(i) without extending the effective period of the exemption under section 203(i) beyond the date upon which the registration under section 205 or 206 would have otherwise terminated, there shall be no additional filing fee required.]

* * *

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

(A) Under section 205 or a notice filing under section 211(a)	300
(B) Under section 206.....	175
(vii) [Filing an application for exemption from registration under section 202(g).....	50]
Filing a notice on SEC Form D under section 211(b)	500
(viii) Filing an application for exemption from registration [for an offering of securities to be sold] under section 203(d) or (s) :	
(A) Where the maximum aggregate offering price at which such securities are offered in this State is less than [\$100,000] \$1,000,000	[50] 150
(B) Where the maximum aggregate offering price at which such securities are offered in this State is [\$100,000 or more but less than] \$1,000,000 or more	[150] 400
[(C) Where the maximum aggregate offering price at which such securities are being offered in this State is \$1,000,000 or more.....	400]
(ix) Filing an application for exemption from registration under section 203[(n)] (t)	[50] 500

* * *

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

* * *

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

* * *

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

Section 602.1. Assessments.--(a) **(1)** Each agent and [associated person] **investment adviser representative**, when applying for an initial license under section 301 or changing employers, shall pay a compliance assessment in accordance with the following schedule: [twenty-five dollars (\$25) for the period beginning with the date of enactment of this section through June 30, 1995,] twenty-seven dollars (\$27) for the period July 1, 1995, through June 30, 1998, [and] thirty dollars (\$30) **for the period July 1, 1998, through June 30, 2001, thirty-two dollars (\$32) for the period July 1, 2001, through June 30, 2004, and thirty-five dollars (\$35) thereafter.**

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

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

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

(5) The assessment for a notice filing by 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.), for an indefinite amount of securities to be offered in this State during the effective period of the notice filing shall be five hundred dollars (\$500) beginning with the date of enactment of this paragraph.

* * *

(c) After giving notice and opportunity for a hearing, the commission may issue an order accompanied by written findings of fact and conclusions of law which imposes an administrative assessment in [an amount] **in the amounts** provided in paragraph (1) against a broker-dealer, agent, investment [advisor] **adviser** or [associated person] **investment adviser representative** registered under section 301 or an affiliate of [the] **any** broker-dealer or investment [advisor] **adviser** where the commission [finds] **determines** that the person [either] willfully has violated this act or a rule or order of the commission under this act or has engaged in dishonest or unethical practices in the securities business; [or] has taken unfair advantage of a customer[.]; **or has failed reasonably to supervise its agents or employees or against any other person if the commission**

determines that the person wilfully violated section 401(a) or (c), 406, 408 , 409 or 512(d); section 401(b) or 407; or a cease and desist order issued by the commission under section 606(c.1) .

(1) The commission, in issuing an order under this subsection, may impose [an] **the administrative [assessment] assessments set forth below.** [of up to ten thousand dollars (\$10,000) for a single violation or of up to fifty thousand dollars (\$50,000) for multiple violations in a single proceeding or a series of related proceedings.] Each act or omission that provides a basis for issuing an order under this subsection shall constitute a separate violation.

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

(ii) In issuing an order against a person for wilful violation of section 401(a) or (c), 404, 406, 408 , 409 or 512(d) or for wilful violation of a cease and desist order issued under section 606(c.1), the commission may impose an administrative assessment of up to twenty-five thousand dollars (\$25,000) for a single violation or up to one hundred fifty thousand dollars (\$150,000) for multiple violations in a single proceeding or a series of related proceedings. In addition to the foregoing assessment, the commission also may impose a special administrative assessment of up to twenty-five thousand dollars (\$25,000) for each of the provisions described as follows that the commission determines are applicable:

(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 wilfully 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 wilful 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 person is subject to an administrative assessment imposed under any other provision of this subsection.

* * *

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

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

* * *

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

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

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

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

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

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

Section 606. Miscellaneous Powers of Commission.--(a) The commission may, by regulation, require any issuer of securities registered under this act or exempted from registration under section 203(d)[, (o), or (q)], which issuer [is not a reporting company] **has not filed reports with the Securities and Exchange Commission pursuant to sections 13 or 15(d) of the Securities**

Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. §§ 78m or 78o(d)), to distribute financial information to its [shareholders] **security holders** at least annually.

(b) If in its opinion the public interest and the protection of investors, so require, the commission may apply to a court of competent jurisdiction for an order, suspending all trading in this State by broker-dealers and agents in any security for any period.

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

(c.1) Whenever the commission finds that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this act or any rule or order thereunder, the commission may order such person to cease and desist from such act or practice and shall notify the person in writing. Notification may be given summarily without notice or hearing. Within thirty days after receipt of a notification under this section, the person desiring to engage in such act or practice may file a written request that the order be rescinded. Upon receipt of the written request, the matter will be set down for a hearing to commence within thirty days after such receipt unless the person making the request consents to a later date. After such hearing, the commission shall determine whether to affirm and continue, modify or rescind such order.

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

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

Section 609. Regulations, Forms and Orders.--(a) The commission may make, amend and rescind any regulations, forms and orders that are necessary to carry out this act, including regulations and forms governing registration statements, **notice filings**, applications and reports, and defining any terms, whether or not used in this act, insofar as the definitions are not inconsistent with this act. All regulations of the commission (other than those relating solely to its internal administration) shall be of general application and future effect and shall be made, amended or rescinded in accordance

with the act of June 4, 1945 (P.L.1388, **No.442**), known as the "Administrative Agency Law," and the act of July 31, 1968 (P.L.**769**, **No.240**), known as the "Commonwealth Documents Law[,]". [and no regulation shall be effective until a public hearing is held thereon or until thirty days after the regulation is published pursuant to such "Commonwealth Documents Law."] For the purpose of rules and forms, the commission may classify securities, persons and matters within its jurisdiction, and prescribe different requirements for different classes. The commission may, in its discretion, waive any requirement of any regulation or form in situations where, in its opinion, such requirement is not necessary in the public interest or for the protection of investors.

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

(c) [The] **Subject to the limitations of the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77 a et seq.), the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78 a et seq.) and the Investment Advisers Act of 1940 (54 Stat. 847, 15 U.S.C. § 80 a-1 et seq.),** the commission may by regulation or order prescribe the kind, form and content of financial statements required under this act, the fiscal or other periods and dates for such statements, the circumstances under which consolidated or other combining financial statements shall be filed, or other requirements it deems necessary for financial statement presentation purposes, and whether any required financial statements shall be certified by independent [public or] certified accountants in good standing with this State. All financial statements shall be prepared reflecting conformity with generally accepted accounting principles **in the United States** consistently applied, unless variance therefrom is disclosed in an acceptable manner, and shall reflect pertinent disclosures by financial notes or other form, where required for that data in compliance with pronouncements by recognized authoritative accounting bodies or if applicable, by governmental agencies, and [unless] **if** otherwise permitted by regulation or order **of the commission**.

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

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

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

Section 29. The act is amended by adding a section to read:

Section 611. Cancellation of Federal Preemption.--Under the authority of section 6(c) of the Philanthropy Protection Act of 1995 (Public Law 104-62, 15 U.S.C. § 80 a-3a(c)), on and

after the effective date of this section, section 6 of the Philanthropy Protection Act of 1995 shall not preempt the laws of this Commonwealth referred to in section 6 of the Philanthropy Protection Act of 1995. This preemption shall apply to all administrative and judicial actions commenced on or after the effective date of this section.

Section 30. This act shall take effect as follows:

(1) The following provisions shall take effect immediately:

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

(ii) This section.

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

APPROVED--The 24th day of November, A. D. 1998.

THOMAS J. RIDGE